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DEATH
PENALTY
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REPORT

In this volume we have mapped the experiences of prisoners sentenced to death with various aspects of the criminal justice system. As will be evident, this volume follows a very different approach compared to Volume 1. We have attempted to convey the experience of prisoners sentenced to death with different aspects of the criminal justice system through qualitative analysis. We felt it would do grave injustice to the voices we heard to reduce their experiences to just numbers. Through an analysis and representation of narratives from the prisoners, we have sought to throw light on the practices adopted by institutional actors in the administration of criminal justice. While much of this might be relevant for all prisoners, irrespective of whether they are sentenced to death, our aim here is to reflect on the processes that inform the imposition of the death penalty. Proceeding on the argument stated in

the Introduction in Volume 1 that being under the sentence of death is a unique punishment, the purpose of the chapters in this volume is to understand the extent to which the protections in the criminal justice system are adhered to while inflicting the harshest possible punishment. Even though the violations might be the same for other categories of prisoners as well, by virtue of the extraordinary nature of the death penalty, these infractions assume much larger significance. Therefore, the adherence to procedural and substantive safeguards within the criminal justice system should be the highest when the possible consequence is condemning an individual to live under the sentence of death. These safeguards exist to ensure that the legal process is a fair one and its importance cannot be overstated in the context of the death penalty.

This volume presented a significant challenge in terms of maintaining the anonymity of the prisoners. We have dispensed with common practices like identifying the exact court, dates of decisions or providing legal citations which, either by themselves or in combination with other factors, are capable of revealing the identity of prisoners.

For a full statement of the measures adopted to maintain anonymity, refer to the section on 'Methodology' in Volume 1.

9 **CHAPTER 6**
EXPERIENCE
IN CUSTODY

109 **CHAPTER 9**
SEEKING
MERCY

147 **DEATH SENTENCES**
IN INDIA (2000-2015):
AN OVERVIEW

CONTENTS FOR
DEATH PENALTY INDIA REPORT
VOLUME 1

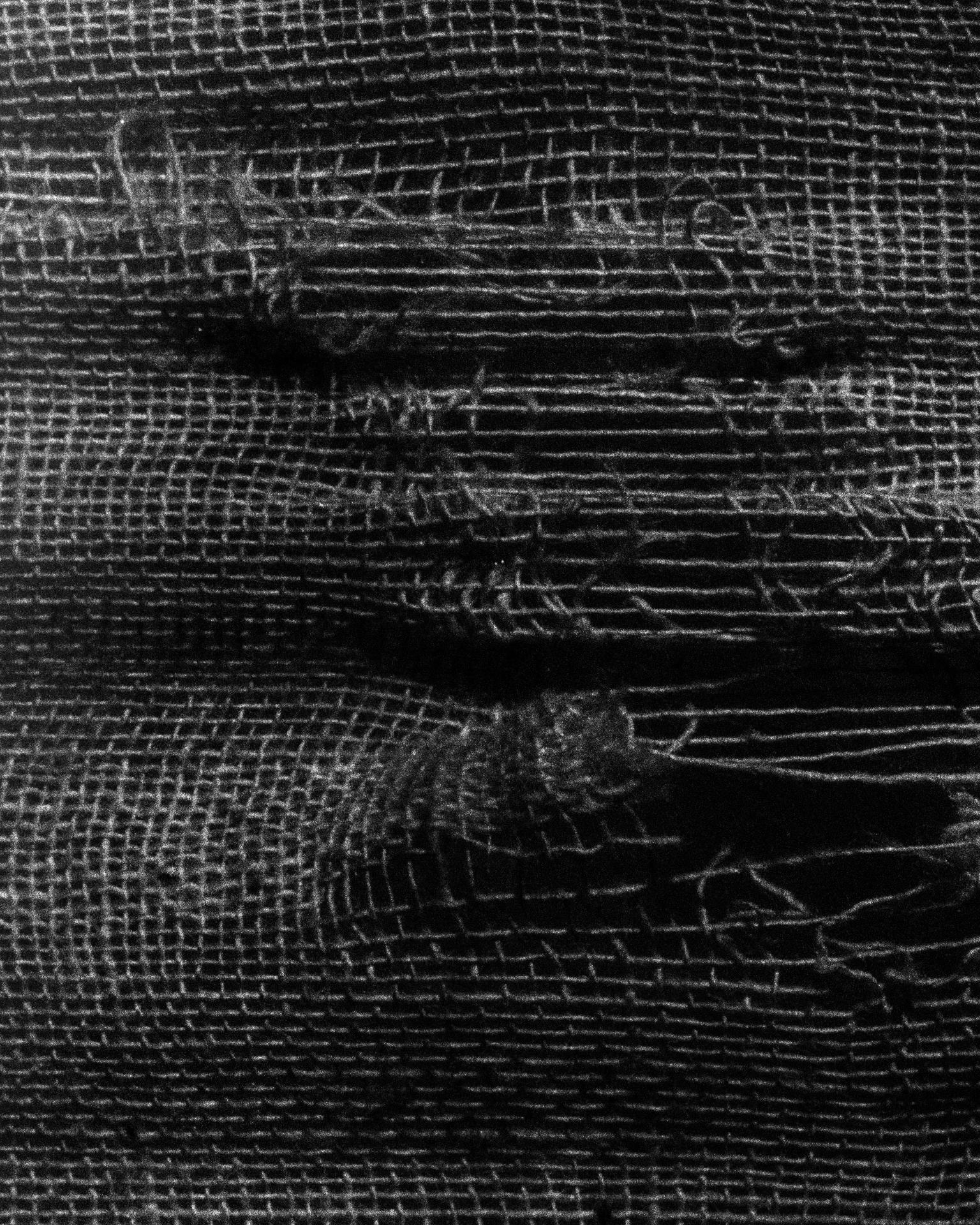
- Introduction
- Methodology
- Legal Context
- Chapter 1 Coverage of the Project
- Chapter 2 Durations on Death Row
- Chapter 3 Nature of Crimes
- Chapter 4 Socio-Economic Profile
- Chapter 5 Legal Assistance
- Appendix

31 **CHAPTER 7**
TRIAL
AND APPEALS

71 **CHAPTER 8**
LIVING ON
DEATH ROW

125 **CHAPTER 10**
IMPACT

201 **CONCLUSION**



6. experience
in custody

The pre-trial phase is crucial for gathering evidence for the trial and in many ways is the foundation on which convictions depend. In the context of cases in which the death penalty is invoked, the crimes are obviously brutal. While a large number of the cases we encountered did not receive attention in the national press, these incidents of violence were extremely sensitive locally and put tremendous pressure on the institutional actors within the criminal justice system, particularly the police and investigating agencies. However, the fundamental safeguards in place through the Constitution and the Code of Criminal Procedure, 1973 (CrPC) seek to ensure that the police does not misuse its powers. These comprise very crucial protections like informing the suspect of the grounds of arrest, the right to consult a lawyer, production before a Magistrate within 24 hours, prohibition of torture, inadmissibility of confessions to a police officer etc. While one concern is to try and protect individuals from excesses of the police, another equally important concern is

to ensure that the police plays by the rules in terms of gathering evidence even if they absolutely believe that the perpetrator of the crime has been nabbed. Therefore, the logic of these safeguards is to protect against State infringements on individual liberty and freedom in exercise of police powers and to uphold the rule of law.

In this chapter, the focus is on the experience of prisoners at the time of their arrest (or surrender) and the manner in which they were treated by the police and investigative agencies. Arguments often justify torture and custodial violence as necessary evils, especially in the context of a broken criminal justice system like India's. It is common to hear the argument that those accused of crimes will not voluntarily confess their crimes to the police and that it needs to be coerced out of them. While such arguments certainly cannot withstand the scrutiny of civil liberties jurisprudence developed over centuries, it is nonetheless important to confront and challenge the popular appeal of such arguments. We also see elements of this

entering the legal discourse of the country with draconian measures in security legislations passing constitutional scrutiny. It is certainly a challenge to impress upon society the value of the argument that increased police powers and condoning the brutality of the investigating agencies is detrimental to foundational liberties and freedoms of all people. The choice that is often presented as having to choose between protecting civil liberties on the one hand and achieving security and law and order on the other is a false one. Further, the information gathered through a confession in police custody by employing torture is often unreliable, as individuals are willing to make statements simply to stop their unbearable suffering and pain.

The inadmissibility of a confession to a police officer under the Indian Evidence Act, 1872 (IEA) is instructive of the concerns that underlie protections afforded to the accused in our criminal justice system. The concern, very simply, is that the police cannot be allowed to use brute force and torture to get confessions and thereby convictions. Despite

multiple judicial and legislative attempts at curbing custodial torture, the police engages, as a matter of routine, in a host of practices which are cruel, inflict unbearable pain and degrade us as a whole, along with those subject to it. Individuals in police custody are threatened with sexual violence against their family members, brutal methods of custodial torture that hardly leave any physical marks are devised, severely tortured individuals are produced in the dark outside the homes of Magistrates and helpless Magistrates make a mockery of the provision pertaining to production within 24 hours. It would be rather short-sighted and lacking nuance to somehow assume that the women and men comprising police forces across this country have some sort of a predilection for violence. Torture and various forms of intimidation are institutionally demanded, condoned and legitimised. India's police force in its various institutional practices is a colonial relic. We have failed miserably in developing a modern police force with a culture for respecting human liberties.

VIOLATIONS OF PROCEDURAL SAFEGUARDS

The Constitution, the CrPC and landmark judgments of the Supreme Court of India outline clear procedural safeguards that investigating agencies must follow while arresting persons and detaining them in police custody. These protections have an integral role in ensuring that a fair procedure is followed while gathering evidence that will ultimately be

produced in a court of law. While violations of these safeguards by themselves are matters of serious concern, they also significantly undermine the right of the accused to a fair trial.

Some of these important safeguards available at the time of arrest under Indian law are given below.

RIGHT TO BE INFORMED OF THE GROUNDS OF ARREST

Article 22 of the Constitution guarantees the right of all arrested persons to be informed of the grounds of arrest as soon as possible. Further, Section 50 of the CrPC casts a duty on the police officer arresting a person to inform her of the full particulars of the offence for which she is being arrested, or the other grounds for arrest.

Of the 219 prisoners who spoke about being informed about the grounds of arrest, 136 said that they were not informed about the same. Common practices included asking individuals to accompany the police officials for false and often vague reasons such as 'answering a few questions' or 'signing some documents'.

Akira was called to the police station on the pretext of signing a few documents.

Thinking that it would not take up much of her time, she left her child sleeping alone at home. During her interview, she described the anguish she felt when she never returned to her child thereafter.

There were instances of prisoners being asked to accompany the police in order to inquire about a relative or friend, or in relation to some 'important work', but they were instead

arrested in relation to an offence. For instance, a prisoner was called for police verification for the purpose of his newly confirmed employment in the Indian Air Force, another called for verification of accounts with respect to a refugee camp that he ran. However, once these individuals reached the police station, the police officials arrested them.

On other occasions, prisoners would be told that they were being taken into custody for petty crimes such as theft, credit card

"I left my sleeping son at home because the police called me to sign documents. I never got home after that."

Akira

fraud or causing a minor accident, but would later discover that they were arrested for more serious offences, having no relation with the reason stated for the arrest. Vatsal Singh was informed by the police that he was being taken for questioning with respect to a bank robbery, but was thereafter charged with causing death by drowning of a family of six.

When the prisoners demanded to know the reasons for their arrest, the police ignored their requests. It was a common practice that they would be informed of the particulars of the offence for which they were arrested only at the time of the interrogation. Further, this would be after they had been subjected to severe custodial violence. Shreecharan was arrested while he was fast asleep, after taking medication prescribed for a mental ailment. He woke up to find himself in the police station and it was only at that point that he was informed about the reason for his arrest.

JUZER'S account of his arrest calls for particular attention. A large number of policemen dressed in civilian clothes were deployed to arrest Juzer in relation to a terror offence which resulted in the death of several policemen, and injury being caused to many persons. In order to make the arrest, armed policemen surrounded his entire neighbourhood and stood on every rooftop around his house to keep watch.

Juzer's father, who was at home, was questioned by the police about the whereabouts

of his son. They assured him that Juzer's presence was required only for the purpose of questioning him about a terror suspect who was killed in an encounter with the police, and that they did not intend to arrest Juzer. They indicated that the police commissioner would complete the questioning within 15 minutes. Juzer's father decided that it was best to cooperate with the police, and accompanied them to Juzer's in laws' residence where he was staying with his pregnant wife. The policemen, still in civilian clothes, took Juzer into custody from his wife's house. Although Juzer's father offered to give information about the terror suspect, as he had been the suspect's teacher in the *madrasa* (school), the policemen refused his request to accompany Juzer to the police station and said that his son would be back within two hours.

At the police station, two Muslim officers called upon Juzer to be honest with them as they shared the same religion and assured Juzer that they would take care of him. However, around 1 am the next morning, a police officer entered the interrogation room and exclaimed "You are gone!" When Juzer asked the policeman whether he could go home, the policeman replied that Juzer was now caught in a trap and that he would have to confess his involvement in the recent terror attack case. It was then that Juzer finally understood the reason for his arrest.

RIGHT TO HAVE FAMILY INFORMED ABOUT ARREST

Under Section 50A of the CrPC, every police officer or other person making an arrest must immediately inform the family, friends, or such other person that the arrested person may nominate, about the arrest. Every person arrested must be informed about this right as soon as she is brought to the police station.

Out of the 195 families that spoke about the arrest or surrender of the prisoners, only in 20 cases did the families state that the police had informed them about the arrest. Apart from this, in 86 cases the families noted that the arrest/surrender took place in front of them. However, it was common for the police to not inform the families about the grounds for arrest, or tell them that the prisoner was being taken for questioning, and would be brought back in a short while.

Mrigank was arrested by the police in the presence of his family, after the police inquired if his name was Mrigank and whether he was above 18 years of age. As soon as the family confirmed Mirgank's identity, the police began to beat him and took him into custody, without telling him or the family the reason for the arrest. In other instances, the families were made to believe that the prisoners were taken into custody for petty offences and would return after being admonished by the police.

In cases where the police did not inform the prisoners' families about the arrest, families learnt about it through media reports while others found out through relatives, friends and neighbours. The family of Sanket became aware of his arrest as the whole village witnessed 35 men being taken into custody and loaded onto trucks after an incident of honour killing occurred in their village.

Another significant factor to be considered is the psychological impact on the family due to not being informed of the prisoner's arrest. In one such case, the family of Swami came to know about his arrest after two months.

The family had spent this entire time looking for him and was completely clueless about his whereabouts. In another case, the family of Pranay Singh learnt about his arrest when his elder brother received court summons to appear as a witness in that case.

In cases of surrender by the prisoners, the practice of detaining families in order to compel the prisoner to surrender was fairly common. In other cases, the family members were tortured or threatened with harm unless they shared information about the prisoner's whereabouts, or compelled the prisoner to surrender. Aariz's wife witnessed his surrender in the hospital where she was admitted. A policeman was deployed at the hospital in anticipation of Aariz's visit to his ailing pregnant wife. Eventually, Aariz surrendered in the hospital. 13 years after his surrender, his wife recalled that at that time she was told that Aariz would be released within three months.

Families also narrated instances of prisoners being kept in an undisclosed location for several days before their formal arrest. The places of detention ranged from guest houses

and isolated locations to houses of police officials. During this time, most families were unaware about the prisoners' location. During her interview, Champak's sister shared that he was tortured for 23 days in a 'workshop' set up by the police where several men and women were detained. Champak's brother-in-law who was also arrested in that case but was later released, narrated accounts of family members of other detainees in the workshop being killed in front of the prisoners. In a high profile terror case, Zaid was detained in a *haveli* (mansion) used by the investigative agencies and severely tortured for almost a month before a formal arrest was recorded.

After he spent 11 years in prison, eight of those on death row, the Supreme Court acquitted Zaid along with his five co-accused while expressing its "anguish about the incompetence with which the investigating agencies conducted the investigation of the case." According to the Court, "instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing."

RANJAY'S narrative is of particular significance in the discussion on surrender by prisoners. Ranjay was convicted and sentenced to death for shooting a one year old child. According to the prosecution's case, Ranjay had demanded Rupees 100 from the child's grandfather, and upon his denial Ranjay fired his pistol which hit the child and killed him instantaneously. During her interview, Ranjay's wife, Shivmani, recounted that Ranjay was an

alcoholic and on the evening of the incident when he came home in a heavily inebriated state, his wife tried coaxing him to go to bed. However, he insisted on going out to buy *gutka* (chewing tobacco), and took his pistol along which he had procured because he was afraid that someone was trying to kill him. According to her, Ranjay fired at a wall but the bullet ricocheted and hit the child. The child's grandfather immediately ran towards Ranjay and stabbed him in the neck with a pair of scissors. Thereafter, Ranjay staggered home and asked Shivmani for the keys to his auto, saying that he needed to drive a child who had been shot to the hospital. She woke up to the sound of someone informing her that people were beating up Ranjay, and she immediately ran to the scene with her children, to see the entire neighbourhood assaulting her husband. Upon seeing them, the mob started beating Shivmani and her children as well. During this violent struggle, her younger daughter was stabbed in the abdomen.

Finally, Shivmani grabbed Ranjay and ran towards the police station, while the crowd pelted them with stones. Upon Ranjay's request, she took him to the police as Ranjay was certain that the crowd would have otherwise killed him. Thereafter, the mob surrounded the police station and the victim's mother threw a stone at the station incharge, asking him to hand over Ranjay, so that they could "take care" of him. Subsequently, Ranjay was admitted to a hospital to treat his various injuries. He was so intoxicated that he did not regain sobriety until the next afternoon, after which he remembered the events of the previous day.

RIGHT TO BE PRODUCED BEFORE A MAGISTRATE WITHIN 24 HOURS

Article 22 (2) of the Constitution guarantees that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours and no such person shall be detained in custody beyond this period without the authority of a Magistrate. This fundamental right has also been recognised in Section 57 of the CrPC, which provides that a police officer shall not detain in custody a person arrested without a warrant for a period exceeding 24 hours, unless produced before a Magistrate. In *Khatri & Ors v. State of Bihar & Ors*, the Supreme Court opined that the intent behind the provision was to “enable the Magistrates to keep check over the police investigation and the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police.”¹

Out of the 258 prisoners who spoke about production before a Magistrate, 166 said that they were not produced before a Magistrate within 24 hours. Narratives of police custody for periods up to seven days, which sometimes even extended to several weeks or months, were documented.

In one such case, Darshan, who has been convicted and sentenced to death for the rape and murder of a minor, was not produced before the Magistrate for four months and was shown to be absconding. During this period, he was severely beaten by the police.

In a multiple murder and dacoity case, Pratibhanu, Vignesh, Amarnath and Omkar were detained for three to four months before being produced before a Magistrate. During this period, the accused were stripped, beaten with steel rods and electrocuted.

When the prisoners were produced before the Magistrate, prisoners repeatedly recounted that the Magistrate did not ask them about custodial torture, legal representation and whether their family was informed about the arrest. In cases where the prisoners themselves complained that they were being beaten in police custody, the Magistrate did not take any action. We also observed the disturbing trend of prisoners being taken to the Magistrate’s residence at night due to which the Magistrate was unable to see visible

¹(1981) 1 SCC 627, paragraph 7.

"When anyone is tortured like I was, it no longer matters whether you did it or not, you will agree to anything to make the torture stop."

Inder

signs of torture inflicted by the police. Zain, a prisoner sentenced to death for the murder of eight persons, recounted that pursuant to his arrest, he was severely beaten in police custody. However, when he was produced before

the Magistrate, it was extremely dark and he was unable to see clearly. During this time, no questions were asked about access to legal representation or torture in police custody.

While confessions recorded in police custody are inadmissible as evidence except to the extent which leads to the discovery of a fact, confessions before a Magistrate may be allowed as evidence. However, in order to ensure that such judicial confessions are voluntarily made by the accused, under Section 164 of the CrPC, the Magistrate shall explain to the accused that she is not bound to make a confession and if she does so, it may be used as evidence against her.

Out of 188 prisoners who spoke about this aspect, 15 admitted to making such confessions. Of these prisoners, some revealed that their confessions were made because the police threatened to harm them or their families.

Others also said that the Magistrate did not inform them that they were not bound to make the confession or that the confession may be used as evidence against them.

Inder, convicted and sentenced to death for the rape and murder of his employer's daughter, provided us a glimpse into the blatant violation of duties by the Magistrate. While in police custody, he was forced to urinate on an electric heater and petrol was poured over his body. Inder recounted that due to the relentless torture, he yielded to the investigating officer's pressure and agreed to confess before the Magistrate. During that

proceeding, the Magistrate did not inform him about the effect of the confession nor did he inquire if it was being made under duress. The Magistrate only asked two questions, "Did you rape the victim?" and "Did you murder her?" During his interview, Inder ruefully shared that he was illiterate and did not have a lawyer to guide him through the legal process, otherwise he would have never made the confession before the Magistrate.

RIGHT TO CONSULT A LAWYER

Article 22 of the Constitution guarantees the right of every arrested person to consult or be defended by a legal practitioner of her choice. In order to ensure that just, fair and reasonable procedure is followed in cases involving impoverished, indigent or illiterate prisoners, the Supreme Court has held that the State shall provide free legal services to such accused persons from the time they are first presented before the Magistrate.²

Pursuant to the guidelines laid down by the Supreme Court in *DK Basu v. State of West Bengal*,³ amendments were made to the CrPC inserting procedural safeguards in case of arrest or detention. One such addition was Section 41D which ensures that any person arrested by the police shall be allowed to meet a lawyer of her choice during interrogation, though not throughout the interrogation. It may be noted that the obligation of the State to provide legal aid has not been extended to police interrogations prior to production before the Magistrate.⁴

Out of the 189 prisoners who spoke about whether they were represented at the time of first production before the Magistrate, 169 (89.4%) did not have a lawyer.

MEDICAL EXAMINATION OF PERSON ARRESTED

In 2009, Section 54 of the CrPC was amended making it mandatory for an arrested person to be examined by a registered medical practitioner. As per this provision, the medical practitioner shall prepare the record of such examination, documenting any injuries or marks of violence upon the arrested person and the

² *Hussainara Khatoon & Ors (IV) v. Home Secretary, State of Bihar, Patna* (1980) 1 SCC 98, paragraph 7; *Khatri & Ors v. State of Bihar* (1981) 1 SCC 627, paragraph 5; *Mohammad Ajmal Mohammad Amir Kasab v. State of Maharashtra* (2012) 9 SCC 1, paragraph 474.

³ (1997) 1 SCC 416, paragraph 35.

⁴ For more details regarding right to consult a lawyer, refer to Chapter 5 on 'Legal Assistance'.

“I do not have a copy of any of the documents. I was denied information from all sides—police, courts and jails.”

Munish

approximate time when they may have been inflicted. In *Shakila Abdul Gaffar Khan v. Vasant Raghunath Dhoble & Anr*,⁵ the Supreme Court noted that Section 54 of the CrPC reinforces the right of an accused to bring to the Court’s attention any instance of custodial torture or assault.

Of the 232 prisoners who spoke about medical examination, 126 said that no medical examination had been conducted upon arrest. Of these, 83 prisoners also said that they faced torture while they were in police custody. While describing his experience of torture during police custody, Mahesh said that he was even beaten by the doctor who conducted his medical examination.

SUPPLY OF DOCUMENTS TO THE ACCUSED

Section 207 of the CrPC provides that the Magistrate shall, without delay, furnish the accused with a copy of the chargesheet and other documents such as the first information report, statements made by persons which the police may seek to examine as witnesses and judicial confessions before the Magistrate.

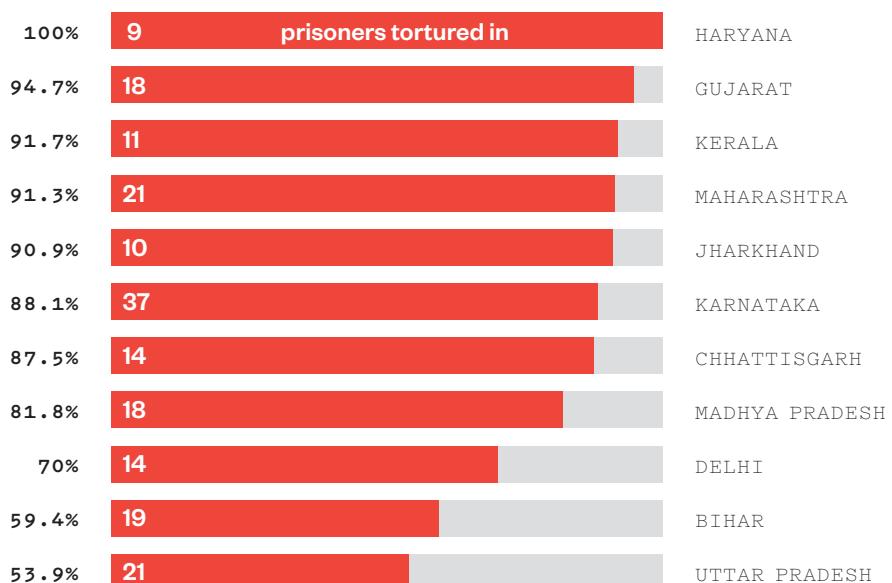
Out of the 255 prisoners who spoke about receiving the chargesheet, 60 said that they never received a copy of the chargesheet. Among the 195 prisoners who did receive a copy, there was a widespread concern that they received it after the commencement of the trial, or after the pronouncement of the trial court judgment. Further, it was a challenge to understand the language in which the chargesheet was written while others could not read it at all as they were illiterate.

⁵ (2003) 7 SCC 749, paragraph 27.

CUSTODIAL TORTURE

Of the 270 prisoners who spoke about their experience in police custody, 216 (80%) admitted to have suffered custodial violence. Further, amongst the states with 10 or more prisoners, Haryana has the highest proportion of prisoners (100%) who were tortured in police custody, followed by Gujarat (94.7%) and Kerala (91.7%).⁶

Graphic 1
State-wise analysis of custodial torture



Information regarding one prisoner in Haryana, three prisoners in Kerala, 13 prisoners in Maharashtra, two prisoners in Jharkhand, three prisoners in Karnataka, three prisoners in Madhya Pradesh, 10 prisoners in Delhi, 21 prisoners in Bihar and 40 prisoners in Uttar Pradesh is unavailable.

⁶ Information regarding custodial torture is unavailable for one prisoner in Haryana and three prisoners in Kerala.

The prisoners spoke about the various methods used, the duration of custodial violence and the effects they continue to suffer until this day. Prisoners often broke down while recollecting their experience of custodial violence inflicted on them. We came across accounts of prisoners where the intense pain and suffering

caused them to sign on blank sheets of paper or agree to versions of events that the police put forward. While confessions to the police as such are not admissible, these statements are often used to back up the staged recoveries, most commonly of the deceased's body, murder weapon or the clothes of the accused.⁷

METHODS OF TORTURE

During prisoner interviews, we heard numerous narratives of torture in police custody. Not only was the number astonishing, the methods employed by the police were inhuman, degrading and inflicted extreme forms of physical and mental suffering. It would be impossible to fully capture the extent and intensity of that experience in all its traumatic nuances. For the prisoners, the very act of narration and remembering was an exercise in conflict.

On the one hand, it was evident that they battled a sense of shame in telling us the details of what was done to them, very often using actions and indirect words in an attempt to avoid articulating explicitly. At the same time, there was a determination to live through those harrowing experiences again to tell us about the brutality of the violence that was inflicted on them. For many of them, it was a mixture of disappointment and shame that they had given in to the demands of the police due to the unbearable pain, only to realise much later the prejudicial legal consequences of their actions.

In this section, we have presented the various forms of torture that were narrated to us. While the depravity of these methods

certainly challenges any acceptable notions of the rule of law, the fact that these methods are more the norm rather than the exception indicates the extent of the crisis in the very foundations of the criminal justice system. These methods relied on by the police at the initial stages of the investigation are built on fear, suffering and submission rather than any modern investigative methods.

We must ask ourselves very serious questions about the use of death penalty in a system where custodial violence and torture form the basis of police investigation because the nature and extent of coercion involved renders any information unreliable, apart from just being morally reprehensible.

⁷ Under Sections 25 and 26 of the Indian Evidence Act, 1872, a confession made by an accused person while in police custody is not admissible as evidence. However, under Section 27, the discovery of a fact pursuant to the information received from the accused in police custody may be proved against the accused, irrespective of whether the information provided amounts to a confession or not.

forms of torture

/ needles inserted into fingernails	/ threat of encounter killings	/ not allowed to use toilets
/ hung upside down and beaten	/ fingernails pulled out	/ skin burnt (with cigarettes/ fire)
/ hands and legs tied to a machine with a motor	/ beaten up with belt/iron rod/ pipes on face/ head/genitals/ soles of feet	/ petrol inserted into body
/ tied in a sack of chillies hung from a tree and beaten with the butt of police guns	/ soap water run through nasal canal	/ dragged by the hair
/ beaten until unconscious, and then made to hop on the spot after drinking water/tea	/ head crashed against walls/glass	/ no food or water for long periods
/ put inside a tyre and beaten up	/ electric current passed through wet body/lips/ nipples/genitals	/ head immersed in the toilet
	/ waterboarding	/ teeth broken

/ fingers
broken with
pliers

/ rollers
pressed
on body

/ solitary
confinement

/ hung
by wires

/ forced to
drink urine

/ not allowed
to sit for
long periods

/ handcuffed/
hands and feet
tied up/tied to
furniture/chained

/ forced nudity
for long
periods

/ put on a slab
of ice and leg
broken

/ immersed
in boiling
water

/ immersed
in ice-cold
water

/ forcible anal
penetration
with rods/
glass bottles

/ ‘aeroplane’—
arms and legs
tied behind
the back, with
stomach parallel
to the floor, and
then pulled up

/ chilli
powder
smeared
on wounds

/ stripped and
tied to a table
with a snake
let loose in the
room

/ forcibly made
light-headed
and then beaten

/ extreme
stretching of
arms and legs

/ made to urinate
on heater

/ “unexplainable
things”

EFFECTS OF TORTURE

Section 55A of the CrPC casts a duty on the police to take reasonable care of the health and safety of an accused under their custody. The severe physiological problems faced by persons while in police custody as a result of custodial violence represent blatant violations of this obligation.

The forms of torture described by the prisoners often left permanent effects on their health and bodily integrity. Permanent loss of eyesight and hearing, irreparable damage to limbs and other bodily parts, spinal injuries are some of the lasting effects of custodial violence that prisoners complained of. Amongst prisoners subject to intense electric shocks over significant periods in police custody, we often heard about severe recurring headaches.

One prisoner claimed that he had developed epilepsy after being subject to prolonged electric shocks in police custody. The inability to eat any food due to intense pain and swelling, urinating blood, fractures in different parts of the body, bleeding from the mouth, ears or anus were other debilitating consequences that prisoners suffered after being subjected to custodial violence.

FEMALE PRISONERS

Among the female prisoners, Amarpreet who was pregnant at the time of her arrest, recounted that rollers were pressed on her body due to which she suffered a miscarriage. She was also doused in extremely hot and cold water alternately. This was done in the presence of male and female police officers. Akira shared that she was given electric shocks

and thereafter chili powder was rubbed into her wounds. While inflicting these horrors, the police would raise the volume of the television so that no one could hear her screams. In another case, Roshini was tied to a chair and beaten due to which she suffered a bone injury in her leg. During this time, she was repeatedly forced to confess to the crime.

TERROR OFFENCES

Out of 22 prisoners who were sentenced to death for terror offences and spoke about custodial violence, 16 revealed that they had been tortured while in custody. Those implicated in terror offences shared detailed accounts of the torture inflicted on them in police custody.

“I was stripped and tied on a table when a snake was let loose in the room.”

Mayur

Mahmud was severely beaten, electrocuted in his genitals and blindfolded during the entire duration of police custody except when he was given food. His co-accused, Zaid said that due to the severe torture meted out to him, his skin would peel off while removing his clothes. Champak, who was convicted for multiple explosions resulting in the death of 22 people, said that the police inserted an iron rod inside his body and electrocuted him for 20 days.

The vivid account of prisoners sentenced to death for an incident involving murder of multiple persons and destruction of property, provides insight into the manner in which persons suspected of terror offences are treated in custody. The case of these prisoners was previously filed under the Prevention of Terrorism Act, 2002 (POTA). After POTA

was repealed in 2004, the review committee constituted by the Central Government to examine all pending cases registered under it, concluded that the accused in this case should not be tried under this legislation as this incident did not form part of a “conspiracy” envisaged under POTA.

While recounting their experiences in police custody, these prisoners shared shocking accounts of the manner in which they were tortured. Hazim was tied to a tree and beaten, electrocuted and continuously threatened with an encounter killing. His co-accused, Imtiyaz was forced to drink his own urine and pins were inserted into his fingers and toes. During his interview, he also recalled the horror of constantly being referred to as a ‘terrorist’.

SEXUAL OFFENCES

Out of 70 prisoners who were sentenced to death for sexual offences and spoke about custodial torture, 63 admitted to have been tortured in police custody. Among the prisoners implicated in cases concerning sexual offences, there were accounts of sexual abuse by police officials as well.

Mayur recounted that he was stripped and tied on a table when a snake was let loose in the room. Apart from this, the police clipped his penis and passed electric currents through it. While discussing his experience in custody, Brijmohan said that the police kept him naked for three days and hit him on his genitals. In order to force Harikishan to make a confession, the police official removed his clothes and

inserted a needle into his penis. Apart from sexual abuse, several prisoners also said that their fingernails/toenails were pulled out and they were deprived of food and water.

AMAAN was sentenced to death in a high profile sexual violence case. In police remand, Amaan was stripped and beaten up with a belt and bamboo stick. His face and genitals

“The technology of torture all over the world is growing ever more sophisticated- new devices can destroy a prisoner’s will in a matter of hours, but leave no visible marks or signs of brutality. And government-inflicted terror has evolved its own dark sub-culture.”

Nandini Satpathy v. PL Dami & Anr, Supreme Court of India (1978)

were electrocuted which caused excessive bleeding. He also spoke about the horror of the police forcefully collecting his semen sample and how he was forced to sign on 10 to 15 blank sheets of paper. Before being taken for a medical examination, the police directed him not to inform the doctor regarding the violence faced by him in custody. Afraid of being

tortured again, he told the Magistrate that the police did not use any force against him. Once the remand period was extended, the police continued to hit him mercilessly. In an account that indicates the level of expectations from police officials, Amaan said that the policemen on night duty were “nicer people” simply because they did not torture him.

CONFESsION BEFORE THE POLICE

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

Shalin Sharma, who was implicated along with three others in a case of kidnapping and murder of a minor, was stripped by the police and petrol was poured over his body. Following this, he was forced to confess to the commission of this crime at gunpoint. In another case, Bakulbhai was threatened with harm to his family members. He was told that his sister and her fiancée were in police custody as well and he was shown photographs of his parents shifting from their house to a rented accom-

modation. Out of the fear of harm to his family, he confessed to kidnapping and murdering a minor. On the other hand, the story of Roshan highlights the plight of prisoners who refused to confess, despite repeated torture. The police stretched his arms and legs wide apart and severely beat him up. He was subjected to waterboarding and his toenails pulled off in order to force him to confess to the rape and murder of a minor girl.

TAMPERING WITH EVIDENCE

Out of the 220 prisoners who spoke about tampering of evidence, 142 believed that the evidence in their case was staged. Of these prisoners, 106 were subjected to custodial violence, which lends greater significance to the issue of tampering of evidence.

There were observable patterns adopted by the police, such as proving discovery of certain facts at the instance of the accused, or showing inculpatory evidence as having been seized from the crime scene or the accused. The police also showed recovery of articles such as weapons, clothes, jewellery or money that the prisoners had never seen before but these were later produced in court as having been recovered from their possession. We also heard narratives across the country about the police forcing the prisoners to leave their fingerprints on incriminatory objects such as the weapon, or planting blood or semen stains on the clothes of the prisoner or the victims. Some prisoners even shared accounts of being taken to the crime scene where the

police took their photographs or made videos of them which were produced in court.

Gopesh, who has been convicted and sentenced to death for the rape and murder of a woman, was taken to the victim's house and forced to leave his fingerprints on a beer bottle, door knobs, cupboards and a video cassette recorder kept in the house. In the case of Hilbert, the police soaked the prisoner's shirt in blood which was later shown to be recovered at his instance, from a compound near his house. Ramanand revealed that his semen was put on the clothes of the deceased to prove the rape charges against him. Purohit recounted that in his presence, the police stained the victim's clothes with his blood.

HARASSMENT OF FAMILY MEMBERS

One of the disturbing observations during our interviews with family members of the prisoners were the narratives of harassment by the police. While stories of physical, verbal and psychological violence faced by the prisoners' families at the hands of the police are less explored, it is often used as effectively as custodial violence to subvert a fair investigative process. Out of the families of 204 prisoners that discussed their experience with police officials, 120 admitted to have been ill-treated, harassed or threatened by the police. Families also shared detailed accounts of the various forms of abuse they encountered.

The youngest brother of Lakshmikant, aged around eight years, was brutally tortured in police custody, which resulted in his death. In another case, the police harassed the uncle of Utpal by making him drink urine. In some cases, the families described that when they

went to the police station to meet the prisoner, they were insulted or ill-treated by the police and sent back even without getting a chance to meet the prisoner. Mrigank was arrested from his house in front of his family members. However, they were not allowed to meet him

at the police station and were threatened that they would be arrested as well. Thereafter, the police maintained guard outside their house and did not allow them to leave the premises.

The accounts shared by the female members of the family depict a different kind of intimidation inflicted by the police officials. One such case is of Fazil, where the police asked his wife, Saleema, for sexual favours in return for permission to meet him. At the time of his arrest, Saleema was six months pregnant and had a three-year old daughter. During this period, policemen would often go to their house and harass her.

Similarly, the pregnant wife and children of Atmaram were detained by the police for four days. During that time they were not allowed to communicate with anyone. Traumatised by her

experience in police detention, Atmaram's wife underwent an abortion upon her release from police custody.

In another case, Brijmohan's mother, Urmilla, shared that the police sexually abused her the day her son was transferred to prison. She believed that since her son, the lone male member in the family, was arrested, the police would continue harassing her and her daughters.

A few families however said that the police was very helpful and even protected the prisoners' family members from local residents following the incident. According to the family of Dharmaketu, the police was extremely cooperative and even stored their belongings for safekeeping after the neighbours tried to destroy their household items.

The narratives of custodial torture and family harassment discussed in this chapter reveal the unreliable and illegal ways through which evidence may be collected during criminal investigations. Apart from the irreversible consequences of investigative arbitrariness on innocent persons who may be wrongly convicted and sentenced to death, we must also reflect on the inherent value in compliance with these procedural safeguards, which lay the foundation of a right to fair trial. The cruel and inhuman manner in which these prisoners have been tortured in police custody not only makes them more vulnerable during their trials, but the pain and humiliation inflicted also denies them the basic standard of human dignity that the law seeks to uphold.



and expand

An assessment of the degree of participation of an accused in the legal process is essential to a discussion on the right to fair trial. It is through this engagement that an accused is sentenced to death at the trial stage, which then shapes her experience during the years in prison and in course of the appeals process. Just as in the previous chapter on 'Experience in Custody', much of this experience might hold true for other criminal proceedings as well and might not be unique to death penalty cases. However, our primary concern here is to draw attention to the manner in which the legal process unfolds to sentence an

individual to death. The evaluation of that process cannot be contingent on its similarity to the processes used for other punishments. Invoking the death penalty and subjecting an individual to live under the sentence of death is qualitatively very different from any other punishment within the criminal justice system. Considering the stakes involved in a capital offence case, any kind of deviation from the procedure may assume an irreversible cost for the accused. Therefore, if the death penalty is to be imposed, it must carry with it a very high degree of fidelity to trial procedures, appellate processes, standards of evidence, quality of legal representation and sentencing factors.

TRIAL PROCEEDINGS

The trial proceedings are the first stage in a criminal case where the guilt and sentence of the accused are determined. It presents the widest opportunity to consider the evidence gathered by the investigative agencies in a manner that is not possible at the later stages. It also provides the accused the best opportunity to present wide-ranging facets concerning the case and explain her role and circumstances. It is during this stage that all the relevant legal materials are brought on record and it forms the foundation for all further legal options. This chapter draws attention to the experience of the prisoner during trial, various processes of the court and ultimately the sentencing practices adopted when the death sentence is sought. A common experience shared by prisoners during the trial stage was their complete alienation from the

legal process. Prisoners knew very little about the case against them and it began right from the investigation stage, where we often heard narratives of individuals being unaware of their grounds for arrest or were picked up on false pretexts. Further, they were unaware of the charges filed against them from the time of arrest till the commencement of trial proceedings as they were either not provided with the chargesheet or were unable to comprehend it. As many lawyers met the accused directly in court after the trial had begun, there was little opportunity for the prisoners to understand the case or to discuss their defence. Such unawareness of the charges and prosecution case levelled against her is what often characterized an accused's experience, as her case came up for trial before a sessions court. Given such alienation of the accused at pre-trial stage and

“When I asked the lawyer about my own case, he taunted me and asked if I have become a lawyer.”

Abdal

the unreliable nature of evidence collected during investigation, the right to fair trial may be protected only if the trial court is cognizant of the faults in the investigation machinery and is able to effectively include the accused in proceedings against her. Any meaningful inclusion would entail making known to the accused the

case against her so that she can respond to the prosecution version in court, either herself or through her lawyer. This burden of inclusion is on the State before it subjects its citizens to penal provisions and it becomes even more onerous where the imposition of the highest penal measure is sought.

PRESENCE OF ACCUSED IN TRIAL COURT

The presence of the accused in court during trial is a fundamental requirement of the criminal justice system and any deviation from it is allowed only in exceptional circumstances. The foundational reason for such a requirement is to give the accused an opportunity to understand the case against her. Section 273 of the Code of Criminal Procedure, 1973 (CrPC) requires that all evidence led in trial proceedings must be taken in the presence of the accused, or her lawyer, if the accused's presence has been dispensed with.¹ Section 317 of the CrPC allows the judge to dispense with the presence of the accused with reasons in writing if the judge is of the opinion that the personal attendance of the accused is not necessary for interests of justice. This demonstrates that the presence of an accused during the trial is the rule and not an exception. Presence in court constitutes the first step in a fair trial and dilution of this requirement can significantly impact the protections envisaged for an accused during trial.

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

To meet the formal requirement of recording their presence in court, prisoners narrated the manner in which they were made to sign documents at the beginning or the end of the

day while remaining confined throughout in the court lock-up. Narratives from prisoners on their absence from court proceedings drew attention to a variety of practices adopted by

¹ The obligation to lead evidence against the accused in her presence is one of the basic requirements of a fair trial and is mirrored in Article 14(3)(d) of the International Covenant on Civil and Political Rights (1966) which entitles every accused facing a criminal charge “to be tried in his presence.” India has acceded to the Covenant and is bound to respect its provisions under international law.

"The heat in the lock-up was unbearable and it constantly reeked of urine."

Deepinder

prison and court officials. Aashay, for instance, said that he was often confined in the court lock-up due to lack of police personnel to accompany him to the courtroom itself.

LOCKED AWAY IN COURT

Ayog told us that he was often kept confined in the court lock-up while the witness statements were being recorded in the court. On other occasions, though he was taken to the courtroom, he would be made to sign some documents and was told to ask his lawyer about the case proceedings. A similar experience was shared by Muhamfiz about his trial, with Muhamfiz being present during the depositions of two defence witnesses while being kept in the court lock-up for the rest of

his trial proceedings. Having never been to school, Muhamfiz believed that even his limited presence in court would have been more meaningful if he had been educated. Not only were various prisoners denied the opportunity to attend their court proceedings, they had to also endure the inhuman conditions of the court lock-ups. Shahid, a prisoner sentenced to death in the same state as Ayog and Muhamfiz, described the court lock-up to be so dirty that "it was unsuitable even for animals." A similar experience was recounted by Deepinder, who described the court lock-up as a small room with 50 people crammed in it. The heat in the lock-up was unbearable and it constantly reeked of urine.

HANDCUFFING PRISONERS WHILE IN COURT

Section 49 of the CrPC provides that persons arrested cannot be subjected to more restraint than is necessary to prevent their escape throughout their period of custody. In *Prem Shankar Shukla v. Delhi Administration*, the Supreme Court held that handcuffing of a prisoner while he was being escorted to court was a violation of Section 49 of the CrPC, as this amounted to physical restraint beyond a degree that was necessary for preventing his escape while he was in custody.² Handcuffing was considered to be inhuman, cruel and unreasonable unless the State was able to show that no other practical way of forbidding escape was available, and that the prisoner was so dangerous and the circumstances so hostile that other means for preventing escape could not be employed.³

The practice of handcuffing prisoners was not limited to the pre-trial experience of prisoners. There were instances recorded of prisoners who were kept handcuffed even in the courtroom while proceedings were taking place.

Hetansh and Jainish, two of the four prisoners sentenced to death in a case, said that they were usually kept incarcerated in the court lock-up during the trial proceedings. While they were called to court on certain occasions to

² Concurring opinion by Justice RS Pathak in *Prem Shankar Shukla v. Delhi Administration* (1980) 3 SCC 526, paragraph 40.

³ Majority opinion by Justice Krishna Iyer in *Prem Shankar Shukla v. Delhi Administration* (1980) 3 SCC 526, paragraph 23.

sign on documents, they were also summoned to witness the proceedings by the judge on certain others. Through the duration for which they were present in court, not only were they

made to stand 15 feet away from the stand which made the proceedings inaudible, but were kept handcuffed as well.

UNDERSTANDING TRIAL PROCEEDINGS

Even when the accused were present in court for the trial, they struggled to understand the meaning and content of the proceedings unfolding before them. Out of the 286 prisoners who spoke about their experience during trial, 156 (54.6%) said that they could not understand the proceedings at all.

The very architecture of several trial courts across the country often prevents any real chance of the accused participating in their own trial. The designated place for the accused was usually at the back of the court-room while the legal proceedings took place right in front, between the judge and the lawyers. The difficulty in physically hearing these exchanges was a significant impediment in the accused's ability to understand the proceedings. The language used in court created yet another barrier for the prisoners. They rarely understood English and said that even though the witnesses might be examined in local languages, instances where the arguments were in English were beyond their comprehension. Such practices go against the mandate of Section 279 of the CrPC, which provides that if evidence is given in the presence of the accused in a language not understood by her, it shall be interpreted to her in open court in a language understood by her.⁴ Further,

Section 318 of the CrPC requires the trial court to forward a report to the High Court, noting the circumstances of the case which resulted in conviction, where the accused having a sound mind, was unable to understand the trial proceedings.⁵ While these provisions provide a framework to ensure that the accused can participate in the proceedings against her, the failure to meet these requirements brings into sharp focus the inability of the criminal justice system to uphold crucial elements of the right to fair trial.

THE LANGUAGE BARRIER

Binesh was 21 years old when he was implicated for the rape and murder of a minor. Born to visually impaired parents, Binesh never went to school and instead helped his family in cultivating their rented land from an early age. During his interview, Binesh recounted that while the trial proceeded in his native language, he was unable to understand the

⁴ The right to free assistance of an interpreter has also been recognized in Article 14(3)(f) of the International Covenant on Civil and Political Rights (1966), which entitles an accused to such a facility if she "cannot understand or speak the language used in court."

⁵ Section 318 of the Code of Criminal Procedure, 1973 reads as "If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit."

complex proceedings, despite his best efforts. Unlike Binesh, Abed's inability to comprehend the trial proceedings arose due to his limited knowledge of English. Abed, who could not complete his secondary education due to financial reasons, remarked that he could only understand simple words in English like "go" and "wait." During his trial which lasted for twelve and a half years and was heard by more than five different judges, Abed could not comprehend those parts of the proceedings which were conducted in English. When Abed was finally sentenced to death, a new judge was appointed and the sentencing hearing was held in chambers. Expressing disappointment over his inability to understand the proceedings, Abed remarked that he understood the trial court decision only after it was explained to him by the other inmates.

While inability to understand English was often a major impediment for prisoners, even familiarity with English did not always guarantee understanding of the case proceedings. Jumail was arrested and taken to a neighbouring state for his trial even though he did not speak or understand the local language of that state. Though educated in an English-medium school, he was denied an opportunity to understand the proceedings against him due to the proceedings being conducted in the local language of the state. Both Jumail's plea for a Hindi translator and his lawyer's demand for case papers to be provided in English were turned down by the trial court, which proceeded to convict and sentence him to death.

While discussing their inability to understand and comprehend the language being used in court, prisoners often made a connection with their low levels of education. Chapter 4 on 'Socio-Economic Profile' provides the levels of educational attainment amongst prisoners sentenced to death in India.⁶ Ideally, in situations where the accused is unable to understand the proceedings, the lawyer for the accused is meant to play a crucial role in mitigating the disturbing degrees of alienation from the legal process. However, as seen in Chapter 5 on 'Legal Assistance', there is very little assistance that comes from lawyers on this front. By virtue of their marginalised position in society, the prisoners under consideration in this Project rarely receive a legal representation that is responsive, involved, and empathetic. The narratives we heard from prisoners sentenced to death across the country told us that their lawyers were often dismissive and rarely showed any interest in hearing what they had to say or informing them about the court proceedings.

LEGAL REPRESENTATION AND ALIENATION

Earning his livelihood as a daily wage worker in stone crushing industry, Ramanand had no means to hire a private lawyer to argue in his trial. Not only did his legal aid lawyer refuse to explain the case details or how the trial was proceeding, but also failed to discuss the different sentences that could be imposed. Consequently, the initial faith in his lawyer

⁶ Out of the 365 prisoners for whom information is available on educational profile, 23% did not attend school and 61.6% did not complete their secondary education.

transpired into a complete lack of trust by the end of trial proceedings. A similar grievance was shared by Abdal, who, in addition to a total lack of engagement with his lawyer, had to bear with dismissive responses such as “Have you become a lawyer!” whenever he tried enquiring about his own case. The sentiment of helplessness brought about by alienation from court proceedings was perhaps most aptly captured by Wasiq, who like others, voiced his concern about being excluded from the case details. Claiming that he was framed by the police, Wasiq expressed anguish over the lack of opportunity to discuss the case with his privately arranged trial court lawyer, who met him only for five minutes before each hearing. “This is like employing a lawyer and keeping quiet; we cannot speak a word in our defence,”

complained Wasiq. With his High Court lawyer assuring Wasiq that he will discuss the strategy with him before the case is heard, Wasiq hopes that the High Court will affirm his innocence.

In essence we have a system where the accused lacks the necessary capabilities or the support to understand the proceedings that will determine her guilt and ultimately sentence her to death. She is largely in the dark about the evidence being presented against her, both in court and in terms of her lawyer informing her about the nature and content of proceedings. These extremely high levels of alienation from the criminal justice system have left prisoners with an acute sense of injustice having been perpetrated in their cases.

TRIAL EXPERIENCE OF FAMILIES OF PRISONERS

Prisoners being brought to court provides families an opportunity to meet the accused in a setting that is far less forbidding than the prison *mulaqat* system. Prisoners are brought to the court premises in the morning before the courts begin work and are kept in the court lock-up until the courts close. This provides the families of prisoners an opportunity to attempt meeting the accused for a longer period of time and in a manner that is perceived to be slightly better than the prison *mulaqat*.⁷

Of the 206 families that provided details about their experience with the trial process, 148 attempted to witness the trial and meet the accused in court in some manner or the other. The remaining families provided us with a range of reasons for not attending the trial proceedings.

⁷ During a prison *mulaqat*, family members often spend long hours waiting outside the prison, for a chance to meet the prisoner for no more than 20–30 minutes. In several jails, the prisoners are lined up to talk to their families across two–three layers of *jaali* (metal netting). With no enclosures, it is extremely chaotic as people jostle for space and shout to be heard across the *jaali*.

Amongst the families that went, responses ranged from those who regularly attended trial proceedings and were able to understand the proceedings to those who would travel long distances but were neither allowed inside court nor allowed to meet the accused. We heard narratives where families would spend considerable amount of money in the initial few instances to reach the trial court. However, they would soon realise that they hardly understood anything and were met with indifference from the lawyers when it came to explaining the proceedings of the day. Those factors would then combine to dissuade families from spending money and losing daily wages to attend the trial proceedings.

We also heard narratives where families would go to trial courts and wait outside the courtroom either because they could not comprehend the proceedings or were not allowed inside by the court officials. In such situations, the motivation of the families to travel these distances was to get a few moments with the accused, or as often happened, to just catch a glimpse of the accused. As trials dragged on and the strain on resources of families kept rising, some families could no longer afford to make the trip to the trial court.

RUKMINI, WIFE OF SHREST, married at the age of 11, was just 18 when her husband was sentenced to death for the rape and murder of a minor, leaving the responsibility of raising their two children solely on her shoulders. Recounting how she had never worked before, Rukmini spoke about the drastic change of circumstances after Shrest's arrest. She was ostracized by the villagers, blamed

for her husband's actions, and denied all help from their relatives. Compelled to take up odd jobs in the village while leaving her five-year old daughter and three-year old son at her neighbour's house, she was hardly able to make ends meet. Things worsened when she would spend her meagre income to visit the trial court, often being denied the chance to properly interact with Shrest, or being made to wait outside the courtroom. Little help was on offer from the privately hired lawyer, who had been paid initially by selling her nose ring and subsequently her earrings. He did not discuss the case with her, dismissed her questions and often ignored her calls. After visiting the court on seven to eight occasions, only to be denied entry into courtroom or to learn that the hearing was being adjourned, she could not afford to let such visits drain her resources further. As she had ceased her visits to the trial court, Rukmini saw the news of her husband being sentenced to death on television.

Families that never went for the trial spoke about the tremendous financial stress that kept them from attending the proceedings. Invariably in such cases, it meant that the family had to cover very long distances, spend a significant amount in travel and food and also lose out on their daily income. In other cases, the families had either severed all ties with the prisoner or did not want to attend the proceedings. In certain high-profile cases that received tremendous local attention, families would decide against going to trial proceedings because they feared violence or ostracisation. There were also instances where family members were not allowed to witness the trial

proceedings by virtue of it being a closed trial inside the prison or on other premises.⁸

AFSANA, WIFE OF AARIZ, was 19 when she got married, and within three months of their marriage, her husband was arrested. She was pregnant at the time of his arrest. Following his implication, her health deteriorated significantly and she had to deal with uterine problems and a damaged spine. Though she was in better health before her husband was arrested, she now found it difficult to even sit up properly. After Aariz' arrest, she took to making incense sticks to earn a living to care for her ailing mother, young daughter and herself. Unfortunately she was then struck by a host of illnesses followed by a debilitating back injury, which incapacitated her for any sort of physical work. She now looks after her school-going daughter and bed-ridden mother with whatever little her relatives manage to give her. Burdened with these responsibilities, Afsana found it impossible to afford travel to another state, where her husband was being tried in a special court. Even if Afsana could arrange for the resources to travel, she could not have attended the trial, as the special court was constituted within the confines of the prison where Aariz was lodged. As a result, she had no idea about the trial proceedings and learnt about any developments from the families of the co-accused. With the trial lasting for more than eight years and the case pending

for confirmation before the High Court, Afsana only hoped that her ordeal would end soon.⁹

MUSCLED TO ALIENATION

Abhijeet Singh and Pahal were two of the three prisoners sentenced to death for kidnapping with murder of a minor for ransom. The case received tremendous media attention as the alleged crime was committed amidst election campaigning in the state. While Pahal's mother believed that her son was sentenced to death due to media pressure, Abhijeet's father claimed that the then Chief Minister even visited the victim's family. Afraid of facing public outrage outside the crowded court-room, Abhijeet's father never attended the trial court proceedings. In another case which received significant media attention, Ghalib's family faced problems in attending trial due to the influential family of the victim. The victim's family members were associated with a powerful religious group and they threatened Ghalib's brother with dire consequences if they tried attending trial proceedings.

Clearly there are structural reasons and institutional practices that prevent family members from being meaningful participants in the trial proceedings. The opaqueness of legal processes with multiple levels of impediments in accessing information about the progress in cases only adds to the frustration and disenchantment with the criminal justice

⁸ Amongst the 367 prisoners for whom information is available on the type of court setting in which trial was conducted, 23 had closed trials. Of these, 21 prisoners in four cases were tried for terror offences inside special courts set up inside prison complexes. Additionally, a prisoner was tried by a court-martial constituted under the Army Act, 1950 while yet another was tried by a Security Force Court constituted under the Border Security Force Act, 1968.

⁹ It had been four years and ten months since the trial court had imposed the death sentence on Aariz and his co-accused at the time of Afsana's interview.

system. Just like the prisoners themselves, the families also repeatedly narrated instances of unwillingness on part of lawyers to provide with any information about the progress in the cases. This is even more surprising in context of the observations in Chapter 5 on 'Legal Assistance' that over 70% of the prisoners had private lawyers at the trial court stage.¹⁰

Irrespective of whether they had private or legal aid lawyers, both prisoners and their families expressed widespread disappoint-

ment with their lawyers for keeping them in the dark about the proceedings in their case. Given the socio-economic profile of prisoners under consideration, it suddenly appears to those trapped in the criminal justice system that it victimises the poor and the marginalised. In varying degrees of institutional exclusion, corruption, indifference and incompetence, multiple actors within the criminal justice system leave those within its violent grasp with a deep sense of disaffection and injustice.

EVIDENCE IN TRIALS LEADING TO DEATH SENTENCES

During our interviews, the quality of evidence was also discussed with prisoners and their families. As will be evident from the preceding parts of this chapter, the alienation from the legal process meant that prisoners and their family members rarely had any meaningful knowledge of the evidence used in their cases to secure the conviction and the death sentence. Prisoners across the country said that they had very little knowledge of the evidence that was used against them, much less to explain or discuss the quality of evidence against them. However, there were also prisoners who had tremendous knowledge of the evidence in their cases and had studied their case papers in great detail.

UNDERSTANDING THE EVIDENCE

Srajan had little opportunity to understand the evidence presented against him. His lawyer interacted with him only once during the entire trial. While he was present for all hearings, he was made to stand at the back of the courtroom from where he could not even hear the witness depositions, let alone understand the evidence given by them against him. This alienation from the legal proceedings was

never addressed by the sessions judge either. He interacted with Srajan only once during the 13-month long trial, asking him whether he had committed the crime. The detachment from the legal proceedings was no different for his mother. While in court, she could not hear the proceedings and had no idea about the evidence presented against her son. Her major motivation behind attending court hearings was to see her son, whom she could meet only

¹⁰ Of the 361 prisoners for whom information was available about nature of legal representation, 255 (70.6%) had private lawyers.

while he was being taken to the courtroom. Although little or no knowledge of evidence presented against them was a common observation while interviewing prisoners, the situation was not always bleak. Utpal, sentenced to death along with two others in a triple-murder case, discussed the evidence against him in detail. Present for all proceedings of the trial which extended over nine years, Utpal claimed that the stolen items were falsely shown to be recovered at his instance by the police. Further, through records sought in a request filed under the Right to Information Act, 2005, Utpal attempted to establish the whereabouts of the main prosecution witness, who worked at a public sector undertaking, in order to negate the prosecution's claim about his location around the alleged time of the incident. However, the trial court held that these records would not prove fatal to the prosecution's case. Having requested his fellow inmates to explain the trial court's decision to him as it was written in English, Utpal found that even his age at the time of arrest was wrongly noted by court. Although verifying

Utpal's claims regarding his case was beyond the scope of the Project, his understanding of the evidence against him stood out as an exception to the general alienation of prisoners sentenced to death from their cases.

Through the information gathered in the interviews and a limited examination of the trial court judgments that were available with us, we have sought to ascertain the nature of evidence used in cases of the prisoners who were interviewed during the Project. Due to poor record-keeping practices and several obstacles in accessing copies of the trial court judgments, we cannot claim that the evidence in all or even most of the cases has been examined exhaustively. However, the evidence in these cases seemed to largely fall into the following categories:

- i. Recovery based on confession to a police officer
- ii. Approver evidence
- iii. Circumstantial evidence
- iv. 'Last seen' evidence
- v. Confession to a Judicial Magistrate

RECOVERY BASED ON CONFESSION TO A POLICE OFFICER

As discussed in the preceding chapters on legal representation and pre-trial experience, confessions to a police officer¹¹ and confession while in police custody (except to a Magistrate)¹² are inadmissible under the Indian Evidence Act, 1872 (IEA). However, a recovery based on confession to a police officer is admissible as evidence under Section 27 of the IEA.¹³

¹¹ Section 25, Indian Evidence Act, 1872.

¹² Section 26, Indian Evidence Act, 1872.

¹³ Section 27 of the Indian Evidence Act, 1872 reads as "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

The following illustration will help understand the position on this better:

A is arrested by the police as a suspect in B's murder. In police custody, A confesses to the investigating officer that she killed B by repeatedly stabbing him and then buried the knife behind her house.

The relevant provisions of the IEA cited above would render B's statement that she killed A inadmissible in a court of law. However, the prosecution can use the statement to establish that the murder weapon was

recovered on the basis of A's statement. This becomes a significantly strong piece of evidence against A that she knew the location of the murder weapon.

The manner in which these legal provisions play out has been laid out in Chapter 5 on 'Legal Assistance'. Unbearable torture or the police threatening to harm family members were the most commonly cited reasons which compelled prisoners to sign blank sheets. Prisoners claimed that these papers were often used to fabricate a disclosure statement.

CONSTITUTIONALITY OF SECTION 27 OF THE INDIAN EVIDENCE ACT, 1872

While upholding the constitutional validity of this provision, an 11-judge bench of the Supreme Court of India in 1962 held that the provision was in consonance with the Constitution as long as no compulsion was used in extracting the information from the accused.¹⁴ Much water has flowed under the bridge since the early 60's and there is undeniable and compelling evidence of widespread custodial violence. The grim reality that emerges is also that the accused in many death penalty cases are tortured to sign on false statements prepared by the police which are later produced in court as 'information' under Section 27 leading to discovery of incriminating objects. Such 'information' proved against the accused is often a major factor for conviction in the case. The excesses of the police and other investigating agencies are significantly better documented now and there is perhaps a very good case for the Supreme Court to reconsider the constitutional validity of Section 27 of the IEA.

It is quite clear that this kind of evidence is quite unreliable because it is largely premised on custodial violence. While courts evaluate such evidence with caution, the reality of the situation is that this kind of evidence raises serious concerns about planting of evidence

by the police after fabricating the statements made to them in custody or otherwise.

BRIJESH AND BRIJMOHAN were convicted and sentenced to death for rape and murder of a woman in a trial which lasted for

¹⁴ *State of Bombay v. Kathi Kalu Oghad* (1962) 3 SCR 10, paragraph 13.

four years and four months. Recollecting their horrors in the nine-day long police custody, Brijmohan said that they were severely beaten with belts, hit on their genitals and kept naked for three days. Brijesh, however, found it difficult to speak about the "unexplainable torture" meted out to them. Faced with such suffering, they said that they were compelled to sign on blank sheets which were subsequently produced as their statements regarding recovery

of the deceased's belongings. They claimed that these were planted in their respective houses. Further, they were made to forcefully ejaculate about five-six times in police custody and their semen was planted on the victim's garments. The recovery of the victim's belongings and her garments at the instance of the accused were relied upon by the trial court, among other factors, in convicting and sentencing Brijesh and Brijmohan to death.

APPROVER EVIDENCE

Approver evidence refers to a situation where a co-accused or an abettor testifies against another accused in the same case. Approver evidence is considered to be weak evidence for the obvious reason that a co-accused/ abettor has an interest in securing a pardon based on the testimony against other accused. Sections 114 and 133 of the IEA deal with approver evidence. While Section 114 provides that it may be presumed that a statement by an accomplice may not have any worth unless it is corroborated, Section 133 goes on to state that a conviction would not be illegal merely because it proceeds on the uncorroborated testimony of an accomplice. The seeming conflict between these two provisions was resolved by the Supreme Court by ruling that there is a presumption against relying solely on an approver's evidence but that presumption can be rebutted in a particular case.¹⁵ These provisions on approver's evidence in the IEA are to be read with Sections 306 and 307 of the CrPC.

These provisions of the CrPC allow for the pardon of an approver on the condition that the approver provides a full and true disclosure of the circumstances within her knowledge, related to the offence and to any person concerned with its commission. Once an accomplice is granted pardon, she ceases to remain an accused and becomes a witness for the prosecution. However, if the public prosecutor certifies that the accomplice has wilfully concealed material or given false evidence, then the pardon granted to the accused may be revoked and the accused can be tried for the offence for which the pardon was tendered and for giving false evidence.¹⁶

¹⁵ *Dagdu & Ors v. State of Maharashtra* (1977) 3 SCC 68, paragraph 21.

¹⁶ Section 308, Code of Criminal Procedure, 1973.

This is a rather unsatisfactory position in the law because it lends itself to different kinds of prosecutorial misconduct ranging from false statements by the co-accused/ abettor to prosecutors seeking pardon in lieu of testimonies that might not be accurate or may even be outrightly false. It does appear that prosecutions in death sentence cases in Maharashtra unduly rely on approver evidence. Out of the 11 cases which had multiple accused, approver evidence has been used in five cases. Nine prisoners were sentenced to death across these five cases on the basis of approver evidence. Moreover, it must be noted that in these cases approver evidence was the main piece of evidence with varying weight of corroborating evidence.

An alarming account on the use of approver evidence was given by Chitrabhanu and Nimish, both sentenced to death in the same case. According to Chitrabhanu and Nimish, the third accused in the case who subsequently turned approver, was the son of a police officer serving in another state. The police officer managed to exert sufficient influence and convince the local police to make his son an approver in the case. Chitrabhanu and Nimish claimed that the approver was tutored by the public prosecutor and he testified to a version of the story that had been fabricated by the prosecution. Having been granted pardon after 15 months of his arrest, the third accused gave a tutored account of the incident which was heavily relied upon by the court in convicting Chitrabhanu and Nimish. While relying on the approver's testimony, the court allowed every aspect of his story, including the fact that he could not understand the implications of carrying a knife to the alleged scene of crime, and that he was compelled to be a part

of the offence even though he wanted to pull out as they were approaching the crime scene. Chitrabhanu and Nimish believed that the approver's concocted deposition led to their conviction, which was otherwise supported by weak circumstantial evidence.

TEJUL'S account highlights the extent of prosecutorial misconduct that occurs to secure a conviction. Amongst the five accused, Tejul was the only one sentenced to death by the sessions court. During the trial, one of the accused was granted pardon by the sessions court as an approver on recommendation of the prosecutor. The sessions judge considered the approver's account to be reliable and held that even if the remaining evidence was considered in its absence, the guilt of the accused was established beyond reasonable doubt. However, on re-appreciation of the evidence by the High Court, the three persons convicted during trial, including Tejul, were acquitted of all charges. The High Court held that there were major discrepancies between the approver's account and the deposition of the other prosecution witnesses, rendering the approver's evidence as highly unreliable. The Court also held that except for the uncorroborated approver evidence, there was nothing on record to establish the motive behind the crime as presented by the prosecution. Before being acquitted by the High Court, during his interview, Tejul recounted that the public prosecutor had initially asked his brother-in-law, a co-accused in the case, to turn approver and testify falsely against Tejul. However, when he refused to do so, the offer was extended to another accused, who accepted the same and affirmed a version of events contrived by the prosecution.

Following his arrest, Tejul's wife Jyoti along with their four children, moved to her parent's house in another district, as she was scared of being constantly harassed by the villagers. Married to a man who had made a living from doing odd jobs, including working in graveyards and picking night soil, Jyoti was compelled to take up manual labour and make ends meet by borrowing food and money from her new neighbours. In the two years and nine months before Tejul was acquitted, Jyoti would desperately pray and hope that her husband would return some day.

Another case which forcefully highlights the suspicious nature of approver evidence involves Maahi and Adita. Their conviction largely rested on approver evidence of Maahi's

husband, which the trial court found to be sufficiently corroborated by circumstantial evidence. While the High Court and the Supreme Court were of the view that the approver had suppressed material facts and had given partial details of the crime, the appellate courts proceeded to nonetheless rely on the approver evidence and uphold the conviction and death sentence pronounced by the lower court. Additionally, the Supreme Court noted that while the CrPC provisions require a public prosecutor to initiate action against an approver for willfully concealing any material or giving false evidence, in cases where the circumstances point towards approver's culpability, it felt that the court had "inherent powers" to proceed against the approver.

CIRCUMSTANTIAL EVIDENCE

'Innocent until proven guilty' is the bedrock on which our criminal justice system is based and a prisoner can be sentenced to death only if her guilt has been established beyond reasonable doubt. Evidence used to establish the guilt of the accused can either be direct or circumstantial. While direct evidence establishes a fact in issue without aid from other facts, circumstantial evidence relies on other facts to prove the facts in issue.

Circumstantial evidence is ordinarily used when there is no direct evidence to support the version of prosecution. The Supreme Court has held that the courts must adopt a very cautious approach while convicting purely on the basis of circumstantial evidence. Reliance may be placed on circumstantial evidence only if it is "wholly consistent" with the guilt of the accused, and that if two interpretations

of the evidence are possible, then the benefit of doubt must be given to the accused.¹⁷ It is also now a settled position of law that the chain of circumstances presented should be able to show within all human probability that the act was committed by the accused.¹⁸ Before convicting the accused, it also needs to be seen that the chain of evidence must be so complete as to not leave any reasonable

¹⁷ *M.G Agrawal v. State of Maharashtra* (1963) 2 SCR 405, paragraph 18.

¹⁸ *Hanuman Govind Nargundkar v. State of Madhya Pradesh* 1952 SCR 1091, paragraph 10.

ground for doubt regarding the innocence of the accused.¹⁹

A crucial subcategory within circumstantial evidence is 'last seen' evidence. The 'last seen' theory must come into play only when the time gap between the accused and deceased being seen together and the death of the deceased is so narrow that it completely rules out the possibility of the crime having been committed by someone other than the accused.²⁰ A more detailed examination of 'last seen' evidence is provided in the next sub-section.

To convict an accused on the basis of circumstantial evidence, it is crucial to consider that the sum total of the circumstances must conclusively establish the guilt of the accused and leave no scope whatsoever for the possibility of her innocence. While the judicial practice is vastly divided, courts have held that death penalty should generally not be imposed in cases where the conviction is based on circumstantial evidence.²¹

'LAST SEEN' EVIDENCE

As mentioned in the section above, 'last seen' evidence is a particular example of circumstantial evidence. 'Last seen' evidence literally means that the victim was last seen with the accused and the prosecution seeks to then establish the guilt of the accused on that basis.

Such a broad formulation is fraught with possibility of error and the development of the law on this issue has sought to put a higher burden to establish the connection between the accused and the crime. 'Last seen' evidence is meant to be invoked when the period of time between when the deceased was last seen alive with the accused and when the deceased is found dead is so small that the possibility of any person other than the accused being the perpetrator of the crime becomes impossi-

ble.²² The period of time that elapsed between the accused being last seen with the victim and the time of the death becomes crucial to decide whether there could have been any possibility that any other person could have come in contact with the victim. The longer the time that has elapsed between 'last seen' and the time of death, lesser the reliability of the evidence. This is precisely the reason for judicial discomfort with prosecutions that rely exclusively or largely on 'last seen' evidence.

¹⁹ *Hanumant Govind Nargundkar v. State of Madhya Pradesh* 1952 SCR 1091, paragraph 10; *Sharad Birdhichand Sarda v. State of Maharashtra* (1984) 4 SCC 116, paragraph 153.

²⁰ *State of Uttar Pradesh v. Satish* (2005) 3 SCC 114, paragraph 9.

²¹ *Bishnu Prasad Sinha & Anr v. State of Assam* (2007) 11 SCC 467, paragraph 55; *Aloke Nath Datta v. State of West Bengal* (2007) 12 SCC 230, paragraph 174; *Santosh Kumar Satishbushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, paragraph 167.

²² *Ramreddy Rajesh Khanna Reddy & Anr v. State of Andhra Pradesh* (2006) 10 SCC 172, paragraph 27.

In *Ramreddy Rajesh Khanna Reddy & Anr v. State of Andhra Pradesh*, the Supreme Court was of the view that courts should necessarily look for corroborating evidence even in situations where the time elapsed between the 'last seen' evidence and the time of death is very small.²³ In *Jaswant Gaur v. State of Punjab*, the Supreme Court took the position that in the absence of any other links in the chain of circumstantial evidence, it is not possible to convict the appellant solely on the basis of the 'last-seen' evidence.²⁴

Once the 'last seen' evidence has been established, then the person with whom the victim was last seen has to explain the circumstances in which they parted ways.²⁵ The opportunity to explain the incriminating circumstance put forth by the prosecution is given to the accused while making a statement under Section 313 CrPC. If the accused keeps silent and does not furnish any explanation for such circumstance, then it becomes a strong circumstance which may be used against her.²⁶

USE OF 'LAST SEEN' EVIDENCE IN DEATH PENALTY CASES

It was observed that 'last seen' evidence was mainly invoked in the category of death sentences for murder with rape. Given the nature of the offence, direct eyewitness testimony was rare and 'last seen' evidence was significantly relied upon. It was seen that 'last seen' evidence was used in combination with recovery based on confession of the accused to a police officer. Courts seem to be accepting of this combination to get around the requirement that 'last seen' evidence alone cannot be the basis of the conviction. However, as discussed above, recovery based on confession to the police officer is a problematic category of evidence. The routine

use of such evidence and the judicial approval it has received has ensured that it is used to support 'last seen' evidence.

Clearly the courts are aware of the dangers posed by 'last seen' evidence and that is evident from the fact that the Supreme Court has tried to repeatedly streamline its use by requiring other supporting evidence. Unfortunately, permitting recovery evidence based on confessions to a police officer does not do much to offset those dangers.

A further concern that emerged during the Project was the relationship of the person giving the 'last seen' testimony to the victim. Given the nature of 'last seen' evidence, a

²³ (2006) 10 SCC 172, paragraph 27.

²⁴ (2005) 12 SCC 438, paragraph 5.

²⁵ *Sahadevan v. State* (2003) 1 SCC 534, paragraph 19.

²⁶ *Avtar Singh & Ors v. State of Punjab* (2002) 7 SCC 419, paragraph 6.

“The police blindfolded me and fired gunshots in the air... I feared for my life with every passing moment... the only way to end this was to confess before the magistrate.”

Inder

question arises about the weight that should be given to the 'last seen' testimony of the victim's family members. 'Last seen' evidence plays a prominent role in cases of rape with murder of minors, where it is extremely rare and difficult to find any direct evidence. It might be more useful to insist on a thorough forensic analysis of the crime scene, including DNA material found on the victim as one of the investigation practices in such cases. However, it is important to note here that DNA evidence itself has many concerns surrounding it and certain jurisdictions have even taken the position that DNA evidence alone cannot be sufficient for convicting an individual.²⁷ The nature of 'last seen' evidence renders it particularly problematic to be used to sentence an individual to death. While it may be used in conviction, imposition of the death penalty in cases where 'last seen' testimony is a critical piece of evidence must be restricted.

VIPUL was sentenced to death for the rape and murder of an eight-year old girl who lived in

his neighbourhood. Relying on the depositions of the victim's father, grandparents and other relatives, the trial court convicted Vipul on the basis that he was 'last seen' with the victim, around half an hour before her body was found. However, the victim's family members neither raised any suspicion about Vipul while looking for the deceased nor did they point to his culpability in their police statements. Noting these discrepancies, the High Court set aside Vipul's conviction after his interview with the Project. It held that the prosecution story of 'last seen' was unsubstantiated. Vipul, who has never attended school, started working as a bus-boy at the age of 10. At the time of his arrest, he was employed as a domestic help and earned Rupees 1500 per month. In the five years that he spent in prison, Vipul's closest companion was his pet pigeon, whom he affectionately called "Veeru." Confident that the truth about his innocence would eventually come out, Vipul remarked that once released from prison, he would watch some of his favourite Hindi movies.

CONFESSTION TO A JUDICIAL MAGISTRATE

Though confessions to a police officer are inadmissible as evidence, confessions made to a Judicial Magistrate are admissible²⁸ and carry considerable weight. The assumption is that confessions made to a Judicial Magistrate are likely to be voluntary and do not suffer from the same apprehension of coercion like the confessions to a police officer.

²⁷ *Regina v. Lashley* [2000] EWCA Crim 88, paragraph 15; *Regina v. Ogden* [2013] EWCA Crim 1294, paragraphs 7 and 8; *Bokolo v S* (483/12) [2013] ZASCA 115, paragraph 23.

²⁸ While Section 26 of the Indian Evidence Act, 1872 makes confession in police custody inadmissible in evidence, it excepts a confession made in presence of a Magistrate, making it admissible in evidence against the accused. Section 26 reads as follows “No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”

While the law does render confessions to a Magistrate admissible as evidence, there have always been concerns about the voluntariness of these confessions, as they may also be extracted under duress. These concerns are evident in the guidelines issued by the Supreme Court in *Rabindra Kumar Pal v. Republic of India* (Graham Staines case):²⁹

- i. *"The provisions of Section 164 CrPC must be complied with not only in form, but in essence.*
- ii. *Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.*
- iii. *A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.*
- iv. *The maker should be granted sufficient time for reflection.*
- v. *He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.*
- vi. *A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.*

- vii. *Non-compliance of Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.*
- viii. *During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.*
- ix. *At the time of recording the statement of the accused, no police or police official shall be present in the open court.*
- x. *Confession of a co-accused is a weak type of evidence.*
- xi. *Usually the Court requires some corroboration apart from the confessional statement before convicting the accused person on such a statement."*

Clearly the Court is aware that confessions to a Judicial Magistrate suffer from a very real possibility that they might have been extracted under coercion. During our interviews, we heard narratives from prisoners where they were left with an impossible choice—to either continue suffering unimaginable pain or agree to confess before a Magistrate. In such situations it does not seem to be a sufficient protection to provide that the prisoner must be kept away from the police and given sufficient time to reflect before confessing. Given the experience of the accused in custody, assurances from the Magistrate to her that she

²⁹ (2011) 2 SCC 490, paragraph 64.

will be protected from further torture in case she decides not to confess is certainly not sufficient. The police threaten the accused by claiming that she would come back to police custody or harm would be inflicted on her family in case a confession is not made. In a criminal justice system where a large number of those arrested are poor and marginalised with low levels of educational attainment, it is rather ineffective to build protections that proceed on the assumption that the accused has effective knowledge of legal provisions. Irrespective of the number of times a Magistrate may assure an accused that she will not be harmed by the police, the reality confronted by the accused in police custody would prevent her from attaching any real weight to such an assurance.

CONFESSING BEFORE A MAGISTRATE

Inder's horrors over a 10-day long period in police custody were not limited to brutal beatings. The police blindfolded Inder and fired gunshots in the air, making him dread for his life with every passing moment. Petrol was poured over his buttocks and he was tortured in ways that he felt ashamed to discuss. During his interview, Inder shared that the only way for him to escape this nightmare was to comply with the investigating officer's demands to confess before the Magistrate. While Inder confessed before the Magistrate, during his trial he informed the sessions judge that he was coerced by the police to make a judicial confession. However, the trial court concluded that the retracted confession was voluntarily made and was sufficiently corroborated by the circumstantial evidence in the case. In

appeal, while the High Court noted that Inder's confessional statement did not mention whether the Magistrate informed him about the repercussions of making such a confession but since he was kept in judicial custody for three days before the statement was recorded, the confession was held to be completely voluntary.³⁰ Remembering the torment he had undergone, Inder shared that for anyone who was tortured like he was, "it would no longer matter whether you did it or not, you will agree to anything to make the torture stop."

Similarly, Tarush was coerced by the police to make a confession before the Magistrate, which was later found to be reliable and sufficiently corroborated by the sessions court. Unable to meet the police's demands for money, Tarush was starved for three days, electrocuted several times and threatened that his wife and children would be taken hostage if he refused to confess. Knowing that he would be tortured again if he did not follow the police's instructions, Tarush confessed to the charges of rape and murder levelled against him, before the Magistrate.

Even though the victim's vaginal swabs showed the presence of semen, DNA analysis was not conducted. On the basis of Tarush's judicial confession, corroborated by the 'last seen' evidence, the sessions court found him to be guilty and sentenced him to death. Unable to read or write, Tarush said that he could barely understand the parts of the proceedings in Hindi, let alone the arguments made in English. Reflecting on his experience with the criminal justice system, Tarush believed that "it works on the basis of forging lies into the truth and distorting the truth into lies."

³⁰ Inder's case was pending in the High Court at the time of his interview conducted in October 2013.

EXAMINATION OF THE ACCUSED BY THE JUDGE

Section 313 of the CrPC provides that the trial court may put questions to the accused at any stage and shall examine her generally on the case after the prosecution completes presenting its case. The examination of the accused shall be conducted before she is called on to present her defence and is meant to be an opportunity for the accused to explain any evidence put forth by the prosecution. The manner in which a judge has to carry out this examination of the accused has been established by various judgments of the Supreme Court.³¹ An examination under Section 313 is not meant to be a cross-examination of the accused and the statement recorded under this provision cannot be considered as evidence. It is meant as an opportunity for the accused to explain, if she wishes, any of the incriminating circumstances relied upon by the prosecution.³² As a general rule, while the accused must be personally examined, the court may in exigent situations demonstrated by the accused, dispense with the personal appearance of the accused and supply a questionnaire to her advocate, seeking responses to questions that it might have put to her under Section 313.³³

The direct interaction between the judge and the accused, without any role for the lawyers, is considered to be an integral element of fair trial. It is an obligation upon the judge to explain simply and clearly each of the incriminating circumstances presented by the prosecution and not treat it as a "mere formality." In 1951, the Supreme Court recognised the challenges in implementing this provision (previously under Section 342 of the CrPC, 1898) and the extent to which judges must go to give force to the protections in the provision. Justice Vivian Bose, as part of a four-judge bench, in *Tara Singh v. State*³⁴ held that:

"I cannot stress too strongly the importance of observing faithfully and fairly the provisions

of section 342, Criminal Procedure Code [Section 313 of the 1973 CrPC corresponds to Section 342 of the 1898 CrPC]...it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt

³¹ *State of Uttar Pradesh v. Lakhmi* (1998) 4 SCC 336, paragraphs 8-11; *Dharnidhar v. State of Uttar Pradesh & Ors* (2010) 7 SCC 759, paragraph 29; *Raj Kumar Singh v. State of Rajasthan* (2013) 5 SCC 722, paragraph 41.

³² *Sujit Biswas v. State of Assam* (2013) 12 SCC 406, paragraph 20.

³³ *Basavraj R. Patil & Ors v. State of Karnataka & Ors* (2000) 8 SCC 740, paragraph 24.

³⁴ 1951 SCR 729, paragraph 32.

to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand."

Unfortunately those concerns raised by Justice Bose in the early 1950s remain largely ignored and unaddressed even today. It is particularly egregious when the provisions of Section 313 are routinely violated while sentencing individuals to death. As has been stated in other parts of this Report, the fidelity to procedure must be at its highest in a case where the death sentence is a possibility. Unfortunately, the manner in which examinations under Section 313 are carried out is yet another example of the cavalier way in which proceedings in death penalty cases are handled. It was evident from the experiences narrated by the prisoners that they were administered a long list of questions which they struggled to understand. The burden of this experience must be viewed in light of the nature of interaction with lawyers outlined in Chapter 5 on 'Legal Assistance'. They were further alienated from this process by virtue of the proceedings under Section 313 being conducted in a 'Yes/No' format. Of the 142 pris-

oners who provided us details of their Section 313 CrPC proceedings, 86 (60.6%) said that they were asked to give only 'Yes/ No' responses. This aspect is of particular significance in cases where convictions are largely based on circumstantial evidence. The position of law in relation to circumstantial evidence and Section 313 proceedings is very clear. Every piece of circumstantial evidence that has been relied upon by the prosecution has to be put to the accused for an explanation and unless such explanation is sought, no piece of circumstantial evidence can be used.³⁵ However, in cases covered under the Project, a significant concern was that prisoners were not given a meaningful opportunity to explain themselves, much less have the incriminating circumstances explained to them in a simple manner.

In essence, we have prisoners sentenced to death whose lawyers never explained the details of the prosecution's case to them and they were further denied that opportunity even in a proceeding conducted by the judge under a statutory obligation. This scenario is worsened by the socio-economic profile of these prisoners.³⁶ Social and economic structures coupled with very low levels of education leave the prisoners in no position to meaningfully use the proceedings under Section 313 to explain the incriminating circumstances against them.

³⁵ *Basavaraj R. Patil v. State of Karnataka* (2000) 8 SCC 740, paragraph 20.

³⁶ For details on socio-economic profile of prisoners, refer to Chapter 4 on 'Socio-Economic Profile'.

**“Be it the government, the police or the judge-
no one heard our pleas.”**

Ramrang

The efficacy of Section 313 in a country like India necessarily depends on the active role of the trial judge. It is incumbent on the sessions judge to ensure that the socio-economic and cultural disadvantages of the accused before her do not contribute to the denial of an essential element in the right to fair trial. Unfortunately, the narratives we encountered on this aspect demonstrated a spectrum characterised by apathy, high degree of formality that aggravated the alienation and exclusion of the accused, procedures that superficially meet the technical requirements of the law, and at times practices that bordered on effective denial of this opportunity. While recounting his experience during trial, Hemraj said that the judge only asked him whether he had committed the crime, to which he responded in the negative. However when he attempted to speak further and respond to the evidence led by the prosecution, the sessions judge did not allow him to do so, assuring him that “the lawyer would handle all that.” Feeling that his lawyer did not prepare him for the death sentence, Hemraj felt “cheated” by the trial court decision and hoped that justice would be served at the High Court.

In contrast, Nirmal and Akul, who were asked about 500-odd questions during their examination under Section 313, felt that

they did not get a sufficient opportunity to explain their version as the questions were in a ‘Yes-No’ format. A similar experience was shared by Veydaant who was given explicit directions from the sessions judge to answer in a ‘Yes’ or ‘No’ and refrain from giving further explanations during his examination.

Given the importance of examination under Section 313 of the CrPC, it is essential that each accused in a case must be separately given an opportunity to explain the incriminating circumstances presented against her.

RAMRANG, one of multiple prisoners sentenced to death in a case, said that he was examined along with three other accused under Section 313. The judge did not ask each of them for their version and posed questions to only two out of those four accused. Having never spoken to his privately appointed lawyer, Ramrang was not asked any questions by the sessions judge. As a result, he was sentenced to death without a single opportunity to discuss his defence either with his lawyer or the judge. With a view of the gallows from his cell, Ramrang constantly thinks about his wife and eight children and worries about their survival if he were to be executed. “Be it the government, the police or the judge, no one heard our pleas,” Ramrang remarked.³⁷

³⁷ Ramrang’s case lasted for three years and nine months in the trial court, and his appeal was pending before the High Court at the time of his interview.

SENTENCING FRAMEWORK IN DEATH PENALTY CASES— LEGAL PROVISIONS

After the guilt of the accused has been established in a trial, the appropriate punishment is determined in the sentencing phase. The sentencing phase of the trial is quite distinct from the conviction phase and has a rather distinct legal framework governing it, particularly in cases where the death penalty is sought. At the very core of the sentencing phase is an acknowledgment that a wide range of factors, that might be irrelevant in determining the guilt of the accused, must play an important role in determining the appropriate sentence. In other words, sentencing is necessarily an exercise in individualised justice where a broad range of circumstances concerning the individual become very relevant.

In cases where the death penalty is sought, the Supreme Court of India in *Bachan Singh v. State of Punjab* (while upholding the constitutionality of the death penalty) has laid down an elaborate sentencing framework to be adopted before sentencing an individual to death.³⁸ The ‘rarest of rare’ doctrine developed in *Bachan Singh* requires judges to balance aggravating and mitigating circumstances while determining whether a death sentence is the appropriate punishment.

The aggravating circumstances identified in *Bachan Singh* relates to the manner in which the crime was committed, its previous planning, the brutality involved, etc.³⁹ whereas the mitigating circumstances are both forward and backward looking. Not only do the mitigating circumstances require the examination of a wide range of circumstances concerning the accused, they also make it important for the judge to rule on future possibility of reformation and conclusively establish that the “alternative option is unquestionably foreclosed.”⁴⁰ In order to make this determination, the State must provide evidence that the accused constitutes

a continuing threat to society and cannot be rehabilitated.⁴¹

As is evident, there is a substantial and detailed sentencing analysis that needs to be undertaken before an individual is sentenced to death. The requirement of this detailed sentencing analysis is not just a requirement of *Bachan Singh* but also has a statutory basis in the CrPC. The law recognises that the sentencing hearing is to be a separate proceeding (Section 235(2) of the CrPC) and also that the judge will have to state ‘special reasons’ for invoking the death penalty (Section 354(3) of the CrPC).⁴² This sentencing framework

³⁸ (1980) 2 SCC 684.

³⁹ (1980) 2 SCC 684, paragraph 202.

⁴⁰ (1980) 2 SCC 684, paragraph 209.

⁴¹ (1980) 2 SCC 684, paragraph 206.

⁴² In the Code of Criminal Procedure, 1898 imposing the death penalty for murder was the norm and judges had to give ‘special reasons’ if they wanted to sentence the prisoner to life imprisonment. This position was reversed in the current Code of Criminal Procedure in 1973, whereby life imprisonment became the norm and ‘special reasons’ had to be provided for imposing the death penalty.

developed through the provisions of the CrPC and the judgment in *Bachan Singh* undoubtedly sets a very high bar for imposing the death sentence.⁴³ The idea is that it should not be easy to take the life of an individual under

the authority of the law and that a rigorous sentencing analysis must form the very core of a decision to sentence an individual to the harshest punishment in law.

GROUND REALITIES OF SENTENCING IN DEATH PENALTY CASES

The sentencing framework developed in *Bachan Singh* is undoubtedly robust and arguably the best that can be hoped for in a retentionist context. However, there has been a complete breakdown in the application of the 'rarest of rare' doctrine developed in *Bachan Singh*. This breakdown is not limited to inconsistent application of the doctrine in terms of outcomes but goes to the very heart of the manner in which sentencing hearings are conducted. During our research we heard accounts that demonstrated a far deeper problem that made it evident that the manner in which sentencing hearings are carried out seems to be a mere formality after the conviction has been achieved. This concern applies to lawyers participating in these sentencing hearings as it does to judges overseeing these hearings. These hearings seem to be rarely detailed or rigorous and that is evidenced by the general quality of discussions on sentencing in trial court judgments that we were able to

access. It is crucial that we understand that the problem begins with the arguments, or the lack of it, on sentencing which then is exacerbated in the sentencing analysis in the judgment.

RUSHAL SHARMA was sentenced to death for murdering his parents. He was unable to understand the trial proceedings as he was directed to stand at the back of the court and could not hear either the witness depositions or the arguments. During his interview, Rushal recollects that the sessions judge never interacted with him and pronounced his sentence on the same day when his conviction was confirmed. While his trial court decision notes that arguments on sentencing were advanced by both sides, no mitigating circumstance has been noted. Contrary to the mandatory sentencing requirement of balancing mitigating and aggravating circumstances, the trial court only considered aggravating factors relating to the crime and sentenced Rushal to death.

⁴³ For an analysis of the inconsistency that has plagued the Supreme Court's death penalty jurisprudence, please see Amnesty International India and PUCL Tamil Nadu, *Lethal Lottery: The Death Penalty in India—A study of Supreme Court judgments in death penalty cases 1950–2006*, 2008, available at: <<https://www.amnesty.org/en/documents/ASA20/007/2008/en/>>. For the Supreme Court's own discomfort with the manner in which the 'rarest of rare' doctrine has been applied, see *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498 (see paragraph 43 onwards generally and paragraphs 63, 109 and 172 specifically).

With a family of seven, Rushal had no criminal antecedents and was almost 48 years old at the time of the incident. Previously a farmer, Rushal lost his right leg when he accidentally fell from a tractor and was working as a tailor before he was arrested. However, none of these mitigating circumstances were con-

sidered by the trial court. Subsequent to his interview, Rushal's death sentence was commuted to life imprisonment by the High Court on the grounds that he did not have a prior criminal record and that the possibility of his reformation could not be foreclosed.

NON-APPLICATION OF THE 'RAREST OF RARE' FRAMEWORK

The extent of the breakdown of sentencing practices in death penalty cases is epitomised by the judgments of the Supreme Court in the cases of prisoners considered in this study. As stated above, the sentencing framework for death penalty cases laid down in *Bachan Singh* requires judges to consider the possibility of reformation and ensure that the alternative option (of life imprisonment) is unquestionably foreclosed.

Of the 50 prisoners in whose cases the Supreme Court had confirmed the death sentence, the issue of reformation was not addressed in the judgments for 34 of them (68%).⁴⁴ For the remaining 16 prisoners, the Supreme Court ruled out any chance of reformation for eight of them only on the basis of the nature of the crime in question. Further, for this set of prisoners, the death sentence for 62% of them were confirmed by the various High Courts without considering the possibility of reformation.⁴⁵ As we move to the trial courts, the performance on this count worsens. For these 50 prisoners, we had access to the trial court judgments for only 28 prisoners. Amongst these 28 prisoners, 21 of them (75%) did not have the issue of possibility of reformation considered.

In the above analysis, even the mere mention of the reformation issue has been counted as the court's examination of that possibility, irrespective of the quality of that analysis. If we were to consider the quality of the reformation analysis, the picture that emerges is even more dismal. Judges have tended to rule out

the possibility of reformation on rather curious grounds without providing any real explanation as to how they are relevant and exhaustive for ruling out the possibility of reformation. The most commonly invoked reasons included individuals absconding during police investigation, commission of subsequent offences

⁴⁴ Out of the 51 prisoners whose mercy petitions had been rejected or were pending at the time of interview, one did not file an appeal before the Supreme Court.

⁴⁵ Out of the 51 prisoners whose mercy petition had been rejected or were pending at the time of the interview, 10 were sentenced to death under Terrorist and Disruptive Activities (Prevention) Act, 1987 and their appeals were directly heard by the Supreme Court. Five others had their sentence commuted in the High Court before they were enhanced to death penalty in the Supreme Court. Out of the remaining 36 prisoners, High Court judgments could be accessed for 34 of them. Amongst these 34 prisoners, the death sentence imposed on 21 of them was confirmed by the High Court without considering the possibility of reformation.

before being arrested and no visible sign of remorse during the trial.

It is inherent in the sentencing framework developed in *Bachan Singh* that the decision to extinguish life must also address the question whether the individual has no chance of reformation in the future. The decision to take life, as rightly identified in *Bachan Singh*, cannot be backward looking and must necessarily take on the moral and legal burden of demonstrating that there is no future value to the individ-

ual's life either. It is precisely for this reason that judges must consider the possibility of reformation. Serious concerns must be raised about sentencing individuals to death without addressing this facet of sentencing in death penalty cases and discharging this burden. Referring only to the crime in question without looking into the circumstances of the criminal is certainly not the method that was envisaged in *Bachan Singh*.

THE INVISIBLE YEARS

Referring back to the judgments of all courts in the cases of 50 prisoners whose death sentences were confirmed by the Supreme Court, not even a single judgment across all three tiers of the judiciary found it appropriate to discuss the manner in which individuals before them had spent their years in prison.

While the Supreme Court on a few occasions has expressed the importance of calling for a report regarding the behaviour of the accused in order to examine whether there is a possibility that the accused may be reformed,⁴⁶ such an exercise does not seem to have been carried out in the cases of these 50 prisoners. Undoubtedly, courts are mostly guided in these issues by submissions of counsel but surely while imposing a death sentence courts can seek such information when it is not forthcoming. This is particularly curious in the Supreme Court because prisoners would have spent a considerable amount of time in prison before their appeals are heard and disposed by the Apex Court.⁴⁷ In this context, the

reference is not really to the number of years in prison as a relevant sentencing factor but bringing the conduct and experience in prison to the forefront. By not considering the manner in which the prisoner has spent her years in prison, the court freezes the prisoner in time. Sentencing decisions are almost exclusively based on an imagination of the prisoner at the time of the offence and the law does not seem to have any space to account for the person the prisoner has become during the years of incarceration. Surely, the question of the possibility of reformation as a sentencing factor cannot be answered without a serious consideration of the time spent in prison.

⁴⁶ *Birju v. State of Madhya Pradesh* (2014) 3 SCC 421, paragraph 20; *Anil @ Anthony Arikswamy Joseph v. State of Maharashtra* (2014) 4 SCC 69, paragraph 33.

⁴⁷ As noted in Chapter 2 on 'Durations on Death Row', the median duration of incarceration for prisoners who had their appeals pending in the Supreme Court is six years and seven months. The longest duration spent in prison by a prisoner with his appeal pending in the Supreme Court is 21 years and six months.

GROSSLY INADEQUATE SENTENCING PRACTICES

The narratives of prisoners on sentencing practices made us realise the multiple levels at which sentencing practices are in crisis. It was evident that sentencing is hardly ever a rigorous exercise, including on the part of defense lawyers. The issues we confronted included lawyers not being present for sentencing hearings, sentencing hearings being conducted on the same day as the conviction (without adequate time given to place before court all relevant material on sentencing),⁴⁸ defense lawyers presenting very cursory sentencing factors, judges demonstrating lack of interest in sentencing arguments and incorrect application of the 'rarest of rare' framework in judgments. Sentencing factors that defence lawyers often put forth are limited to age, poverty and existence of family. Given the nature of interaction between the lawyer and accused as discussed in Chapter 5 on 'Legal Assistance', defense lawyers hardly have any information about the individual they are representing that can be meaningfully used in sentencing hearings. As mentioned earlier, the very idea of a sentencing hearing is to consider all circumstances of the individual beyond the crime in question. A comprehensive understanding of the prisoner's background requires an extensive interaction by the lawyer. Unfortunately, that is severely lacking in the manner in which the prisoners in this study were represented. It is a combination of the inability of the

accused to afford quality representation along with structural issues regarding the nature of criminal defense in India. Legal practice in this field seems to be limited to the defense trying to establish inconsistencies in the narrative of the prosecution towards demonstrating that the prosecution has not established a case 'beyond reasonable doubt'. Within this framework, detailed and continuous interaction with the accused in prison about the case is rather neglected. Apart from its impact on conviction proceedings, this has disastrous consequences for the sentencing phase. As seen in the sentencing portions of judgments concerning prisoners in this study, there is very little information presented to the court that would enable it to visualise the individual as someone who is more than the crime she has been charged with. Information on various facets of the individual's experience from childhood onwards, till the conduct in prison, would enable the court to have a meaningful consideration of the possibility of reformation and an alternate punishment.

Unfortunately very little information is provided and neither is it demanded by courts. In the final analysis, we must face up to the fact that irrespective of the sentencing framework developed, the decision to impose the death sentence is almost exclusively based on the crime in question and very little else.

⁴⁸ In *Alauddin Mian & Ors v. State of Bihar* ((1989) 3 SCC 5, paragraph 10), the Supreme Court held that as a general rule, after convicting the accused, the trial court should hold the sentencing hearing on a future date to allow both sides to place relevant material before the court on issues relating to sentencing. Also, in cases where the choice is between life and death, "high degree of concern" must be shown towards the statutory right of the accused to a sentencing hearing and the same should not be treated as a "mere formality."

MOVING TOWARDS COMPREHENSIVE SENTENCING HEARINGS

The limited considerations of age, poverty, and remaining family members cannot be considered to be a rigorous sentencing practice in death penalty cases. In the move towards extinguishing a person's life through the law, it is imperative that a far more holistic approach be undertaken to present the value of a person's life. This holistic approach must throw light on the physiological, psychological, social, economic and emotional factors that might have impacted the development of the individual before the court.

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

The judgment in *Bachan Singh* echoes the position that the taking of life with the sanction of the law must not be easy. If at all we are to have the death penalty, justice would demand that we establish that there is nothing redeeming about the individual whose life the law seeks to extinguish. In terms of mitigating circumstances, the factors considered could fall into two broad categories. The first set of factors are those that help explain (and not 'justify'⁴⁹) various facets that impact an individual's life leading up to the crime. The second set broadly relate to the individual's life that project an identity beyond that of a criminal. It helps humanise the accused and demonstrate to the court that the identity of

an individual should not be reduced to just the crime she committed.

In the first category, it would be useful to look for factors that impact behaviour leading up to the crime. In jurisdictions like the United States, a wide spectrum of biological, psychological, neurological, and social factors gathered through a broad range of experiences right from childhood, to intergenerational history of the accused and going up until their time in prison fall within the range of probable mitigating circumstances. The 2003 American Bar Association Guidelines on Death Penalty Representation strongly recommend the use of a mitigation specialist to assist defense lawyers in death penalty cases.⁵⁰ A mitigation specialist, usually with extensive experience in social work with sufficient clinical skills, is expected to develop an exhaustive psycho-social history of the accused through extensive interactions with prisoners and their families. The skillset required for this task is very different from that of a lawyer. The idea here is to have a specialist who can gather information from the accused and her family that they might be reluctant to share for a wide variety of reasons. Such information is likely to be sensitive and could be information that is extremely embarrassing or has a deep sense of shame attached to it. To get accused persons and their families to reveal their comprehensive social history would require possessing the requisite skills for such a task

⁴⁹ Craig Haney, 'The Social Context of Capital Murder: Social Histories and the Logic of Mitigation', 35 Santa Clara L. Rev. 547 (1994–1995).

⁵⁰ American Bar Association, 'Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases', 31 Hofstra L. Rev. 913, 1090 (2002–2003).

and investing considerable time in gaining their confidence.⁵¹ The experience of documenting social histories of prisoners on death row in the United States has seen the emergence of factors like abandonment and neglect, early sexualisation, substance abuse by parents, experience of violence in childhood, sleep disorders, exposure to domestic violence, self-destructive behaviour, suicidal tendencies, psychological trauma, physical abuse etc.⁵² The role of the mitigation specialist is not just limited to gathering such information but also includes the ability to identify neurological, congenital and mental factors that might have influenced the accused's behaviour through the years. Once such information concerning the social history and clinical factors has been identified, the mitigation specialist then identifies relevant experts to examine the accused and testify accordingly.

Defense attorneys in foreign jurisdictions do not use these factors to argue any causal relationship between the factors, whether individually or in combination with other factors, and the actual commission of the crime. The motivation is to demonstrate that the general behaviour and personality of an individual is influenced by an accumulation of factors interacting in myriad ways over which one has very little control. It makes it possible to see the individual to be sentenced as not just someone who committed a crime, but instead as someone who is a sum of the influences on

her life. By not presenting this comprehensive picture to the sentencing judge, it is only the crime that is on display.

In addition to factors that might have cumulatively influenced the development and personality of the accused, sentencing hearings are also an opportunity to demonstrate to the court that there is much more to the accused than just the crime in question. Various facets of her life must be highlighted in order to assist the court in addressing the possibility of reformation. It is crucial that defense lawyers produce evidence at the sentencing stage that demonstrates the behaviour and contributions of the accused in different settings. Information about the conduct and behaviour of the accused from her place of residence, co-workers and prison staff would be critical in helping the court evaluate the possibility of reformation.⁵³ Another critical aspect that is completely absent in Indian death penalty jurisprudence is a discussion on 'future dangerousness' as a sentencing factor.⁵⁴ This is an issue that requires contextual analysis and sophisticated expert opinion at a level that currently seems extremely distant for the criminal justice system in India.

NAVINDER SINGH said "I am allowed to go wherever I want to go within the jail. Everyone here likes me." Every morning, he wakes up at 4 am, gets ready by 5:30 am before the barracks open and works throughout the day in the

⁵¹ American Bar Association, 'Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases', 31 Hofstra L. Rev. 913, 1090 (2002-2003).

⁵² Russell Stetler, 'The Mystery of Mitigation: What Jurors Need to Make Reasoned Moral Responses in Capital Sentencing', 11 (2) U.Pa.J.L. & Soc.Change 237 (2007-08).

⁵³ Mark Cunningham and Mark Vigen, 'Death Row Inmate Characteristics, Adjustment, and Confinement: A Critical Review of the Literature', 20 Behavioral Sciences and Law 191 (2002).

⁵⁴ John Blume, Stephen Garvey, and Sheri Lynn Johnson, 'Future Dangerousness in Capital Cases: Always "At Issue"', 86 Cornell L. Rev. 397 (2000-01).

prison workshop, either making soap or *dari* (carpet). He also engages himself in grooming the vegetable garden inside prison. At 8:30 pm, he retires to his cell for the night, eagerly awaiting for the next morning when he would be back at work.

Navinder was isolated from other prisoners for the first two years of incarceration. However, considering his good behaviour in prison, he was moved out of solitary confinement and was allowed to involve himself in different activities inside the prison. While Navinder's interaction was restricted to his fellow inmates and family members during *mulaqats* (visits), his concern extended beyond them. Seeing that the women visitors did not have a place to relieve themselves after travelling long distances to meet prison inmates, he undertook the initiative to build a female toilet in prison.

However, a reading of the decisions rendered in Navinder's case makes it clear that none of the three levels of judiciary considered the possibility of reformation, before confirming his death sentence. Although Navinder had been incarcerated for more than 17 years before his death sentence was upheld by the Supreme Court, no part of his life in prison was considered by the Court while arriving at its decision. Sharing his views about the death penalty, Navinder believed that it did not serve any purpose. "It only exists to appease people's fears," he remarked.⁵⁵

Exercise of sentencing rigour is predicated on courts truly adopting the sentencing framework laid out in *Bachan Singh*. If questions of

alternate punishments and reformation continue to be limited to the nature of the crime, we will continue to propagate sentencing practices that are skewed and incapable of delivering justice that meets constitutional standards. It must be a matter of grave concern that the quality of sentencing in death penalty cases is extremely shallow. It is a problem that needs to be addressed at multiple levels. Beginning with defense lawyers appreciating the importance and scope of sentencing hearings to judges ensuring that rigorous sentencing practices are adopted.

The extent and nature of information required to undertake meaningful sentencing in death penalty cases is a tremendous challenge to the criminal justice system in India. Sentencing practices that rarely invoke anything beyond poverty, age and number of family members are extremely narrow. To move towards a more robust sentencing practice would require nothing short of transformation. Given the socio-economic profile of prisoners being sentenced to death, it is quite unimaginable that they could afford the kind of representation that would ensure rigorous sentencing hearings. This is only further complicated by the observation in Chapter 5 on 'Legal Assistance' that 70.6% of the prisoners had private lawyers in the trial court to whom they largely struggled to pay any significant amount as fees. The quality of lawyering within the legal aid system also suffers from a deep crisis of confidence and certainly does not have the capability and resources required to carry out sentencing hearings in the manner

⁵⁵ Subsequent to his interview, Navinder's death sentence was commuted to life imprisonment by the Supreme Court on the ground of inordinate delay by the executive in deciding his mercy petition.

outlined above. We are then faced with the grim reality of sentencing hearings without any real substance and conducted merely to meet the formal requirements of the law. Unfortunately, the marginalisation of individuals who need this process the most along

with the inability of the system to provide any meaningful assistance in this regard leaves us with a rather bleak picture. The least that can be done is to recognise the full blown crisis in India's death penalty sentencing practices.

ACCESS TO TRIAL COURT JUDGMENT

Section 363 of the CrPC provides that when an accused is sentenced to imprisonment, the copy of the judgment shall be provided to her immediately after the pronouncement of the sentence, free of cost. The Section also allows the accused to apply for a translated copy of the judgment in her own language which must also be furnished for free.⁵⁶ In *Madhav Hayawadanrao Hoskot v. State of Maharashtra*, the Supreme Court observed that provision of a copy of the judgment to the accused within reasonable time to appeal was an element of the right to appeal which is integral to procedural fairness as enshrined in Article 21 of the Constitution.⁵⁷

Given the low levels of interaction with their lawyers and the lack of opportunity to meaningfully participate in the trial proceedings, the accused often have little chance to understand the case against them. Therefore, the right to receive a copy of the judgment is of vital significance to the accused as it allows her to understand the court's examination of the evidence against her and meaningfully aid the lawyer in constructing her case before the High Court.

However, during our interviews we noticed that most prisoners were either not given a copy of the judgment or were not provided with its translated version. Inder did not receive a copy of the judgment from the court and his lawyer asked him for money to provide him a

copy. In the absence of any monetary support from his family and struggling to manage the legal expenses with the money he had earned in prison and through financial assistance from an ex-inmate, Inder did not have any money to pay for the judgment copy. Following a trial that lasted over twelve years, out of which he was unable to understand the arguments as they were in English, Indrajit Singh requested for a copy of the trial court judgment after the sentence was pronounced. However, the judgment copy that Indrajit was provided was also beyond comprehension as it was in English and he was never given a translation. A similar grievance was shared by Deepinder who was sentenced to death in a trial that was barely audible to him. The proceedings were

⁵⁶ The provision of a translated copy of the judgment is subject to the practical convenience of the trial court.

⁵⁷ (1978) 3 SCC 544, paragraphs 11 and 12.

conducted in English and the judgment was also delivered in the same language. While he was given a copy of the judgment, he was unable to read it. “If it were in Hindi, I could at least try to read it,” remarked Deepinder who had dropped out of high school. He was never informed by his private lawyer that he could have requested for a translated copy of judgment. On the other hand, Atmaram knew about the right to apply for a translated copy

and even attempted to exercise it. However, he never received a response to his application for a Hindi translation of his trial court judgment which was written in English. Imprisoned for almost seven years and not allowed to work, Atmaram spent most of his time trying to study law and understand the court system. “Sometimes, something that is said in Hindi may be written very differently in English,” observed Atmaram.

APPELLATE PROCEEDINGS

Ordinarily, the death sentence imposed by a trial court cannot be executed until it has been confirmed by the High Court under Section 366 of the CrPC.⁵⁸ Therefore, irrespective of whether a prisoner files an appeal, a death sentence case must be referred to the High Court for confirmation. This requirement to have two levels of the judiciary concur on the imposition of the death sentence, aims at minimizing the possibility of error before executing the harshest possible punishment. As explained in Chapter 1 on ‘Coverage of the Project’, except in a few instances, there is no automatic right to appeal before the Supreme Court. While Article 134 of the Constitution provides three instances in which an appeal shall lie to the Supreme Court from a judgment, final order or sentence of the High Court,⁵⁹ the Apex Court may be approached under Articles 132 or 136 of the Constitution as well.⁶⁰ It must also be noted that while the determination of guilt and appropriateness of the sentence may be re-examined by the appellate courts, their scope of review is largely restricted by the materials put on record during trial.

⁵⁸ Section 366(1) of the Code of Criminal Procedure, 1973 reads as “When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.” However, the requirement for confirmation of a death sentence by the High Court has been excluded by several central legislations, namely The Air Force Act, 1950; The Army Act, 1950; The Assam Rifles Act, 2006; The Border Security Force Act, 1968; The Coast Guard Act, 1978; The Indo-Tibetan Border Police Force Act, 1992; The Navy Act, 1957; The Sashastra Seema Bal Act, 2007, and The Terrorist and Disruptive Activities (Prevention) Act, 1987.

⁵⁹ Article 134 of the Constitution provides that an appeal shall lie to the Supreme Court in the following instances (a) When the High Court reverses an order of acquittal by the trial court and imposes a death sentence, (b) When the High Court withdraws a trial from a lower court, conducts the trial before itself and sentences the accused to death and (c) When the High Court certifies that the case is fit for appeal to the Supreme Court.

⁶⁰ Under Article 132 of the Constitution, an appeal lies before the Supreme Court if a certificate of appeal is granted by the High Court stating that the case involves ‘a substantial question of law’ regarding the interpretation of the Constitution. Under Article 136, the Supreme Court may in exercise of its discretion, grant a leave to appeal from any judgment, decree, determination, sentence or order passed by any court or tribunal.

By the end of trial proceedings, prisoners interviewed during the Project felt extremely alienated from the legal process and were affected by the helplessness of not being able to speak in their defence. Coupled with the mental trauma of being given the most extreme punishment, these experiences characterized their interaction with the criminal justice system as their case reached the appellate stage. While the procedure for mandatory confirmation of a death sentence

by the High Court seeks to ensure strict judicial scrutiny before an individual is sent to the gallows, the law does very little to remedy the deep sense of alienation experienced by these prisoners, which only increases as their case progresses in the appeal process. This disconnect also bears severe psychological costs for the prisoners and their families, as their desperation and sense of injustice continuously grows with the years spent by prisoners in incarceration.⁶¹

AWARENESS OF PROCEEDINGS IN APPELLATE COURT

While the law does not mandate the presence of the accused in proceedings before the High Court or the Supreme Court, one of the aspects common to prisoner accounts, was the severe lack of information about the progress in their cases at the appellate levels. The most worrying aspect in this regard was the complete absence of or minimal interaction with their appellate lawyers.⁶² Even the prison authorities would rarely inform the prisoner if her case was listed or about any developments therein. Other sources for prisoners to receive updates regarding their cases were television and newspaper reports.

However, these modes of information were also contingent on access to such facilities in prison or the prisoner's ability to read the newspaper. In cases where the prisoners were present during their High Court proceedings, they would barely understand the exchange

in court as it was mostly conducted in English. During the interviews, we even encountered prisoners who were either completely unaware about the procedure for appeals or had no knowledge about which High Court had heard their appeal. On the other hand, there were a handful of prisoners who were aware about the progress in their case as they were in constant touch with their appellate lawyers or because their family members provided them regular updates.

KNOWLEDGE OF HIGH COURT PROCEEDINGS

Lokesh neither knew the legal aid lawyer who argued his appeal before the High Court nor was he taken for the proceedings. During his interview, Lokesh was even unaware about which High Court had decided his criminal appeal. The level of awareness was worse in

⁶¹ For more details on mental health of prisoners sentenced to death, refer to Chapter 8 on 'Living on Death Row'.

⁶² For more details on interaction with lawyers, refer to Chapter 5 on 'Legal Assistance'.

case of his family, who had their hopes glued to the High Court's verdict, when the death sentence had already been confirmed and the case was pending before the Supreme Court at the time of their interview. Burhan, whose High Court appeal had been dismissed about four years prior his interview, shared his observation that unlike other prisons in the state, prisoners sentenced to death in his prison were not allowed to attend the High Court proceedings. In contrast, Shiresh, and Gopesh, sentenced to death in two different states, had little opportunity to understand the High Court proceedings despite being present in court on a few occasions. As the High Court proceedings were completely in English, Shiresh recounted that he could not understand anything and was not allowed to talk. "We just have to go there and stay shut; just go in, come out, and it's done," remarked Shiresh. Unable to comprehend the High Court proceedings and

desperate to speak in his defence, Gopesh requested the judge to speak to him. However, his plea was immediately met with a blunt rejection, as the judge instructed the police to remove Gopesh from the courtroom. However, Ekant Singh has not received an opportunity to even make such a request. Ekant says that he witnessed the victim's rape and murder, and was framed by the police when he led them to the body of the deceased. Unable to sleep knowing that he is innocent, Ekant desperately wants a chance to interact with the High Court judge and request him to order a re-investigation into the forensic analysis in his case, which he believes was manipulated to falsely incriminate him. "I just want a chance to speak to the judge about the forensic science laboratory report, and then I will even accept the death sentence," said Ekant, who had never been taken to the High Court.

EXPECTATIONS FROM APPELLATE PROCEEDINGS

On one hand, the Project encountered prisoners who hoped for a positive outcome from the High Court or the Supreme Court despite being alienated from the legal proceedings through their years of incarceration. On the other hand, there were prisoners who had lost all faith in the criminal justice system and had left their fate to God's will. Instances were also recorded where prisoners said that they would rather die than remain suspended in the uncertainty between life and death or would prefer death over burdening their families with their existence in jail.

Dinbandhu, sentenced to death for kidnapping with murder, told the researchers that he had lost all hope for relief by the Supreme Court. Not only had the case consumed his family's entire income, Dinbandhu felt that it had significantly affected his aging father's health.

Sustained only by his father's pension now, his parents no longer have the resources to fight his appeal in Delhi. "I just want the court to quickly do whatever it wants to do," said a distressed Dinbandhu, who is constantly worried about the financial strain that this case

has imposed on his family. Now, Dinbandhu either wants to contribute to his family's income or be executed, so that he no longer remains a burden on his family. However, some prisoners continued to nurture hopes seeing justice being done at the Supreme Court. Zaid, Mahmud and Fazil, sentenced to death and convicted along with others, had their case pending in the Supreme Court at the time of their interview. Claiming that they were framed by the investigating authorities, the three of them were apprehensive about the outcome but had faith in the powers of the Supreme Court. "I have hopes of being acquitted in the Supreme Court, especially because its jurisdiction is outside the state," shared Mahmud. Their case was argued in the Supreme Court by senior lawyers who were engaged by an organization, which handled their legal expenses.⁶³

APPEAL PROCESS UNDER TADA

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) departed from the standard criminal procedure in many aspects. One of the major departures is Section 19 which provides for an appeal before the Supreme Court from the judgment of the designated TADA Court, depriving the aggrieved of a hearing before the High Court. The constitutional validity of this provision was challenged in *Kartar Singh v. State of*

*Punjab*⁶⁴ wherein while the Court recognised the practical difficulties faced by an aggrieved person when deprived of a stage of appeal, it held that this difficulty in itself was not a ground to render the provision constitutionally invalid.⁶⁵

The impact of this Supreme Court decision is perhaps best understood in light of the lived experiences of the persons convicted under TADA. Champak, Lucius, Chittaranjan and Murthi were convicted and sentenced to life imprisonment by a TADA court in 2001. Following the judgment of the TADA court, the state appealed before the Supreme Court, praying for enhancement of their life sentences to death. While the Supreme Court dismissed the appeal filed by the state, on its own motion, the Court enhanced their sentences and dismissed the appeals filed by the prisoners challenging their conviction by the TADA court. In doing so the court observed that the enhancement of a sentence to death penalty can be considered in cases where awarding any punishment less than death would "shock the conscience of the court." While holding that the accused were members of a notorious criminal gang and did not deserve any "sympathetic consideration", the Court enhanced their sentence to death. By virtue of this decision, Champak, Lucius, Chittaranjan and Murthi never had the opportunity to appeal against their death sentence as the

⁶³ All the convicts in the case were subsequently acquitted by the Supreme Court in a decision where the Court expressed anguish over the incompetence of the police.

⁶⁴ (1994) 3 SCC 569, paragraph 297.

⁶⁵ With the growing criticism surrounding the human rights abuses perpetrated under the provisions of this Act, the Terrorist and Disruptive Activities (Prevention) Act, 1987 was finally allowed to lapse in the Parliament in May 1995.

punishment of death was first imposed by the Supreme Court.

Lucius, one of the accused, shared that the lawyers dealing with their case were confident that they would be acquitted by the Supreme Court. Desperate to prove his innocence, Lucius acted on the advice of his lawyers and placed his faith in the Apex Court. However, far from providing them the expected relief, the Supreme Court enhanced their sentences from life imprisonment. Shocked to hear about the enhancement of his sentence

through television news, Lucius wondered if he should have refrained from exercising his statutory right to appeal before the Supreme Court. In recounting the events preceding the appeal, Champak shared that a leading human rights organization which dealt with his appeal assured him that the evidence against him was weak and justice would prevail at the Supreme Court. Even nine years after the decision of the Supreme Court, Champak wonders every single day whether the decision to appeal was the "right one".⁶⁶

APPELLATE PROCEEDINGS AND FAMILIES OF PRISONERS

Despite having no moral or legal culpability, the families of prisoners sentenced to death were undoubtedly the most severely hit by their cases. While a detailed analysis of the repercussions on the families of death row prisoners has been undertaken in Chapter 10 on 'Impact', it is important to consider the psychological and financial burden borne by them over the years. As observed in Chapter 5 on 'Legal Assistance', there is an increasing financial strain on the prisoners' families, as they often sell their limited assets or incur debts in order to manage their households, sustain the legal expenses and arrange for prison visits. Families rarely had knowledge of the proceedings in the appellate courts and even where they did, it was limited to knowledge of the dates and very little else. As the cases moved from the trial court to the High Court (usually

in the capital of the state or in another major city), families found it extremely difficult to stay abreast with the progress of the case. This was further accentuated when the case moved to the Supreme Court. Just in terms of geographical distance, the case became increasingly distant as it moved up the appellate process. That invariably meant more expense, more lost days of work and more intimidating settings. This extreme helplessness left them deeply disillusioned with the administration of justice in the country.

BHOLERAM, FATHER OF DINBANDHU, had an experience that highlights the extreme alienation faced by the family in their interaction with the criminal justice system. His son, Dinbandhu, was sentenced to death for murder and kidnapping for ransom. His inter-

⁶⁶ The death sentence imposed on Champak, Lucius, Chittaranjan and Murthi was later commuted into lifetime imprisonment on the ground of inordinate delay by the executive in deciding their mercy petitions.

action with the system was minimal from the trial stage as the proceedings were conducted in a sessions court, which was two hours away from Bholeram's residence. Employed with the State Electricity Board, Bholeram was unable to take leave from work to attend the trial proceedings. Absent when the death sentence was pronounced in the trial court, Bholeram recounted that when the lawyer called him to inform him about the sentence, he simply said "Sorry, Sir." When the case proceeded to the High Court, Bholeram traveled to the state capital, about 100 km away from his residence, to view the proceedings only to learn that the case had been adjourned as the judge was on leave. Frustrated that his lawyer did not inform him about the adjournment, Bholeram was unable to attend the remaining proceedings

and hoped to receive updates from his privately appointed lawyer. However, Din-bandhu's lawyer refused to answer Bholeram's calls or recognise him when he would visit his office. Bholeram and his family were not even informed about the High Court verdict by their lawyer, and learnt about it only through the newspaper. His alienation from the proceedings remained even when the case is before the Supreme Court. When he tried to call his state appointed lawyer, the lawyer refused to engage with Bholeram, saying that since he was assigned this matter by the Supreme Court and not Bholeram himself, Bholeram did not have the right to ask him about the proceedings. However, Bholeram is willing to leave no stone unturned to save his son and hopes that he will return home one day.

Rules of procedure and the constitutive elements of the right to fair trial are meant as protections against possible excesses of the police and investigative agencies. Judicial institutions are meant to ensure that the excesses discussed in Chapter 6 on ‘Experience in Custody’ do not form the basis on which individuals are convicted, much less sentenced to death. The criminal justice system places the burden on the prosecution to demonstrate that it has played by the rules and depends on institutional actors like judges and defense lawyers to ensure compliance with constitutional guarantees and procedural safeguards. They are meant to check the exercise of power by the police even when it is clear as daylight that the accused has committed the crime. However, in this chapter we have seen the manner in which there is a serious crisis in the ability of various institutional actors to effectively play their role and it would be shallow to view it merely as the failing of individuals concerned. We rarely confront the harsh reality that the very structural foundations and institutional priorities of our criminal justice system render the systematic erosion of basic protections inevitable.



Business or
Gathering

Prisons in India are largely an unknown world with very little access to outsiders. While the research on Indian prisons has certainly been insufficient, the paucity of information on incarceration of prisoners sentenced to death is even more acute. Even though every death sentence has to be confirmed by the High Court,¹ prisons treat individuals as being sentenced to death from the date of sentence of the trial court. Prisons as institutions of reformation and rehabilitation raise important concerns in the context of the death penalty. Prisoners sentenced to death by trial courts have a significant number of legal options in the form of appeals, review petition, curative petition and clemency proceedings. As discussed in Chapter 2 on 'Durations on Death Row', prisoners sentenced to death spend significant number of years waiting for the courts to decide their cases. During this period, the conditions and nature of their incarceration has significant rights implications. For more than four decades now, the Supreme Court has repeatedly upheld the rights of prisoners generally and even particularly of prisoners sentenced to death. The court's jurisprudence on prisoners' rights makes it amply evident that prisons are not institutions meant to inflict torture, violence and inhuman conditions on the prisoners. Apart from rights implications, the unique sentencing requirements in death sentence cases makes the time spent in prisons critical. Ideally, as the case moves up through the legal system, courts should factor the manner in which prisoners have spent their

time in prison. This would be a very relevant indicator in the court's analysis of the reformation potential of the prisoner sentenced to death which is a mandatory sentencing requirement.² Prisoners can demonstrate such possibility of reformation only if appropriate opportunities are created in prison and they are protected from various kinds of hostile, violent and degrading treatment.

While details of the prisons where the prisoners sentenced to death are confined in India has been provided in Chapter 1 on 'Coverage of the Project', this chapter seeks to document the experience of prisoners sentenced to death and the impact their condition of incarceration has on them. In their interviews, the prisoners revealed the severe conditions of their incarceration, defined by a desperate lack of basic amenities and discriminatory treatment. It is evident that the punishment for prisoners sentenced to death is not limited to their constant contemplation of death and the unbearable uncertainty that is attached with it. It is compounded by harsh and often violent prison conditions that do not nudge them in any manner towards reform and rehabilitation. The predominant attitude towards prisoners sentenced to death revolves around the view that their reform and rehabilitation is futile as their identity is reduced exclusively to one of individuals awaiting execution. The inspiring narratives in this chapter of prisoners sentenced to death working towards bettering their life chances are undoubtedly to be seen as achievements despite the system and not because of it.

¹ Of all prisoners interviewed during the Project, the ones sentenced to death under the Terrorist and Disruptive Activities (Prevention) Act, 1987 could only file an appeal directly to the Supreme Court under Section 19 of the Act.

² According to *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, the court must determine that the accused is beyond reformation before sentencing her to death. For more details on sentencing, refer to Chapter 7 on 'Trial and Appeals'.

LEGAL FRAMEWORK

The legal framework governing prisons in India is informed by colonial documents with a few amendments since independence. Our conversations with prisoners sentenced to

death about prison conditions revealed a wide disjunct between the legal provisions and entitlements on one hand and the actual treatment meted out to prisoners on the other.

Prisons in India are governed primarily by the Prisons Act, 1894 (Prisons Act), a central legislation, and the rules framed thereunder. The division of powers in Schedule VII of the Constitution renders administration of prisons as a state subject. As a result, different states have different prison manuals, though some states have adopted common manuals. Prison manuals, framed by the state governments in exercise of powers under Section 59 of the Prisons Act lay down provisions regarding the day to day functioning of prisons. Based on the prison reforms suggested by the All India Committee on Jail Reforms, 1980-1983, and on the direction of the Supreme Court in the case of *Rama Murthy v. State of Karnataka*,³ the Correctional Administration Division of the Ministry of Home Affairs, Union of India has drafted a Model Prison Manual in 2003.

While the Model Prison Manual incorporates several suggestions for improving the physical conditions of incarceration of prisoners, it continues to suffer from fundamental concerns. The ultimate adaptation and implementation of the Model Prison Manual has been left to the states, and there has been very little movement on adopting even the limited reforms suggested in the Model Prison Manual.

The Prisons Act, and prison manuals contain some provisions applicable exclusively to prisoners sentenced to death. Discussing the treatment of prisoners sentenced to death, a five-judge bench of the Supreme Court in *Sunil Batra v. Delhi Administration & Ors* held that a prisoner sentenced to death is entitled to be treated in a manner similar to other prisoners.⁴

Justice V.R. Krishna Iyer, perhaps the only person to be imprisoned by a government in independent India before being elevated to the Supreme Court,⁵ held that such prisoners “shall be merely kept in custody and shall not be put to work like those sentenced to rigorous imprisonment. These prisoners shall not be kept apart or segregated except on their own volition... They shall be entitled to the amenities of ordinary inmates in the prison like games, books, newspapers, reasonably good food, the right to expression, artistic or other, and normal clothing and bed. In a sense, they stand better than ordinary prisoners because they are not serving any term of rigorous imprisonment, as such. However, if their gregarious wishes induce them to live in fellowship and

³ (1997) 2 SCC 642, paragraphs 33 and 34.

⁴ (1978) 4 SCC 494, paragraph 120.

⁵ In May 1948, Justice V.R. Krishna Iyer was arrested on the charge of actively helping communists by providing hideouts and spent one month in Cannanore Central Prison (now known as Central Prison, Kannur). Kerala saw its first democratically elected communist government in April 1957.

work like other prisoners they should be allowed to do so. To eat together, to sleep together, to work together, to live together, generally speaking, cannot be denied to them except on specific grounds warranting such a course...

It is only at a stage when the death sentence has become final and cannot be annulled by any judicial or constitutional procedure, that a prisoner sentenced to death can be “kept

apart” from other prisoners.⁶ This judicial and constitutional procedure functions till beyond the rejection of the mercy by the President,⁷ as the Supreme Court has recognised the right of a prisoner sentenced to death to challenge the rejection of her mercy petition on certain grounds.⁸ A sentence of death can become finally executable only after all legal remedies available to the prisoner have been exhausted by her.⁹

SPACES OF CONFINEMENT

Prisoners sentenced to death in India spend considerable time being treated as a death row prisoners despite their ongoing legal proceedings. They are subject to conditions and treatment reserved for prisoners sentenced to death even though their remaining legal options could set aside their death sentence. This is particularly egregious in light of our research that only 4.9% of the death sentences imposed by the trial courts are ultimately upheld by appellate courts.¹⁰ To develop insights into the experiences of prisoners sentenced to death in India, it is crucial to

first understand the physical spaces within which such prisoners remain confined. These spaces and the rules that govern them mark the boundaries of their daily existence and determine the limits of their lives in prison.

The Prisons Act states that a prisoner sentenced to death must be kept apart from other prisoners.¹¹ Several prison manuals also contain similar provisions.¹² However, in *Sunil Batra*, the Supreme Court clarified that a prisoner sentenced to death can be confined in a cell apart from other prisoners only when the death sentence has become finally

⁶ *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494, paragraphs 222 and 223.

⁷ (1978) 4 SCC 494, paragraphs 222 and 223.

⁸ In *Shatrughan Chauhan & Anr v. Union of India & Ors* (2014) 3 SCC 1, the circumstances that have been discussed by the Supreme Court are delay in disposal of the mercy petition, insanity, solitary confinement, judgments declared *per incuriam* and procedural lapses.

⁹ *Shabnam v. Union of India & Ors* (2015) 6 SCC 702, paragraph 20.

¹⁰ For more details on tracing of case outcomes at the appellate level, refer to Chapter 11 on ‘Death sentences in India (2000–2015): An Overview’.

¹¹ Section 30(2), Prisons Act, 1894.

¹² For instance, Rule 5, Chapter XLII, Maharashtra Prison Manual, 1979 states that a prisoner sentenced to death shall, from the date of his sentence, and without waiting for the sentence to be confirmed by the High Court, be confined in a cell in a special yard, apart from all other prisoners. Such a rule is directly in violation of the decision of the Supreme Court in *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494.

“They herd people around like cattle in the jails.”
Navinder Singh

executable.¹³ Even at that stage, the prisoner must be kept within 24 hour watch, but cannot be condemned to solitary confinement. The prisoner must be kept within sight and sound of other prisoners, and be permitted to eat food in the company of others.¹⁴

Diverse practices have been adopted across states and prisons in India regarding the manner in which prisoners sentenced to death are confined. During the Project, we observed that at least six states largely followed the *Sunil Batra*¹⁵ ruling (with notable exceptions) to the extent that prisoners sentenced to death were confined along with prisoners sentenced to other terms of imprisonment in common cells, barracks, blocks or wards.¹⁶ In prisons adopting these practices, prisoners sentenced to death live and interact with other prisoners, but unlike others, they are not permitted to work even if they wish to do so. Even though they live with others, the prisoners sentenced to death said that they nonetheless continued to be deeply troubled by the precariousness of their lives, not knowing whether they were going to live or die.

COMMON BARRACKS

Kalicharan described that he lives in a barrack with 30–40 other prisoners who have been sentenced to lesser punishments. While other

prisoners tend to gardens and vegetable patches, he is not permitted to work and instead passes time by playing cards and carom, which is his favourite activity. However, during the night, when he is by himself, he often thinks about his sentence. He would prefer the sentence of life imprisonment to that of capital punishment, even if it means being in prison for the remainder of his life. He constantly worries about his wife and children, and has a deep desire to live for them.¹⁷

A different view was shared by Rochak, who is confined in a common ward with 22 other prisoners sentenced to lesser punishments. Though Rochak enjoys watching the news on the television with the other prisoners, he often worries about the financial condition of his impoverished family, and feels that he would rather die than remain consumed with worry. In order to stop being a burden on his family, he feels that it would be best if he were hanged as soon as possible.

Some prisons in states like Maharashtra, Kerala, Karnataka, Jharkhand and Bihar incarcerate prisoners sentenced to death separately and permit no interaction with the general prison population. While reflecting on his life in the ‘death barracks’, Lakshmi Kant said “hum kaid hote hue bhi kaid hai” (even

¹³ (1978) 4 SCC 494, paragraph 223.

¹⁴ (1978) 4 SCC 494, paragraph 224.

¹⁵ (1978) 4 SCC 494.

¹⁶ It must be noted that there were exceptions within these states as well where prisoners are in solitary confinement.

¹⁷ Kalicharan’s death sentence has been commuted by the High Court on the ground of inordinate delay in deciding his mercy petition.

in our confinement, we are further confined). Segregated incarceration of prisoners sentenced to death, in addition to the prohibition on work, limits their interaction with people who are similarly situated—those constantly grappling with the extreme stress of anticipating their execution. While prisoners have recounted instances of building bonds of support and solidarity with others placed in a situation as grim as theirs, others have explained the sense of shared despair that builds up when prisoners sentenced to death have access only to each other. The practice of confining prisoners sentenced to death in separate barracks, locked away from the rest of the prison population is in clear violation of the Supreme Court's ruling in *Sunil Batra*.¹⁸

Ayananka Singh shared his experience of being confined in a single cell within a death barrack. Only one other prisoner, Burhan, is confined within the same barrack in a different cell. Ayananka Singh expressed anger against the prison authorities for the treatment meted out to him and Burhan. Unlike other prisoners they are not permitted to leave their barracks and walk in common areas of the prison. They are forced to interact only with each other. Due to the vast distance between his home state and the state where he is lodged, Ayananka Singh discourages his family from visiting him, fearful of the prohibitive costs involved. Ever since his arrest in 2006, no one has visited Ayananka Singh, apart from his younger brother. In fact, Ayananka Singh's wife and children are unaware that he has been sentenced to death. Ayananka Singh insisted

that it should remain this way because the knowledge of his sentence would cause them immense grief and anguish. His only means of communication with his family is the prison telephone and he has lodged many complaints about the condition of his confinement with prison authorities. His repeated requests that he be shifted to a prison closer to his home state, in order to meet his family, have been denied.

Nimish, as an undertrial prisoner in a high profile murder and dacoity case, was kept in the death barrack of a central prison even before he was convicted. During his time as an undertrial, he was confined in an individual cell and was let out of his cell only for three hours every day. After the trial court sentenced him to death, he was transferred to another central prison within the state. Through the efforts of human rights activists, prisoners sentenced to death confined in this prison were permitted to remain outside their individual cells from 6 am to 6 pm, although they remained within the confines of the death barrack and were unable to meet or interact with other prisoners.

BARRED FROM FESTIVITIES

Birsa is lodged in a death barrack of a central prison with four other prisoners with his case pending in the High Court. He has been convicted in a case involving multiple murders. Birsa described that the prisoners confined in the death barrack were not permitted to meet other prisoners, or to participate in the life of the prison. Birsa said he strongly believed in Lord Shiva, and kept a picture of Lord Shiva,

¹⁸ (1978) 4 SCC 494, paragraph 220.

“Jail is a living morgue with all the prisoners as alive dead bodies”

Purab

given by his family, in his cell. He also showed us a locket of Lord Shiva around his neck that he wore at all times. With tremendous sadness and disappointment, he spoke about the time when a procession had been organised in the prison on the day of *Shivratri* (festival of Lord Shiva) but the prisoners in the death barrack were not permitted to participate. He

recalled the manner in which some of the prisoners in the death barrack had gathered around a tiny hole in the wall of their barrack, and took turns to catch a glimpse of the procession as it went past their barrack. Birsa said his celebration of *Shivratri* was limited to cleaning his cell and praying to the small picture of Lord Shiva in his cell.

SOLITARY CONFINEMENT

During the prison interviews, accounts of prisoners sentenced to death incarcerated in solitary confinement also emerged. As will be discussed subsequently, such practice is in complete violation of the fundamental rights of prisoners guaranteed by the Constitution, statutory norms in relevant legislations on prisons, rules of prison manuals adopted by state governments, and of international human rights standards.

Solitary confinement has been understood to mean such confinement that entirely isolates the prisoner both from the sight of, and communication with, other prisoners.¹⁹ Solitary confinement continues to be a permissible form of punishment in India under Section 73 of the Indian Penal Code, 1860 (IPC). However only a court of law can sentence a prisoner to such punishment. Prison authorities cannot condemn a prisoner to solitary confinement in the absence of judicial pronouncement of such punishment. This is hardly surprising as solitary confinement has been identified as a dehumanising punishment.²⁰

Sections 73 and 74 of the IPC set some limits to the punishment of solitary confinement. No court can sentence a prisoner to solitary confinement exceeding three months in the whole,²¹ and no prisoner can be required

to serve the punishment beyond 14 days at a time.²² Further, prisoners kept in solitary confinement must be visited by a medical officer every day, and must have the means to communicate with the prison authorities at all

¹⁹ *Ranbir Singh Sehgal v. State of Punjab* 1962 Supp (1) SCR 295, paragraph 4.

²⁰ In *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494, the Supreme Court in paragraph 217 observed that “solitary confinement has a degrading and dehumanising effect on prisoners.” In paragraph 218, the Court held that subjecting prisoners sentenced to death to solitary confinement only on the basis of them being sentenced to death was violative of Articles 14 and 19 of the Constitution. Further, if solitary confinement led to “total deprivation of camaraderie, commingling and talking and being talked to” that would amount to a violation of Article 21 of the Constitution.

²¹ Section 73, Indian Penal Code, 1860.

²² Section 74, Indian Penal Code, 1860.

times.²³ The prison manuals of several states also contain safeguards for the implementation of a sentence of solitary confinement when so ordered by a court of law.²⁴ For instance, the Uttar Pradesh Jail Manual provides that if a medical officer believes that solitary confinement is likely to be injurious to the mind or body of a prisoner, the prisoner is to be removed from solitary confinement immediately, and if the prisoner is declared to be permanently unfit to undergo solitary confinement, the prison authorities must apply for remission of such sentence.²⁵

Under the Prisons Act, the superintendent of a prison is empowered to punish prisoners for offences committed in prison,²⁶ including condemning prisoners to cellular confinement for a maximum period of 14 days,²⁷ or separate confinement for a maximum period of three months.²⁸ Cellular confinement involves secluding a prisoner from communication with, but not from sight of, other prisoners, while separate confinement further allows the secluded prisoner to undertake not less than one hour's exercise per day and to have his meals in association with one or more other

prisoners. The prison authorities cannot, however, condemn any prisoner to solitary confinement. Similarly, a prisoner sentenced to death cannot be kept in solitary confinement by the prison authorities, and may be kept in separate or cellular confinement only upon the commission of a prison offence.

This legal position largely meets the international standards on solitary confinement as set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the 'Nelson Mandela Rules'.²⁹ As per the Nelson Mandela Rules, solitary confinement is understood to mean confinement of prisoners for 22 hours or more in a day, without meaningful human contact.³⁰ Under these Rules, prolonged solitary confinement (for over 15 days), indefinite solitary confinement³¹ and subjecting women and children to solitary confinement, are completely prohibited.³² Further, solitary confinement can be used only in exceptional cases as a last resort, for as short a time as possible. Even then, solitary confinement must be imposed by a competent authority and must be subject to independent review. It must also be noted that the Nelson

²³ Section 20, Prisons Act, 1894.

²⁴ Chapter 17, Bihar Prison Manual, 2012; Rules 863–873, Chapter XXXII, Uttar Pradesh Jail Manual; Rule 56, Delhi Prisons (Prisoners Property, History Ticket, Civil Prisoners, Unconvicted Prisoners, Judicial Solitary Confinement, Cells and Treatment Therein) Rules, 1988.

²⁵ Rules 870 and 871, Chapter XXXII, Uttar Pradesh Jail Manual.

²⁶ See Section 45, Prisons Act, 1894 for the list of acts declared to be prison offences.

²⁷ Section 46(10), Prisons Act, 1894.

²⁸ Section 46(8), Prisons Act, 1894.

²⁹ The United National Standard Minimum Rules for the Treatment of Prisoners were first approved by the Economic and Social Council by its resolutions 663 C (XXIV) 2076 (LXII), passed in 1957 and 1977 respectively. The General Assembly unanimously, and without vote, adopted a revised set of Rules, called the 'Nelson Mandela Rules' on 17 December 2015.

³⁰ Rule 44, United Nations Standard Minimum Rules for the Treatment of Prisoners.

³¹ Rule 43 and 44, United Nations Standard Minimum Rules for the Treatment of Prisoners.

³² Rule 45, United Nations Standard Minimum Rules for the Treatment of Prisoners.

Mandela Rules do not permit the imposition of solitary confinement on prisoners sentenced to death by virtue of their death sentence. The Rules state that the imposition of solitary confinement should be prohibited in case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.³³

Our research revealed that prisons continue to confine some prisoners sentenced to death in solitary confinement for considerable durations. Such punishment was seen to have caused severe physical and psychological pain and suffering amounting to torture. The combination of solitary confinement with the sentence of death is particularly inhumane and the narratives highlighted here are meant to give a sense of the depth of suffering such prisoners undergo.

JAYAKANTHAN, on walking into the room to meet us, blinked continuously for the first few minutes. He explained that he was not accustomed to so much light as he was kept in solitary confinement in a cell with no source of sunlight. He was provided food in his cell and was permitted to come out of his cell for only 20 minutes every day. His solitary confinement began in September 2013 and he had no human contact since then, except for an occasional conversation with the guard stationed outside his cell at all times. He said

that his routine interaction was only with lizards that entered his cell and that he had befriended the lizards by feeding them his food. He felt that the noises made by the lizards were to thank him for feeding them. He also shared his observation that after a while, the lizards would stop coming to him for food but would nonetheless visit his cell and make noises as though talking to him as their friend.

During his interview, Jayakanthan recounted that he accepted solitary confinement as it was a result of his attempts to escape from prison twice. After his arrest, he was severely beaten by the police, and Jayakanthan accepted that as well, as an inevitable consequence of his attempts to escape. He shared that his reasons to escape were his wife and two daughters (studying in the eighth standard and in first year of college, respectively), who had been rendered extremely vulnerable since his incarceration. He said his lawyer, a distant relative, was sexually harassing his wife and he was afraid that the lawyer would harass his daughters as well. Jayakanthan said that he decided to escape because he knew that the police presence around his house would immediately increase in an attempt to capture him again. He felt that such a measure would at least ensure that his wife and daughters were protected from sexual harassment by his own lawyer.

³³ Rule 45, United Nations Standard Minimum Rules for the Treatment of Prisoners.

FOUR HOURS A DAY

10 prisoners belonging to the Dalit community were sentenced to death for the murder of persons belonging to the other backward classes (OBC). On pronouncement of death sentence by the trial court, these prisoners were confined to single cells in the death barrack of a central prison. The prisoners were permitted to come outside their cells for a total of four hours in a day, between 6 am and 8 am for bathing and eating their breakfast, between 11 am and 12 noon for eating lunch, and then from 3 pm to 4 pm for eating their dinner. Darshak recounted how he constantly worried about his case and his sentence when

he was alone in his cell. He would wonder what the verdict of the High Court would be, whether he would be acquitted, or his sentence commuted, or whether he would be hanged. The uncertainty of the sentence of death also plagued the mind of Viraj. He worried about the enormity of the position in which he was, and could see no light at the end of the tunnel. He was unable to sleep beyond three hours a day. Even during the hours when he was let outside his cell, he did not sit with or talk to the other prisoners. He was haunted by the door of the gallows, which he could see from his cell, and was filled with fear and uncertainty each time he glanced at the door.

CONDITIONS OF INCARCERATION

The Supreme Court in the case of *Sunil Batra*, held that even prisoners are entitled to the protection of the right to life guaranteed under Article 21 of the Constitution. Justice V.R. Krishna Iyer wrote in his judgment:

*“...Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner’s shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or undertrial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no, lest social justice, dignity of the individual, equality before the law, procedure established by law and the seven lamps of freedom (Article 19) become chimerical constitutional claptrap.”*³⁵

The punishment for prisoners who have been sentenced to death is their sentence itself, and the harsh conditions of confinement are not part of their punishment. However, the

experience of prisoners revealed that the harsh physical conditions of incarceration almost act as a separate sentence, making living under the sentence of death all the more

³⁵ *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494, paragraph 52.

difficult. Seen in the light of the long periods for which prisoners remain confined under the sentence of death,³⁶ these revelations by the prisoners paint a stark picture of the gruelling life in prison for prisoners sentenced to death. Undoubtedly, many of the narratives we encountered would hold true for the general prison population as well but the point under consideration here is that prison conditions further compound the experience of being under the sentence of death.

Apart from all the restrictions that have an impact on the mental well-being of the prisoners sentenced to death, the physical conditions are also desperately lacking. Prisoners narrated a wide range of concerns that should set off serious warning signals about denying them the dignity that is guaranteed to all persons by the Constitution—extremely cramped spaces, cells with very little light and air, unacceptable standards of hygiene, abysmal quality of food in flagrant violation of prison manuals, poor standards of medical services, almost non-existent mental health services are issues that emerged from different prisons. Our prisons are an extremely closed world that are increasingly difficult to access³⁷ but perhaps the conditions in which people live

in that world reflects our humanity more than anything else.

POVERTY AND SLEEP

For the world outside prison walls, this might seem like a trivial problem. However, prisoners from a certain prison narrated harrowing accounts of sleep deprivation due to swarms of mosquitoes for large parts of the year. And even here, the economic conditions of the prisoners determined whether they could sleep. Prisoners sentenced to death in this prison who had family members sending them money every month could afford to buy mosquito repellent coils. Those prisoners who had no means of affording the coils had to contend not only with extended periods of sleep deprivation, but also find ways of protecting themselves from being bitten all over their body, particularly their faces.

UNDER THE GLARE

A fascinating instance of archaic legislative provisions being implemented to give absurd results was reflected in the complaint of a set of prisoners regarding the light bulbs in their cells being kept on all night long. Under the prison manuals of some states,³⁸ it is mandatory for a lantern to be placed outside

³⁶ For details of time spent by prisoners under the death sentence, refer to Chapter 2 on 'Durations on Death Row'.

³⁷ In its guidelines issued on 24 July 2014, the Ministry of Home Affairs has imposed rigorous restrictions on access to inmates confined in prisons. According to the guidelines, any private individual, press, NGO or company is allowed entry into the prisons for making a documentary, article or any other research, only if the concerned state or union territory feels that it is for the purpose of "creating positive social impact" or is relating to prison reforms. An application for permission has to be submitted at least 30 days in advance to the jail superintendent or Home Department of the relevant government along with a security deposit of Rupees one lakh. On grant of permission, interaction with prisoners can only be done in presence of a senior jail official. While no pens or paper are allowed, any recording is also to be submitted to the jail superintendent who has the power to delete any portion she finds objectionable. The full guidelines are available at: <http://mha1.nic.in/PrisonReforms/pdf/GuidelinetoVisitInsideJails_240715.pdf>.

³⁸ Rule 325, Punjab Jail Manual, 1996; Rule 13, Delhi Prisons (Custody of Prisoners) Rules, 1988; and Rule 69, Chapter V, Tamil Nadu Prisons Rules, 1983.

the cell of a prisoner sentenced to death between sunset and sunrise, so as to monitor the activities of the prisoner. Sajal and Hanish described that this has now translated into light bulbs being left on in their cells, all night long. Similarly, Birsa revealed that the switch for the light bulb was located outside the cell so the prisoners could not switch it off, even when they struggled to sleep under the glare of the light bulb. Not only did the light bulbs stay on all night, guards would rattle the locks on their cells through the night to ensure that there was no tampering.

AN UNBEARABLE STENCH

Hanut, a prisoner whose mercy petition had been rejected by the President and who had been confined in prison for 12 years at the time of the interview,³⁹ revealed that until 2010, there were no toilets in the prison. The prisoners were provided a steel tub inside their cells for their daily toiletry needs. Hanut recalled the horror of the days on which the tub was not cleaned. The entire cell would be filled with an unbearable stench, and even the thought of consuming tea within the same cell was repulsive. Even the days on which the contents of the tub were emptied, the lingering stench made it difficult for the prisoners to consume food in the cell. Hanut further revealed that the prisoners were even denied

the privacy needed to relieve themselves. The prisoners used a *kurta* (long shirt) hung over the bars of the cell as a signal to inform others that they were relieving themselves. Hanut felt deeply humiliated and lamented, "Give us punishment, but until then at least treat us like human beings."

COLONIAL PRACTICES

The prison manuals, by virtue of being colonial instruments or drawing largely from colonial practices, specify archaic timings for meals in prison. Although the exact timings differ from state to state, prisons in India continue to follow practices that are anachronistic and belong to an age when regulations in this regard were determined according to the hours of natural light. The Uttar Pradesh Jail Manual is a classic example of this, and provides that the morning bell is to be rung 45 minutes to an hour prior to sunrise throughout the year, and after counting of prisoners and washing up, the prisoners are to be provided their morning meal. It further provides that the midday meal is to be provided at 11 am, and evening meal to be provided at 4:30 pm in winter and 5:30 pm in summer.⁴⁰ Dakshesh described that because of such odd meal timings, prisoners were sometimes left with no choice but to store their food and eat their meals hours later, when the food had turned stone cold.

³⁹ Subsequent to his interview with the Project, Hanut's sentence was commuted by the Supreme Court on grounds of inordinate delay in deciding his mercy petition.

⁴⁰ Rules 753, 754, 755, 757, 761 and 765, Chapter XXVIII, Uttar Pradesh Jail Manual. Similar provisions can be found in Rules 517, 518, 526, and 527, Punjab Jail Manual and Rules 9,11, 22, Delhi Prisons (Custody of Prisoners) Rules, 1988.

“The doctors in the jail do not even touch us.”
Imtiyaz

MEDICAL TREATMENT

The Prisons Act contains provisions relating to hospital facilities for prisoners in jail.⁴¹ Prison manuals contain provisions regarding the working of these hospitals and the duties of the medical officers of the prison. The prison manuals also contain provision regarding the procedure to be followed when a convict cannot be adequately treated within the jail and must be removed to a district hospital.

However, conversations with the prisoners once again revealed the difference between legal provisions and their lived experience. During our study, we came across instances of prisoners being denied basic medical attention and also gross negligence in the failure to diagnose terminal illnesses until it was very late.

Nityanand was told by the prison authorities that he will not be treated for his stomach ailments for the sole reason that he was a condemned convict, and therefore, did not deserve medical attention as he was ultimately to be executed. Rajvinder developed cataracts in prison, but was denied permission for surgery by the jail authorities and told that he would be provided treatment only once the cataracts turned to blindness. Other prisoners also narrated instances that revealed a very disturbing lack of empathy on behalf of the prison medical officers. For instance, Imtiyaz felt that the treatment they received at the hands of the jail doctors was worse than the treatment provided to animals. “The doctors in

the jail do not even touch us,” he said woefully. Abdal echoed a similar sentiment when he said that according to him, the doctors in prison are no good and do not give timely attention to ailing prisoners. The lack of medical facilities and hygienic living conditions led him to believe that around 15 prisoners had died in the past three years in that prison. Similarly, Hanut believes that the prison doctors are under the impression that their responsibility ceases with prescribing tablets to the prisoners, without getting into details of follow up. Hanut further believes that permissions to conduct external examinations are granted only in high profile cases or to important prisoners.

AIDS : UNDETECTED AND UNTREATED

Arnav, a prisoner convicted for the rape and murder of a minor, was confined in judicial custody since 2002, and his mercy petition was pending at the time when we interviewed him. Arnav was diagnosed with Acquired Immune Deficiency Syndrome (AIDS) in September 2014, 12 years after he was first

⁴¹ Section 39, Prisons Act, 1894.

taken into custody.⁴² By the time his illness was diagnosed, his health had rapidly deteriorated, and there was very little that could be done to help him. His CD4 count (reflects the CD4 white blood cells that play an important role in the body's immune system) had reduced to 55–65 cells per cubic millimeter of blood, and it was evident that he had very little time left to live.⁴³ This shows gross negligence in respect of the medical care he received. Much before the CD4 count drops that low, the prisoner would have started to show symptoms that should have led the medical staff to test him for the Human Immunodeficiency Virus (HIV). The fact that he was diagnosed so late meant that Arnav had no real chance of benefitting from the advances in anti-retroviral treatment for AIDS. Arnav succumbed to his condition in September 2015.

Prisoners have been compelled to send petitions to the National Human Rights Commission to bring attention to instances of denial of the right to proper medical treatment. Asav shared with us that he had been forced to petition the National Human Rights Commission to get him proper medical treatment after the same had been denied to him by the prison authorities despite repeated requests. Similarly, Utpal, who had been in prison since 2004, was diagnosed with cancer in 2009. The fact that the cancer causes him unbearable pain was not enough for the prison authorities to provide him medical treatment. His treatment was made possible only once the National Human Rights Commission intervened in the matter on the basis of his petition. His cancer is now being treated at three leading government hospitals in the city.

OPPORTUNITIES FOR REFORM AND REHABILITATION

EDUCATION

As previously discussed in Chapter 7 on 'Trial and Appeals', the Supreme Court in *Bachan Singh v. State of Punjab*, while upholding the constitutionality of the death penalty, placed significant emphasis on reformation. A prisoner can be sentenced to death only if she is beyond reform, and the option of an alternate punishment is thereby "unquestionably foreclosed."⁴⁴

⁴² In this context, it is relevant to refer to the 'Advisory on the policy for the treatment of terminally ill prisoners/inmates' framed by the Ministry of Home Affairs released in August 2010. The advisory suggests state governments and union territories to take steps towards effective management of terminally ill patients (including patients suffering with "full blown AIDS"), such as provision of reasonable medical facilities within the prison or through a specialty/super-speciality government hospital and consider release of these prisoners as part of general amnesty. The full advisory is available at: http://www.mha.nic.in/sites/upload_files/mha/files/pdf/Advpol-261110.pdf.

⁴³ CD4 count varies between 500–1,200 cells per cubic millimeter of blood in a healthy adult. A CD4 count less than 200 cells per cubic millimeter of blood is one of the qualifications for a diagnosis of stage 3 HIV infection (AIDS).

⁴⁴ (1980) 2 SCC 684, paragraph 209.

In this context, the education of prisoners assumes great significance. Any system of punishment that has an emphasis on reformation must factor in education. In recognition of this, the Model Prison Manual, 2003 contains a chapter dedicated to education in prisons. According to the Model Prison Manual, education opportunities must be provided both to prisoners who do not possess basic literacy, and also to other prisoners to enable them to develop their education qualifications.⁴⁵ Further, the Model Prison Manual also has provisions on maintaining a good library in prisons, and encouraging prisoners to develop reading habits.⁴⁶

Although most states are yet to embark on even the limited prison reforms envisaged in the Model Prison Manual, some state prison manuals contain provisions relating to the education of prisoners. The Bihar Prison Manual, 2012, which has incorporated some of the suggested provisions contained in the Model Prison Manual, emphasises on education programmes to facilitate rehabilitation and socialization of prisoners.⁴⁷ The Uttar Pradesh Jail Manual contains provisions for the education of prisoners in a chapter titled 'Reformative Influences'.⁴⁸ It provides for instruction in reading, writing and arithmetic up

to the lower primary standard to be imparted to prisoners.⁴⁹ Further, several states require maintenance of library facilities for prisoners.⁵⁰ In Maharashtra, prisons are mandated to provide social and moral education to prisoners,⁵¹ although formal education connected with the state education system, is not mandated. In Delhi, prisons have a limited mandate of providing educational facilities only to adolescent and young prisoners, but to ensure that the educational facilities correspond to those available in public schools in Delhi and are approved by the Central Board of Secondary Education.⁵²

As documented in Chapter 4 on 'Socio-Economic Profile', almost one-fourth of the prisoners sentenced to death in India have never attended school, and a further 9.6% attended school but did not complete their primary education. In fact, only 38.4% of the prisoners in our study have completed their sec-

⁴⁵ Paragraph 13.24, Model Prison Manual, 2003.

⁴⁶ Paragraph 13.08, Model Prison Manual, 2003.

⁴⁷ Rule 264, Chapter 9, Bihar Prison Manual 2012.

⁴⁸ Chapter XXVII, Uttar Pradesh Jail Manual.

⁴⁹ Rule 731, Uttar Pradesh Jail Manual.

⁵⁰ Rules 737–739, Uttar Pradesh Jail Manual; Rule 89, Delhi Prisons (Admission, Classification, Separation, Remission, Reward and Release of Prisoners) Rules, 1988.

⁵¹ Maharashtra Prisons (Religious Facilities, Moral and Social Education to Prisoners) Rules, 1976.

⁵² Rule 39, Delhi Prisons (Treatment of Convicts Sentenced to Simple Imprisonment, Death, Female Prisoners, Youthful Prisoners, Leper Prisoners and Lunatic Prisoners) Rules, 1988.

ondary education.⁵³ During our interviews, we also heard accounts of prisoners accessing educational opportunities for the first time in their lives and becoming literate. Others who had received a limited education in their childhood and adolescent years, explored the opportunities given to them in prison to further their educational attainments.

PROGRESS AND REFORM

Datta was only 20 years old when he was arrested for the rape and murder of a minor girl. Datta had never attended school in his childhood, and in fact nobody from his family had ever gone to school. His family belonged to a Scheduled Tribe, and Datta had moved out of his village to work as a daily wage labourer on somebody else's land to contribute to the meager family income. Currently, Datta is the youngest prisoner in the barrack he shares with older prisoners, as there are no separate barracks for young adults. Datta spends his time in prison studying and working, going to school at eight in the morning each day and returning to his barrack in the evening. Datta is very proud of the fact that he has learnt so much in prison—he has learnt to read and write in Hindi, and stated with immense satisfaction that he is able to write his name. He has now filled the form to enroll in the fifth standard.

At the time of his arrest, Nimish had studied only till the seventh standard. Although he enjoyed going to school, he was compelled to drop out of school due to financial difficulties. His sister was to be married, and his father took a loan to organise the wedding. As his father could not repay the loan with his paltry

earnings, Nimish left school to supplement the family income. Nimish migrated to another state from his native village in search of work, and was only 20–21 years old at the time of his arrest. In the two decades that he has spent in prison, Nimish has completed a Bachelor of Commerce degree, a Bachelor in Political Science, as well as a certificate course in tourism. Currently, he is pursuing a Masters in Sociology from prison.

LEARNING THE LAW

There were prisoners who spoke to us about learning the law while they were in prison, despite their limited education. Due to their determination to prove their innocence, the prisoners invested tremendous effort in understanding the law, and few even began to represent themselves before the sessions courts, choosing to depend on their own abilities rather than suffer the ambivalence of the lawyers appointed to fight their cases.⁵⁴ Luv, a prisoner sentenced to death for the rape and murder of a minor, started reading about the law during the pendency of his trial and appeal. Today, he understands the legal process much better and has realised that his lawyer did not represent him effectively. He has also read the prison manual because he feels that everyone

⁵³ For more details on educational qualifications of prisoners, refer to Chapter 4 on 'Socio-Economic Profile'.

⁵⁴ For more details on the nature of representation in court for prisoners, refer to Chapter 5 on 'Legal Assistance'.

should be aware of their rights. Rubiram, another prisoner, had studied only till the seventh standard. Due to the impoverished condition of his family, he was compelled to leave school in order to contribute to the meager family income. As there were limited opportunities in his remote village in the mountains, he moved to a big city in search of work. He worked in roadside eateries and as a domestic help for several years prior to his arrest. Charged with multiple cases of rape and murder, Rubiram began to study the law while in prison. Despite

his limited formal education, he slowly began to decipher the complexities of the law. Although Rubiram was kept in a single cell, apart from all the other prisoners, he used his time in solitary confinement to read his case files, research on points of law, read books on criminal law from the prison library, draft legal applications, and prepare for arguments in his cases. Though a death sentence was confirmed in one of his cases,⁵⁵ Rubiram now represents himself in some of the ongoing trials.

DENIAL OF EDUCATION OPPORTUNITIES

Certain prisons denied educational opportunities to prisoners sentenced to death. From the accounts narrated by prisoners, the prison authorities took the view that since the prisoner was to be executed, there was no need to provide educational opportunities. Not only is such an approach inhumane, it is also legally untenable. In keeping with the dictum of the Supreme Court in *Sunil Batra*,⁵⁶ prisoners sentenced to death cannot be differentiated from other prisoners for the purposes of availing educational facilities, until their sentence becomes finally executable.

Moreover, prisoners sentenced to death have appeals, review petitions, curative petitions and possible writ petitions as legal options. Their efforts within prison to educate themselves could prove to be critical during their appeals or subsequent proceedings including mercy petitions to the Governor/ President to establish a case for commutation. For each step of the legal process to be meaningful, a continued assessment of the prisoner must be made, and in the meantime the prisoner must

be provided opportunities to reform. Denial of such opportunities would mean that the criminal justice system would be condemning prisoners to death without really giving them a chance at reformation. The question of reformation should be analysed differently at the various stages within the legal process. At the trial stage, if the prisoner has spent only a few months in prison, questions of reformation would disproportionately rely mainly on past conduct beyond the crime. However, if the

⁵⁵ This death sentence has been subsequently commuted by the High Court on the grounds including inordinate delay in deciding his mercy petition and solitary confinement of the prisoner.

⁵⁶ *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494, paragraph 120.

sentencing in the trial is after a significant period of incarceration or during the appeals, the consideration of activities undertaken in prison should become an integral part of sentencing and the evaluation of the potential to reform. Denial of educational opportunities significantly reduces the chances of being able to demonstrate an important element of the reformation process. Further, educational opportunities give prisoners respite from the burden of their sentence and the constant anticipation of death. Prisoners often seek work or education so they can spend their time in prison without being plagued by worry, and denying them the opportunity to engage in either of these furthers their agony under the sentence of death.

YEARNING TO STUDY

Sentenced to death for a terror offence, Moinuddin was very keen to pursue an undergraduate degree, particularly in Political Science. Although he began his undergraduate studies in 2007, while his case was pending in the trial court, his studies were put to a halt by prison authorities when he was transferred to a central prison after being sentenced to death. He requested the jailor to allow him to continue his studies and even wrote to the Inspector General, but to no avail. Baburao Moré belongs to a Scheduled Tribe, and had never had the opportunity to attend school. His family did not have a permanent place of residence, and lived a nomadic existence, moving from place to place in search of livelihood. When his case was pending in the trial court, Baburao Moré began to study for the first time in his life. However, after he was sentenced to death by

the trial court and moved to a central prison, he was unable to continue his studies. He requested the jailor, numerous times, to permit him to study and work in prison. However, due to his status as a prisoner sentenced to death, his requests were repeatedly denied.

SHARING THEIR LEARNING

Prisoners who had gained an education prior to their incarceration tried using their time in prison to share their learning with others. Sentenced to death at the age of 28, Zaina was well qualified and had obtained Masters degrees in English and Geography, and also a Bachelors degree in Education. She worked as a primary school teacher in a government school prior to her arrest. In prison, she teaches her co-prisoners in the *mahila* (women's) ward of the prison, and also takes classes for the young children living with their mothers. Though her death sentence has been confirmed by the Supreme Court, none of this was ever mentioned as relevant sentencing factors in any court.

Hanish, sentenced to death for rape and murder, has an undergraduate degree in Political Science from one of the top universities in the country. He spends his time in prison by teaching other prisoners, translating judgments and writing letters for them. Barun Kumar, sentenced to death for rape and murder, taught English, Mathematics and Science in a primary school. In prison, he is always eager to help his fellow inmates, and writes letters for prisoners who do not know how to read or write, enabling them to communicate with their families.

WORK

While the importance of reform has been discussed in the preceding section, we now turn our focus to the provisions for rehabilitation and the role of vocational training in furthering the same.

The Prisons Act provides for the employment of prisoners, and the prison manuals contain provisions regarding the vocational training of prisoners,⁵⁷ and provide that work is to be allocated after giving due consideration to the prospect of rehabilitation. Essentially, what needs to be considered is whether the prisoners can viably pursue those vocations once they are released from the prison.⁵⁸

Even in the context of prisoners sentenced to death, work in prison assumes great significance. Across prisons and states in India, prisoners sentenced to death revealed that they were not permitted to work from the moment their sentence was pronounced by the trial court. The Bihar Prison Manual, 2012, expressly provides that a prisoner sentenced to death shall not be engaged in any type of work.⁵⁹ It must be noted that several stages of appeal are available to prisoners at that stage, and under the *Sunil Batra*⁶⁰ framework, they must be treated like any other prisoner. Given the number of years that prisoners sentenced to death spend on death row before finally being acquitted or commuted,⁶¹ depriving them the opportunity to work for all those years is grossly unjust. With no way to predict the ultimate outcome of the cases concerning the prisoners sentenced to death, it also takes away from the ultimate object of punishment in

a civilised society, which is reform and rehabilitation.

PROHIBITION ON WORK

Prisoners narrated to us that although they were permitted to work in prison during the pendency of their case in the trial court, they were barred from continuing to work once they were sentenced to death. Mahmud, who had been imprisoned for 11 years at the time of his interview and had spent eight of those on death row, recalled that as an undertrial, he worked as a cook in the prison canteen. But once he was sentenced to death, he was no longer permitted to work.⁶² Samar, sentenced to death for multiple murders, was pursuing an undergraduate degree in Biology prior to his arrest. As an undertrial he was taught to use the computer by prison authorities, and would help with data entry in prison. However, he was not permitted to continue these activities once he was sentenced to death by the trial court.

⁵⁷ Rule 47, Delhi Prisons (Transfer of Prisoner, Labour and Jail Industry, Food, Clothings and Sanitation) Rules, 1988.

⁵⁸ Paragraph 613(b), Punjab Jail Manual.

⁵⁹ Rule 637, Chapter 22, Bihar Prison Manual, 2012.

⁶⁰ *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494.

⁶¹ For details of time spent by prisoners under the death sentence, refer to Chapter 2 on 'Durations on Death Row'.

⁶² Mahmud has been acquitted of all charges by the Supreme Court. The Court expressed its "anguish" at the incompetence of the investigative agencies which lead to implication of innocent persons.

WORKING FOR ESSENTIALS

Prisoners also wanted to work in prison in order to earn money for buying essential commodities such as toothpaste and soap from the prison store, which were not being supplied to them by the prison authorities. Left with no alternative, prisoners who received no money from their families and were denied work in the prison, resorted to working privately for the other prisoners even within the death barracks. They took up work like washing clothes of other prisoners, cleaning their cells and other small jobs. Padmanabhan, sentenced to death for rape and murder of a minor, does not want to depend on his impoverished family for money while he is in prison. He washes clothes of the other inmates and meets his expenses through the money he earns through that. Madhukar, sentenced to death for dacoity with murder, also earns money in prison by washing clothes of other prisoners. Belonging to an extremely poor Scheduled Caste family, he never had the opportunity to go to school and worked as a manual casual labourer from a young age. He was only 18–19 years old at the time of his arrest, and both his parents passed away while he was in prison. The paltry amounts he earned through washing clothes was the only source of income available to him to meet his essential needs in prison.

Prisoners sentenced to death undergo tremendous amount of anxiety and stress due to the uncertainty of their fate under their sentence. Working in prison provides them an avenue to constructively spend their time, and gives them some respite from endlessly worrying about their precarious fate. The denial of such opportunity further aggravates their agony under the sentence of death. The

problem of prisoners sentenced to death being denied the opportunity to work in prison is rampant across prisons and states in India, and was a matter of deep concern for prisoners we interviewed.

WORK AS RESPITE

Bakulbhai, sentenced to death for kidnapping and murder, informed us that though the prison authorities did not permit prisoners sentenced to death to work, he took special permission to work in the prison kitchens without any remuneration. He said he did it just so that he did not constantly have to think about his death sentence. Amogh, sentenced to death for murder of multiple persons had made repeated requests to the prison authorities to permit him to work, for he feared that he would lose his sanity if he kept sitting idle in his cell all day long. He was finally permitted to work in the jail kitchen, and eagerly looked forward to this part of his routine.

Zubin, who had been on death row for six years at the time of his interview, also expressed the desire to work in prison. He felt that working would enable him to be more at peace with his surroundings. Unable to sleep beyond four hours at night, he was plagued by worry for his family and his punishment. A cycle rickshaw puller by occupation, he felt that he would be able to sleep better after doing manual labour. For Ifraz, whose case was pending before the High Court, his conviction and sentence of death did not only mean having to live under the constant horror of execution, it also meant having to face that fear without doing the one thing that would make it easy for him to spend time in prison—practising his skill of stitching and embroidery.

FAMILY VISITS

The wide range of responses concerning visits by family members to prisons made us realise the futility of attempting to develop any single narrative on the experience of living under the sentence of death. Prisoners reflected on various factors that shaped their view on visits (or the lack of them) by their family members. Especially given the economic vulnerability of families, the costs to be incurred to visit the prison were often prohibitive. In most cases, families would have to undertake such journeys to meet the prisoner barely for 20–30

minutes in extremely crowded *mulaqat* (meeting) rooms. However, there were also prisons that provided special meeting arrangements for prisoners sentenced to death where families could meet the prisoner with no physical barriers between them and also for longer durations than the general prison population. Family visits for prisoners under the sentence of death was not an entirely happy experience. It reminded them of the lives they had left behind and often left them feeling like an additional burden on the family.

OBSTACLES TO FAMILY VISITS

It may be recalled that a vast majority of the prisoners were from economically vulnerable backgrounds. Despite the obvious economic burdens that prisons placed, many families ensured periodical visits to meet the prisoner. Inevitably, there was tremendous importance placed on not going empty handed to meet the prisoner and therefore additional expenses would be incurred on taking food for the prisoner. In situations where the prison was very far away from the families, boarding and lodging would often be an issue, especially for women. Unable to afford room rents in lodges, it was common for families to spend the night out in the open on railway platforms, bus stations, and other public spaces. Such difficulties had a direct impact on the frequency of visits.

Apart from economic and geographical impediments, there were also instances where adverse media attention and fear of social stigma or reprisal from the police prevented

families from visiting the prisoners. Rubiram's wife had never visited Rubiram even though she was in the same city where he was lodged. Given the extremely high profile nature of the case, she feared the police would go after her if she tried visiting Rubiram in prison. However, Rubiram believed that his wife was still in their village in a neighbouring state, completely unaware that his wife had moved to the same city. Along similar lines, Dhanvant's family is terrified of going to meet Dhanvant who was sentenced to death for rape and murder of a minor. His father told us that the victim's family was powerful and influential and he feared that they might not be allowed to live in the village if anyone found out that they were in touch with the prisoner. Dhanvant, on the other hand, has no idea of this backlash and keeps asking prison authorities for an explanation for not having any *mulaqat* with his family.

DIFFICULTIES IN PRISON VISITS— ECONOMIC AND GEOGRAPHICAL

In order to meet prisoners sentenced to death, families incurred substantial costs travelling to the prisons. In most states, prisoners sentenced to death are incarcerated in central prisons. Due to the vast distance between the residence of the families and these prisons, families are often compelled to travel for several days each time they visit the prisoner. Further, some prisoners in our study were incarcerated in prisons in states different from those to which they belonged, making it even more difficult for families to visit the prisoners. In some cases, these financial and geographical difficulties substantially impacted the frequency of family visits.

Chetak has had just one visit from his mother in the 11 years of his incarceration. His mother leads an extremely impoverished existence in a neighbouring state, and does not speak the language of the state in which Chetak is lodged. The one time she undertook the long journey to meet her son in prison she had to rely on a neighbour travelling to meet relatives of their own in the same town as the prison.⁶³ Prajay had left his family behind in North-Eastern India and had moved to South India in search of work. Convicted and sentenced to death for dacoity with murder, Prajay has been in prison for five years and eight months and no one from his family has been able to visit him due to prohibitive travel costs and difficulties of the long journey. Although Prajay is deeply saddened by the fact that he has been unable to meet his family, he believes that it would break his heart even more to meet

them once and watch them leave. He said he'd rather not meet them at all.

In certain instances families were initially able to maintain contact with the prisoners but as the years went by the families found it increasingly difficult and stopped meeting the prisoner. Devnath, sentenced to death for the rape and murder of a minor, had already served 14 and a half years in prison and recalled the initial years when his mother used to visit him regularly. However, no one had come to meet him in the past eight years and Devnath did not know the reasons for his mother no longer visiting him. Devnath gave the address of his mother to researchers on the Project, but when researchers reached the given address, they found the house deserted with no trace of his family.

KAPIL AND PINKY lead an ordinary life in a town in Central India. Since they had no children of their own, they adopted the youngest daughter of Kapil's elder brother, and felt that their family was complete. Upon their arrest for the murder of their own child, they were both incarcerated in the district prison, where they could meet at least once a week. At the end of their trial, the sessions court sentenced Kapil to death while Pinky was sentenced to imprisonment for life. Because of his death sentence, Kapil was transferred to the central prison while Pinky continued to remain confined in the district prison. Consequently, they no longer have any way of contacting each other. The central prison does not have barracks for women prisoners, and so repeated petitions

⁶³ Chetak's death sentence has been subsequently been commuted by the Supreme Court on the ground of inordinate delay in deciding his mercy petition, and his solitary confinement for seven and a half years.

made by Kapil to get Pinky transferred to the central prison have been ignored. Pinky feels that with her daughter gone, she would have

no reason to live if her husband is executed. Torn apart, they wait for the law to take its own course, hoping to be reunited someday.

MULAQAT FOR PRISONERS SENTENCED TO DEATH

During the Project, we observed that at least three states did not have a separate *mulaqat* system for prisoners sentenced to death. They are made to use the same arrangements as the general prison population. These arrangements most often involve an enclosure where prisoners are made to line up in batches to talk to their families. They are made to stand on either side of two layers of wire mesh and then asked to carry on their conversation. The situation that then emerges is one, where multiple prisoners are trying to talk to their families simultaneously with everyone concerned trying to talk at their loudest in order to be heard. Scope for any personal or private conversations is further reduced by the presence of jail staff while these meetings take place. They are allowed to talk for an average of 20–30 minutes in this manner. It is often for such a meeting that families of prisoners sentenced to death travel great distances, spending significant amounts of money and deepening their economic vulnerability.

Very few prisons have a system of *mulaqat* where the prisoners and their families talk over the phone, facing each other separated by glass. In at least four states, we noted that a separate *mulaqat* system was followed for prisoners sentenced to death. Taking into account the position that prisoners sentenced to death find themselves in, these prisons allow the prisoners and families to sit with each other for durations significantly longer than those

mandated for the general prison population. One of these prisons allowed family members to go all the way into the death barracks as the *mulaqat* for prisoners sentenced to death were conducted in the common area at the entrance of the barrack. While it largely made the prisoners happy that they could meet their family members at such close proximity, it also meant that yet another opportunity for the prisoner to leave the death barracks was now blocked.

DEMAND FOR BRIBES

Given the oppressive conditions in which these *mulaqats* take place, with little or no scope of a meaningful conversation, families are left with no option but to bribe their way into extending the time of these meetings. Aabid reveals that for Rupees 1,000, they are allowed to meet their families for half an hour, and the time can be extended if they pay more money. Gulshan Singh reveals that the setting in which the meeting takes place is extremely inconvenient. They are separated by a wire mesh and are unable to see each other properly. The prison authorities take advantage of this system and demand bribes from the families of prisoners to enable them to meet face to face. Gulshan's family, which engages in subsistence farming to make ends meet and has little to survive on, is left with no alternative but to find a way to arrange money to be paid as bribe if they want to meet the prisoner in any meaningful manner.

“This life in prison is psychological violence.”
Ashraf

FAMILY VISITS—MIXED FEELINGS

Though prisoners were comforted by family visits, it was not necessarily a happy experience entirely. Prisoners are often overcome with sadness and guilt at the thought of not being able to contribute positively to the family in any way and being the cause of their trouble and grief. They feel that that asking their families not to visit would reduce the suffering and unhappiness of their family members. For Dheer, meeting his wife in prison is always a bittersweet experience. He knows that she has to travel for two days and spend Rupees 300 in coming to meet him. His wife shares with us that sometimes they also travel ticketless on the bus and the train while coming to meet the prisoner because they cannot afford to buy the ticket. While on the one hand, Dheer feels guilty that they have to undergo such hardship to meet him, seeing them also makes him immensely happy.

It is sometimes out of sheer frustration that prisoners sentenced to death ask their families to not come and meet them in the jail. A single trip to the jail to meet Inder costs his father around Rupees 200. Inder is troubled when his father comes to meet him in prison

because he knows that his father can barely afford the cost of the travel. He also feels that there is absolutely no point in that exercise, as he can update them about the case status even over the phone. He also discourages his friends from coming to meet him, because he feels that no one can really help in any manner. He believes that in a situation like his, all that people can offer as solace is small talk. He feels there is very little else to be said.

Ranjay, whose case was pending before the Supreme Court at the time of his interview in December 2013, felt that the time period of the *mulaqat* and the setting was just inadequate to be able to have a meaningful conversation with his family. They are left with no choice but to hide their feelings from each other.

Balgovind Singh feels a sense of deep sorrow when he sees his family visiting him in prison. He feels helpless that he is unable to contribute to their growth and that his wife has to now work as an agricultural labourer to raise their two children. But seeing them also gives him hope that not all is lost, and that things will work out ultimately.

TREATMENT OF PRISONERS

Apart from the oppressive conditions in prisons, violence being inflicted on prisoners is a serious issue that needs to be addressed. Amongst the many issues discussed during the interviews, prisoners were most reluctant to talk about this issue as they feared it could

land them in trouble. Despite that general reluctance and the fear of reprisal, narratives emerged about violence being inflicted both by fellow prisoners and prison authorities. Prisoners sentenced to death for sexual offences and terror offences seem to be particularly

vulnerable to such violence. Apart from physical violence, prisoners also experienced different forms of humiliation and ostracisation at the hands of their fellow prisoners. The initial period of entry into prison, either by means of judicial custody or transfer after conviction, was the worst time for prisoners who faced such violence. Such practices and the prison narratives surrounding them made it seem like a system with its own internal violent logic aimed at sending messages of strong disapproval.

TREATMENT BY FELLOW INMATES

Asad, a prisoner sentenced to death for a high-profile terror offence, was attacked with a blade while his case was before the trial court, making a deep cut behind his ear. He continued to be subject to acts of violence carried out by his co-prisoners as his case progressed through the judicial system. Asad was attacked five times in the 13 years of his incarceration.

Satyanarayanan, sentenced to death for rape and murder in a case that attracted tremendous attention in the state, was beaten up very often when he was initially sent to prison after his arrest. The other prisoners would hardly need any excuse to brutally assault him. Although he complained to the superintendent of the prison, no action was taken for his protection. Even after two years and 10 months of incarceration, the treatment meted out to him by other prisoners continues to be the same. When Satyanarayanan goes to the bathroom, it is quite common that two prisoners accost him and proceed to physically attack him, only to blame him for the altercation later. There have also been instances of prisoners throwing mud in his rice, rendering his food inedible on

multiple occasions. While noting that he got no respite from such treatment, an otherwise undaunted Satyanarayanan broke down while describing his experience in prison.

Accounts of such violence were also accompanied with concerns about the complicity of the prison staff, or worse, acts of violence perpetrated by the prison officials. The inability to prevent such violence or indulging in such violence is indicative of the manner in which prisons are perceived. The very personnel involved in the day-to-day administration of the prison view prisons as institutions to further inflict punishment on the persons being brought in. A very fundamental and crucial distinction seems to have been forgotten. Prisons are meant to be places for serving out punishments and suffer the severe deprivation of liberties. They are not meant to inflict more hostility in terms of inhumane conditions or violence in any form. In light of such attitudes to prisoners, it becomes difficult to consider prisons as institutions working towards meaningful reformation or rehabilitation.

PRISON VIOLENCE

Rachit, a prisoner sentenced to death for murder, described in detail the custodial violence and humiliation he faced while he was incarcerated in a central prison. On his first day in prison after his arrest, he and his co-accused were stripped to their underwear and made to walk around the prison compound. The next day they were again stripped, made to parade around the boundaries of the prison again and then made to squat on their haunches while being beaten. After Rachit and his co-accused lost consciousness due to the brutal assault,

they were thrown into a water tank to regain consciousness and subsequently the assault resumed. Rachit said that they were tortured in the middle of the prison to ensure that all other prisoners and prison staff could view this macabre spectacle of violence.

Rajul, a prisoner accused of rape, kidnapping and murder was severely beaten both by other prisoners as well as by the prison authorities due to the rape charges against him, despite being acquitted of the rape charge by the trial court. The television media had highlighted his case and portrayed him to be a gruesome villain. Consequently, the day he was transferred to the prison after being sentenced to death, the prisoners as well as the prison authorities beat him. They also repeatedly tugged at the beard he had maintained as a practising Muslim. Rajul begged the superintendent and jailor of the prison not to torture him for a crime that he had not committed. No help was forthcoming as he was continued to be beaten mercilessly. While reflecting on a similar experience meted out to him in prison, Hanish observed that after being treated in this manner, any person brought to prison would walk out a hardened criminal.

Another interesting aspect of prison experience that emerged during the interviews was fellow inmates being a source of great strength and support for the prisoners. Moinuddin, lodged in a death barrack, described how a bond of affection and solidarity had developed amongst the prisoners sentenced to death. Moinuddin would talk to all the other prisoners in his barrack, and knew the details of each one's case. He narrated how, after seeing each prisoner's pain, a strong bond of love

and compassion had developed between all prisoners, one that was not blinded by religion or anything else. Sharing a similar experience, Bhargav described how he was confined in a common barrack with 60 other prisoners sentenced to varying punishments. He had friendly relations with all his co-prisoners, and he was not treated any differently by the other prisoners because of his sentence. His case was pending in the High Court, and the other prisoners gave him hope that he would get relief from there. In fact, they repeatedly find good omens to cheer him up with.

ROSHINI, a prisoner sentenced to death for the murder of a minor, had never gone to school. She was married at a very young age, and had her first child at the age of 15, another when she was 18, and a third when she was 23 years old. In the patriarchal world she inhabited, she was completely under the control of her husband, who did not permit her to leave their home. During her incarceration, Roshini got the opportunity to study for the first time in her life. She learnt to read Hindi, and although she had not yet learnt how to write fluently, she could write her name. In the women's prison in which she was confined, she had made many friends, and felt that she was treated better in prison than at home. She felt that everyone in prison treated her with love and respect, and her death sentence did not impact the manner in which she was treated. She was also grateful to the prison authorities for providing her with healthcare facilities and taking her to the hospital whenever she fell ill. Ironically, in some way, she felt more empowered and free in prison, than in the outside world.

“Jail to jaise dukhon ka ghar hai.”
Ramrang

MENTAL HEALTH OF PRISONERS SENTENCED TO DEATH

Mental health generally in India remains a largely neglected and misunderstood area. Social attitudes towards mental health are characterised by an acute lack of awareness about the nature and consequences of various mental health conditions. Reactions to mental health issues often range between extreme trivialisation and exaggerated notions of the consequences involved. The manner in which the legal system responds to issues of mental health raises a lot of concerns. Various stakeholders within the criminal justice system are unable to comprehend and appreciate the complete relevance of mental health concerns within the criminal justice system. In particular, during the sentencing phase, there is hardly any information provided to courts on the mental health of defendants.

The relevant mental health factors preceding the crime and subsequent to incarcerations are rarely placed before courts and neither are they demanded. This is yet another limitation of the model of legal practice followed in India. Limited or no interaction with the prisoners prevents lawyers from comprehending the need for an expert evaluation of the mental health of the prisoner. While the role of mental health factors during the sentencing phase is far more advanced and nuanced in retentionist jurisdictions like the United States, the interaction in India between mental health

and criminal law remains underexplored and to a large extent misunderstood.

“Jail to jaise dukhon ka ghar hai,” (prison is a house of sorrows) summed up Ramrang, a prisoner sentenced to death in a case of caste massacre, while describing life in prison. Intuitively, one imagines that the long durations of incarceration coupled with the harsh and inhuman environment of prisons would have an impact on the mental health of prisoners. In case of prisoners sentenced to death, these conditions are made worse by the uncertainty of being suspended between life and death for years together. While more research is required to develop a substantive and precise understanding of the impact of such factors on the mental health of prisoners sentenced to death, our conversations with prisoners demonstrated a credible cause for concern.⁶⁴

In the course of our study, we came across prisoners possibly suffering from mental illness. It is difficult to put an accurate number on them because of the following observations. There were a few prisoners whose mental health condition had been formally recognised and diagnosed by prison authorities and treatment was being provided but they continued to be under the sentence of death. Another category comprised those who were being administered medication that was typically used to treat mental health conditions

⁶⁴ The National Institute of Mental Health and Neurosciences with the Department of Prisons, Government of Karnataka and the Karnataka State Legal Services Authority studied the mental health of prisoners confined in the Bangalore Central Prison. In their report published in 2011 titled 'Mental Health and Substance Use Problems in Prisons: Local Lessons for National Action', they found that prisoners had a much higher rate of mental illness as compared to the prevalence of mental illness in the overall population. They found that 79.6% prisoners could be diagnosed as having either mental illness or substance abuse problems. A large part of the mental morbidity of prisoners was contributed by substance abuse and its related consequences. 27.6% prisoners had a diagnosable mental disorder excluding substance abuse. There is, however, paucity of research on the mental health of prisoners sentenced to death in India.

but we were unable to ascertain whether there was a formal diagnosis. The last category comprised those prisoners whose families believed that they were suffering from mental health conditions, or who, during the course of our interaction appeared to be suffering from acute mental health problems. There were also a few instances of prisoners harming themselves in an attempt to take their own lives or explicitly contemplating suicide.

Since our interactions with prisoners was limited to a single session, the last category is problematic. There could be other prisoners who suffer from mental illnesses but their episodes were not obvious to us or that they did not have an episode during our interview session. As laypersons in this regard, we did not have the necessary skillset or the expertise to determine their state of mind at the time of the interview. Mental health concerns amongst prisoners sentenced to death requires a much deeper study that would then enable the criminal justice system to consider questions of culpability and punishment in a far more holistic manner. Without commenting in any manner whatsoever on the technicalities of their mental health status, this sub-section documents our observations of certain prisoners that help us understand the range of mental health issues that might be involved.

PRANAY SINGH was sentenced to death for murdering five members of his cousin's family by setting their house alight. According

to his brother, a few years prior to the incident, Pranay Singh had developed a mental illness. He became aloof and withdrew from his family. He stopped farming and was indifferent when his yield was destroyed. After the incident, Pranay Singh left the village and returned after a period of twelve years. On his return, Pranay Singh was unkempt and his health had severely deteriorated. He did not eat much, and remained withdrawn. He did not seem to remember the incident and wondered why his house, which had been damaged in the fire that resulted in the death of his cousin's family, was destroyed.

During his interview, Pranay Singh was unaware that he was implicated for murder, and thought that he was taken into custody because the roof of his house fell apart. Pranay Singh remembered going to court for hearings but did not know the details of the case, and was under the impression that he had been acquitted by the court. He believed he was living in prison of his own volition, because he liked it there, more than he liked living at home. Although he was in his fifties, he believed that he was only 32 years old. Moreover, he insisted that the five persons whose deaths he was convicted for, were alive. No one from his family had visited him in prison and the prison officials were the only people he communicated with. Despite being diagnosed with schizophrenia in 2010, Pranay's mercy petition was rejected by the President of India.⁶⁵

⁶⁵ Pranay's death sentence was subsequently commuted by the Supreme Court on the ground of his mental illness. In its judgment, the Supreme Court noted that the Ministry of Home Affairs did not make a reference to his mental condition while advising the President to reject Pranay's mercy petition.

GORAKH'S death sentence was confirmed by the trial court, High Court and the Supreme Court, for murdering his five daughters. Gorakh was diagnosed with a mental illness soon after his conviction by the trial court, and began receiving treatment for the same. Gorakh said that prior to the treatment, he would sit all day by himself in a corner, dejected, and did not feel like talking to anyone. Over the year and half when he received treatment, he was not informed about the details of his illness or his medication, and his treatment was limited to being given pills by the prison doctors to help correct the 'mental disturbance'. Despite his mental illness, his mercy petition was rejected by the President, a death warrant was issued and he was shifted to solitary confinement. After a stay was secured the night before the execution, Gorakh continued to be kept in solitary confinement for over six months.⁶⁶

AINESH SINGH was convicted and sentenced to death under the Terrorist and Disruptive Activities (Prevention) Act, 1987. As a bright student in his youth, he received a scholarship for his higher studies, and was working as a lecturer in a University prior to his arrest. His wife, Simran, revealed that after 10 years of imprisonment it became apparent that his mental health was rapidly deteriorating. He had been kept in solitary confinement during this long period of incarceration and deprived of meaningful human contact. Simran had moved to another country and was unable

to visit him beyond a few times each year. Each time she met him, he seemed increasingly quiet and withdrawn. Five years after he began to show signs of mental illness, Ainesh was permanently shifted to a mental health facility for treatment. Despite him being in a mental health facility for psychiatric care, the President rejected his mercy petition.⁶⁷

DEVNATH, imprisoned since 2001, has been receiving treatment for his mental illness in prison without any real diagnosis. According to him, he takes 15 pills in the morning and 18 pills at night, but has no idea what these pills are for. He has frequent memory lapses and cannot function properly if he does not take the prescribed medicines. His head starts to ache, and he feels like banging his head against a wall if he does not get his pills on time. Once he takes his pills, he forgets everything and goes off to sleep. He has been suffering from loss of appetite and sleep deprivation for many years now. He has been prescribed a special diet of fruits as it is the only thing he is able to consume. In spite of his mental illness, Devnath's mercy petition has been rejected by the President.

SUKHI SINGH, a prisoner incarcerated since 2009, has also been diagnosed with mental illness while in prison. His family narrated how he had developed mental health problems, would lose control, become violent and tear his clothes. He was eventually sent to

⁶⁶ The death sentence in Gorakh's case was commuted by the Supreme Court on the ground of insanity.

⁶⁷ Ainesh's death sentence has been subsequently commuted on the grounds of insanity and inordinate delay in disposal of his mercy petition.

a hospital for treatment. Sukhi believed that being consumed with worry about his case and sentence has caused the mental illness. His case remained pending before the High Court for almost five years.

SLEEP DEPRIVATION

Over 100 prisoners sentenced to death spoke about their struggle with sleep deprivation. Several prisoners have difficulty in sleeping beyond three–four hours a night, as they are kept awake by worry for their families or concern about the uncertainty of their fate. Prisoners also described their dependence on sleeping pills to get some sleep every night. The conditions of their incarceration further aggravates their sleep deprivation, be it the presence of constant light, disturbance by prison guards banging the locks to check if they are shut, heat, cold or mosquitoes.

ATUL was sentenced to death in September 1992 for the murder of two persons. According to his wife, Neela, it became apparent that Atul was suffering from mental illness six years after he was sentenced to death. He was unable to recognise any member of his family other than his wife but refused to even meet her. Neela was able to meet Atul only when his co-prisoners forcibly brought him with them during the *mulaqat* time. During our meeting, Atul was very emotional and agitated. In response to our questions, he often yelled out phrases unconnected with the conversation. When asked about his childhood, he suddenly said, "Satyamev Jayate!", followed by, "the truth never hides!" When asked about his education, he said, "there is

no one greater than Mother!" Several times he retorted, "unless you have a point, you will be doomed" and each time he used the word "point" he would touch the index fingers of the researchers conducting the interview.

In 2000, the High Court had commuted his sentence on the ground that there was nothing to suggest that his case fell in the 'rarest of rare' category. However, the Supreme Court set aside the judgment and remitted the case back to the High Court on the ground that the High Court had not properly balanced the aggravating and mitigating circumstances of the case before commuting the death sentence. Eight years later, the High Court sent the case back to the original sentencing court. Overall, Atul has remained incarcerated for 25 years while his case went from court to court, with no certainty about his punishment. The prisons department of the concerned state government continues to treat him as a prisoner sentenced to death.

AARYAMAN, convicted for the murder of his wife and infant son, has been confined in prison since 2009. His father fears that his mental balance is being severely affected as he often talks to himself and laughs suddenly. Through the course of his interview, Aaryaman did not seem to be aware of what was happening around him. While talking to the researchers, he either stared blankly into the distance, or hard into the eyes of the researchers. Further, he did not seem to know the offence for which he was in jail and only said "*kisi ko maarne ka hai, kisko maarne ka hai, yeh sab nahin maloom*" (The charge against me is of murdering someone, I do not know whose murder).

"I feel like I am caught between two blades of a scissor, with no means to escape"
Harikishan

Although his case was pending before the High Court, he seemed to be under the impression that his case was not pending before any court. He hardly remembered any details about his life outside prison, including the name of his younger brother.

The prison authorities, who were prompt to clarify that a doctor visited the prison daily and examined all the prisoners, prescribing medicines if necessary, admitted that they did not have any mental health facilities available to competently treat the prisoner.⁶⁸

GAMAN, before his arrest, was a bus driver working with the State Road Transport

Corporation. He was sentenced to death for murdering nine persons by driving a bus of the transport corporation through crowded parts of the city in an imminently dangerous manner. Gaman said that this reaction was triggered when he was denied a day's leave to go see his psychiatrist for his mental illness. Although his plea of insanity was denied by the trial court and the High Court for purposes of both conviction and sentencing, Gaman continues to receive treatment in prison for his condition. He shared with us that he gets fits and seizures and that he receives medication for the same. His case is currently pending before the Supreme Court.

SUICIDE IN PRISON

CHIRANJIV, a prisoner sentenced to death in 2013 for the rape and murder of a minor, claimed that he was a juvenile at the time of the incident. It must be noted that this aspect was not considered by the trial court in its judgment and neither is it known if this was raised by Chiranjiv's lawyer. Chiranjiv had studied till the tenth standard and thereafter, was working in a brick kiln. After the incident, his family severed all contact with Chiranjiv, and only after he was sentenced to death, did they begin to visit him and provide support. During his interview, he said that he was hopeful that his sentence would be commuted by the High Court, and otherwise he was ready to go to every forum

available to him, including the Supreme Court, and thereafter the Governor and President. More than anything, he longed to be with his family. Chiranjiv committed suicide in prison a few months after we met him. He was only 20 years old.

MAAHIR, a prisoner sentenced to death for the murder of his lover and her four children, revealed during the course of his interview that he had attempted suicide in 2010 in prison. 26 years old at the time of the attempted suicide, Maahir said he felt that his punishment was "like a ghost", as it constantly haunted him. He believed that the death penalty could never

⁶⁸ Aaryaman's death sentence has been subsequently commuted, on the ground, *inter alia*, that he was emotionally and mentally disturbed at the time of the incident on account of his suspicion regarding the chastity and character of his wife, had subsequently expressed remorse, and did not have a prior criminal record.

lead to reform, and that people would only become from bad to worse once sentenced to death. If one is sentenced to life imprisonment, there remains some hope that one's confinement might end some day, however all hope dies when one is sentenced to death. After living under the sentence of death for several years, people begin dying from within. If one is to be executed at all, he should be executed at once.

HARIKISHAN, a prisoner sentenced to death for rape and murder, attempted suicide in prison when he was 31 years old. After his mercy petition was rejected by the President, Harikishan first learnt about the date set for his hanging through news channels on the television set in the death barrack. He felt that the media portrayed him as a monster and

depicted his entire village as being terrified of him. With details of the preparation for his execution constantly flashing on the television screen in his barrack, he could see the theatre of his own death playing out. Filled with extreme anguish at his inability to prove his innocence, Harikishan slashed his genitals with a piece of floor tile. He told us that he would rather kill himself than be executed by the State for a crime he did not commit. During his interview, Harikishan emphasised that the evidence against him was false and that he would have accepted any level of punishment if the prosecution's case was true. While describing his anguish, he said that he feels like he is "caught between two blades of a scissor, with no means to escape." Harikishan had spent nearly 12 years in prison.⁶⁹

EXPERIENCE OF LIVING UNDER THE SENTENCE OF DEATH

The harsh conditions of incarceration and limited meaningful human interaction make life in prison extremely difficult for prisoners sentenced to death. Further, the awareness of their sentence makes the prisoners worry about the precariousness of their existence, constantly oscillating between life and death. This worry becomes more intense with time, and the long wait coupled with the uncertainty of their final fate makes living under the sentence of death an unbearable experience

of anxiety and fear. Multiple prisoners told us that they would rather be executed immediately than prolong their agony of living under the sentence of death.

Bansi, sentenced to death in 2010, found the experience of living under the sentence of death to be excruciating. He was ready to be executed immediately and wondered why the State had not executed him soon after the death sentence was first pronounced by the sessions court. Ranjay, a prisoner sentenced

⁶⁹ The Supreme Court commuted Harikishan's death sentence on the ground of inordinate delay in deciding his mercy petition.

to death for the murder of a child, said that being under the sentence of death was like having a gun constantly aimed at one's head, and waiting for the gun to go off. Baburao Moré, already having been imprisoned for 11 years and awaiting a decision on his mercy petition, wanted to be executed immediately as he felt he was "half-dead" already. Another prisoner, Imtiyaz, gave the analogy of killing a chicken. He said he would rather be killed in one go, in the "jhatka manner" (killed instantly with a single strike), than to have a prolonged, agonizing death.

LIFE ON DEATH ROW

Chitrabhanu had already spent 19 years and nine months in prison and his mercy petition was pending before the President at the time of the interview. He was initially confined in a single cell in the death barrack of the prison. He recounted that he could hardly sleep and when he was alone in his cell, he would begin thinking about his sentence. Chitrabhanu said that he would rather die than continue to live in the manner in which he was confined in prison. "How many years can one live like this?" he asked. He had lost all hope in the criminal justice system and observed that although he had reformed in prison, there was no one to see his reformation. He recounted the time when he made a noose from a piece of cloth, placed it over his neck and tightened the noose to get a sense of how the end might feel. Chitrabhanu shared that he immediately broke out into a cold sweat.

Amarpreet, a prisoner whose mercy petition had been rejected at the time when we interviewed her described that she felt as if there was always a rope hanging above her head. She was unable to sleep at night and every time the gate opened she thought that the authorities had come to take her to carry out the execution. She felt most apprehensive in the early morning hours, which was the preferred time for executions. She frequently saw a nightmare where she was being led to a butcher's shop and slaughtered. Amarpreet had written a letter to the President, praying that she be hanged immediately because she could not bear "the agony of waiting."⁷⁰

Aamod Singh was terrified when he walked into the room for a conversation with us. Though his case was pending in the High Court, he had been told by some prisoners residing in his barrack that he was being taken to be executed. His hands were trembling violently due to fright and he kept muttering to himself that he was going to be hanged. He was acutely alienated from the criminal justice system and was unaware that he could not be executed at that stage. Although we reassured him that he had many legal options remaining, he remained unconvinced. After settling down, he told us that he felt this frightened whenever he thought about his sentence of death. He said, "I know that when I am taken to the gallows, I will refuse to climb."

⁷⁰ Subsequent to the interview, the Supreme Court commuted her death sentence on the ground of inordinate delay in deciding her mercy petition.

Other prisoners sentenced to death could not imagine remaining confined for the entirety of their lives, and said that they would prefer to be executed immediately. Kushal and Dalvinder said that if they were to be incarcerated for the rest of their lives, they would rather commit suicide than bear the agony of spending a lifetime in prison with no hope of coming out.

Prisoners were deeply concerned about their families and wanted to be executed immediately so that they would no longer be a burden on them. Further, they hoped that their families would get a chance to finally move on once they were executed. Aariz, a prisoner who had remained confined for over 13 years at the time of our interview, felt that he was dying every day while living under the sentence of death. Each night felt like it was his last, each day brought uncertainty to his life. Aariz was deeply concerned about his family and was unable to eat or sleep whenever he thought of them. He felt that he was of no use to his family as he was unable to contribute financially or to help his family in any way. He wanted to stop being a burden and be executed immediately.

However, some prisoners felt that despite the agony of their circumstances, they would prefer to remain alive so that they could at least meet their families occasionally. Others felt that however difficult their lives were, life was too precious to be abandoned. They were determined to hold on despite the harsh physical conditions that marked their lives in prison. Mudit Moré, whose mercy petition was pending, felt that life imprisonment without the possibility of remission would be far more desirable than the death sentence. Life was precious to him and he said that he would clutch at any straws as long he was able to live. Kalicharan, a prisoner sentenced to death whose mercy petition was also pending before the President, told us that he had a deep desire to remain alive, and hoped beyond hope that he would be granted mercy by the President. He had young children, and he wanted to remain alive for them. He was extremely worried about his family, and although he could no longer do much for them in his state of incarceration, he wanted to remain alive for them.⁷¹

GALLOWS

The presence of gallows in some prisons serves as a constant reminder of the death sentence and further aggravates the agony of uncertainty that marks the lives of many prisoners sentenced to death. Out of the 67 prisons in which we conducted interviews, 30 had gallows.⁷²

⁷¹ Subsequent to the interview, Kalicharan's mercy petition was rejected by the President. Thereafter, his death sentence was commuted by the High Court on the ground of inordinate delay in deciding the mercy petition.

⁷² For more details on prisons with gallows in India, refer to Chapter 1 on 'Coverage of the Project'.

**“Although I have not seen the gallows,
I am haunted by their presence.”**

Aashay

The presence of gallows only adds to the prisoners' ordeal as their case travels through the complex criminal justice system. While some prisoners had seen the building in which the gallows were situated, others had heard of their presence. Harshal, a prisoner confined with other death row prisoners in the *gunaah-khana* (death barrack), had seen the gallows up close and described it as a *chota gol* (smaller enclosure) within a *bada gol* (big courtyard). The experience of seeing the gallows, or even the building in which the gallows are located, is traumatising for the prisoners as it symbolises their bleak future. Abrez said that although he had only seen the locked gate leading to the gallows, he would die of shock if he ever saw the gallows. Describing his reactions on seeing the *phansi ghar* (building for the gallows), Kshitij said it fills him with such dread that he feels like taking his own life.

VIEWING GALLOWS

It was particularly distressing to observe instances wherein the prison officials showed the gallows to the prisoners so as to further aggravate their fear. Aamer revealed that each prisoner sentenced to death confined in his prison was shown the gallows by the chief warden when they first arrived at the prison. Asking “what reason could there be for such a practice”, he felt it was to “cause mental agony and fill the prisoners with *khauf* (dread)!” Nityanand, sentenced to death for murder, was forcibly shown the gallows when a prison official took him there under the pretext of seeing a “nice place.” Satyanarayanan, a prisoner sentenced to death for rape and

murder, revealed that a prison official showed him a photograph of the gallows on his mobile phone. Some of the officials also asked him to name them in his “last wish” as the person to place the noose around his neck. The official placing the noose around the prisoner’s neck was entitled to a reward of Rupees 20,000 from the state government.

While fear is a natural reaction on seeing gallows, some prisoners have their unique ways of battling the fear. Pahal, sentenced to death for murder and kidnapping for ransom, has become accustomed to the presence of gallows in prison. After having spent almost nine years in prison he said that, “if you scare a child with the same thing repeatedly, the child will treat it like a toy.”

VIRAJ was among the 10 people convicted and sentenced to death for the massacre of 16 people resulting from caste-based conflict. Viraj shared that he can see the gallows from his cell and what terrifies him on seeing them is the uncertainty and the bleak nature of his future. He is particularly worried by the thought that many innocent people may have been hanged there. The presence of the gallows right next to the barrack where the prisoners sentenced to death are confined, fills him with fright. Due to this stress, Viraj is unable to sleep for more than three hours at night. Unable to draw solace even from visits by his family members, Viraj said that seeing his family only reminds him of the fact that he is unable to take care of them.

ABHIJEET SINGH, whose mercy petition was pending, presented a contrasting narrative when he said that he was not afraid of seeing the gallows. Abhijeet is lodged in the death barracks, in the same compound as the gallows. Abhijeet drew our attention to a story in the prison that all prisoners executed there had to be physically dragged to the gallows due to their fear of death. Every year on Diwali,

Abhijeet lights a lamp near the gallows to pay homage to the people who were hanged there. After spending close to nine years in prison, Abhijeet shared that life in prison has taught him how to face adversities. No longer the naive man that he was before coming to prison, he said that he does not trust friends and relatives anymore as they are the first ones to turn away in times of need.

It is evident that it is not just the sentence of death that is the punishment. Harsh prison conditions and inhumane treatment meted out to prisoners sentenced to death also seem to be an integral part of the punishment. At least in relation to prisoners sentenced to death, the case to view prisons in India as institutions of reformation and rehabilitation is extremely weak. The approach of prisons towards prisoners sentenced to death seems to be informed by an understanding that these are just individuals awaiting execution. There does not seem to be any meaningful investment in their possible future. Given the extremely high rate at which death sentences are set aside by the appellate courts, it is unconscionable to deny basic opportunities in prisons to prisoners sentenced to death. The violence of the pre-trial phase, the alienation inflicted by adjudicatory mechanisms and the inhumane nature of incarceration make it evident that the various points of the criminal justice system contribute disproportionately to the retributive aspects of sentencing individuals to death. Javed perhaps captured the violent nature of this journey when he said, “Just kill me. But don’t inflict this repeated torture on me.”





9.
seeking
mercy

The plea for clemency is the last resort for a prisoner who has been sentenced to death to seek reprieve.

While the provision for clemency is not unique to death sentence cases, the experience is distinct since the rejection of a prisoner's mercy petition may be the final step before the execution of the death sentence. The process of granting pardon by the executive is different from the court's determination of a prisoner's guilt and punishment. The executive, while exercising its clemency powers is not bound by the judicial determination and can conduct a much broader inquiry into the case. However, the opacity that cloaks the method of deciding mercy petitions worsens the anxiety and fear felt by the prisoners sentenced to death. With no knowledge about when their mercy petitions may be decided or the considerations that would be relevant in making that decision, prisoners confront and contemplate the possibility of death with an intensity that is very different from any other stage on death row.

This chapter seeks to highlight the experiences of such prisoners whose mercy petitions are pending or have been rejected. During the Project, there were 51 prisoners whose mercy

petitions had either been finally rejected by the President or were awaiting its outcome. Despite the importance of the right to seek clemency, most prisoners do not receive any legal assistance at the time of drafting their plea for clemency. Every prison has a standard template clemency petition that is sent on behalf of the prisoners. Unlike the court proceedings where the prisoners receive an opportunity to make oral submissions, a hearing before the President or the Governor is a matter of absolute discretion. Even in these circumstances, most prisoners are unaware of the content of their mercy petition, as they make a final attempt to have their sentence reduced.

The accounts of these prisoners also provide a glimpse into their life of extreme uncertainty at the very last stage of the administration of the death penalty. A common concern shared by such prisoners is that the decision on their mercy may be guided by extraneous factors, such as the leanings of the government or public sentiment. In this context, it becomes impossible to ignore that arbitrariness in procedure is common to the judicial and executive processes.

CLEMENCY IN THE INDIAN CONSTITUTION

Historically, the power to grant pardon was viewed as a royal prerogative vested with the Sovereign. While the underlying basis of pardoning powers was the belief that the King had divine powers, and could exercise

'pure grace' over his subjects, this philosophy changed over the years. With the definite shift towards constitutional democracies, the rationale behind the power to grant clemency altered to securing against judicial error in

matters of denial of life and personal liberty.¹ In India, the power to grant pardon is vested with the President and the Governor of a state under Articles 72 and 161 of the Constitution, respectively. While explaining the content of these powers, the Supreme Court has held that the power to grant pardon under the

Constitution is “neither a matter of grace nor a matter of privilege but is an important constitutional responsibility reposed by the People in the highest authority.”² Further, these powers are executive in nature and their exercise does not amount to an alteration or modification of the judicial record.³

SCOPE OF POWERS UNDER ARTICLES 72 AND 161 OF THE CONSTITUTION

In *Kehar Singh & Anr v. Union of India & Anr*, the Supreme Court held that the President is entitled to go into the merits of the case and arrive at a conclusion that is different from that of the courts.⁴ The Court also clarified that a petitioner does not have a right to an oral hearing before the President. However, if the President considers that an oral hearing is necessary for the “proper and effective disposal” of the mercy petition, then it may be granted to the parties.⁵ The Supreme Court has also declined to frame guidelines for the exercise of the power to grant pardon, as it is a constitutional power vested with the President or the Governor. However, it has consistently held that executive orders under Articles 72 and 161 are subject to limited judicial review. While the courts would not ordinarily interfere with these executive orders on merits, they retain the power to review whether all relevant materials were taken into account and whether there was a malafide exercise of power.⁶

Considering that Article 21 of the Constitution “inheres the right to life in every prisoner till his last breath”, the Supreme Court in *Shatrughan Chauhan & Anr v. Union of India & Ors* held that while examining mercy petitions, the President and the Governor must consider “supervening circumstances” which occur after the final confirmation of the death sentence. The circumstances that have been discussed by courts are delay in disposal of the mercy petition, insanity, solitary confinement, judgments declared *per incuriam* and procedural lapses.⁷

¹ *Kehar Singh & Anr v. Union of India & Anr* (1989) 1 SCC 204, paragraph 7.

² *Shatrughan Chauhan & Anr v. Union of India & Ors* (2014) 3 SCC 1, paragraph 19.

³ *Shatrughan Chauhan & Anr v. Union of India & Ors* (2014) 3 SCC 1, paragraph 10.

⁴ (1989) 1 SCC 204, paragraph 10.

⁵ (1989) 1 SCC 204, paragraph 15.

⁶ *Epuru Sudhakar v. Government of Andhra Pradesh* (2006) 8 SCC 161, paragraph 34; *Shatrughan Chauhan & Anr v. Union of India & Ors* (2014) 3 SCC 1, paragraph 25.

⁷ *Shatrughan Chauhan & Anr v. Union of India & Ors* (2014) 3 SCC 1, paragraphs 61, 78 and 87; *Navneet Kaur v. State (NCT of Delhi) & Anr* (2014) 7 SCC 264, paragraph 12; *Ajay Kumar Pal v. Union of India & Anr* (2015) 2 SCC 478, paragraph 11.

DELAY IN DISPOSAL OF MERCY PETITION

The issue of undue delay in execution of the death sentence as a ground for commutation has been a matter of continuous litigation since the early 1980s in India. In *Triveniben v. State of Gujarat*, a five-judge bench of the Supreme Court clarified that delay should be considered only after the judicial process had ended.⁸ Therefore, the only delay to be considered would be the time taken in disposal of the mercy petitions by the executive.

While expounding on delay as a supervening circumstance, the Supreme Court in *Shatrughan Chauhan* noted that “undue, inordinate and unreasonable delay” in the execution of a death sentence amounts to torture and violates the right to life under Article 21.⁹ In *V. Sriharan @ Murugan v. Union of India & Ors*, the Supreme Court clarified that independent of the suffering it causes, the dehumanising effect is presumed in cases of delay and therefore there is no requirement for the death row convict to prove the actual harm caused by the delay.¹⁰

One of the most overwhelming concerns amongst prisoners who have sought clemency is the uncertainty regarding the fate of their mercy petitions. The prisoners often remarked that their expectations for a positive outcome dwindled as their cases progressed in the appeal process. After submitting their mercy petition, with each passing day, they found themselves swinging between hope and fear. Another aspect that differentiates waiting for a decision on the plea for clemency is that, unlike court proceedings which are relatively transparent, mercy proceedings are steeped in obscurity and prisoners exercise almost no control over their own mercy petitions.

Girish Kumar described the experience of awaiting a decision by the courts to be very different from the wait before the President. He said that only a person who has experienced

it could understand the difference. Girish was convicted and sentenced to death for the murder of four members of a family. Subsequently, the High Court confirmed his death sentence and the Supreme Court upheld that decision a year later. Although Girish filed his mercy petition to the President within two weeks from the Supreme Court’s dismissal, it was rejected after nine and a half years. After the initial visits by his wife in the district prison, where Girish was lodged as an undertrial, he did not get any visitors once he was moved to the central prison. In his mercy petition, Girish mentioned that he had been kept in solitary confinement since his trial court decision. On being asked about family visits, Girish murmured that he does not know how to spend his time when other prisoners have visitors and wished that he could meet his family again. Not having

⁸ (1989) 1 SCC 678, paragraphs 16 and 17.

⁹ (2014) 3 SCC 1, paragraph 61.

¹⁰ (2014) 2 SCC 242, paragraphs 19 and 21.

**"Waiting every second is
a big sentence... my soul is being
pricked from the inside."**
Girish Kumar

received a decision on his mercy petition for almost a decade, Girish lamented that waiting for 'tomorrow' was a sentence in itself and that he was surviving only because of his belief in God. By the time we interviewed Girish, he had spent 15 years and six months in prison.¹¹

Further, apart from filing requests under the Right to Information Act, 2005, there are no means to determine the status of one's mercy petition. Having submitted their mercy petition in March 2003 after their death sentence was confirmed by a split verdict of a three-judge bench of the Supreme Court, Gopichand Ravidas, Govardhan Ravidas, Mahant and Yudhishtir are still awaiting the outcome of their pleas for clemency. Convicted for the massacre of 35 people belonging to an upper caste community, the prisoners said that they merely signed the mercy petitions prepared by the prison authorities and had no idea about their contents. Till date the prisoners have not received any communication either from the state or the central government regarding a decision on their mercy petitions. Having spent 21 years and five months in prison without parole, the prisoners feel that "it would be better to die now than suffer the agony and distress of living on death row."

While concluding that prolonged delay in deciding mercy petitions is a ground for commutation, courts have considered the "brooding horror of hanging" that haunts a prisoner sentenced to death and the effect that such agony would have on their mental,

emotional and physical well-being.¹² This suffering caused at the hands of the executive would entitle the prisoner to invoke the right to life under Article 21 and seek commutation of her sentence. The account of Talib who was sentenced to death for the murder of his wife and five daughters provides an insight into the trauma of a prisoner awaiting the decision on his mercy. After the incident, when Talib went to the police station to surrender and revealed that he had murdered six family members, the police officials did not believe him. Subsequently, he showed them the murder weapon and then took the officials to his house, where the bodies were recovered. His special leave petition to the Supreme Court was dismissed *in limine* as the Court found no merits in his case.¹³

In the same year, he sent his mercy petition to the President and Governor through the prison. In 2009, convinced that his mercy was going to be rejected, he ordered a *kafan* (shroud) for himself and deposited it with the prison authorities. Resigned to his fate, he said that "if Allah (God) has desired this for me, then so be it." During his interview, Talib said that he learnt about the rejection of his mercy petition when a few human rights lawyers visited him in prison. The prison received the official communication regarding the rejection of his mercy petition three months after the President's decision. The Supreme Court commuted Talib's death sentence on the ground of inordinate delay of over nine years in the

¹¹ Considering the unexplained delay of nine and a half years in disposal of his mercy petition, the Supreme Court commuted his death sentence to life imprisonment.

¹² *Ediga Anamma v. State of Andhra Pradesh* (1974) 4 SCC 443, paragraph 15.

¹³ A petition dismissed at the threshold without a full appreciation of the facts and evidence in the case, is said to be dismissed *in limine*.

rejection of his mercy petition. The Supreme Court also noted that while the Court has the power under the Constitution to dismiss a special leave petition at the threshold, it is desirable that such a power is not exercised in death sentence cases and the materials on record are re-examined by the Supreme Court to arrive at its independent conclusion.

Several prisoners also expressed anguish over the possibility of a positive outcome of their mercy petitions, had they been considered by previous Presidents. One such prisoner was Panduram who along with his co-accused, was convicted and sentenced to death for rape and murder. Considering that the previous President had granted pardon to several prisoners on death row, Panduram had hoped that his mercy petition would be accepted as well. However, when the next President assumed office, the anxiety regarding the outcome returned to haunt him. While describing his time in prison, he said that as an undertrial he worked in a brick kiln and earned about Rupees 10 per day. However, after the trial court's decision, he was shifted to a central prison, where prisoners sentenced to death were not allowed to work. He said that he spent his time praying, watching television and talking to other prisoners in the death barrack. Having spent almost 12 years in prison, with eight years and two months on death row, Panduram described every day to be like "death itself."¹⁴

AINESH SINGH, was convicted and sentenced to death under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) by a designated TADA court. After the confirmation of his death sentence by the Supreme Court, Ainesh submitted a mercy petition to the President, which was dismissed eight years and four months later. Challenging the dismissal of his mercy petition on the ground of inordinate delay, a writ petition was filed seeking commutation of the death sentence. While dismissing this writ petition, a two-judge bench of the Supreme Court adopted the reasoning that the rule enunciated by the five-judge bench in *Triveniben*¹⁵ regarding long delay in disposal of mercy petitions as a ground for commutation would not be applicable to a person convicted of an offence under TADA or other similar legislations. The Court observed, "it is paradoxical that the people who do not show any mercy or compassion for others plead for mercy and project delay in disposal of the petition filed under Article 72 or 161 of the Constitution as a ground for commutation of the sentence of death."

During the Project, we were unable to interview Ainesh Singh as he was admitted to a mental health institution on account of his acute mental illness. However, we interviewed his wife, Simran, who met him seven years after his arrest as she was living abroad and was unable to come to India. After Ainesh filed his mercy petition, Simran would come to India

¹⁴ The Supreme Court commuted his sentence on grounds of excessive delay of six years in disposal of his mercy petition by the President.

¹⁵ *Triveniben v. State of Gujarat* (1989) 1 SCC 678.

without definite plans for return, as they were unsure about when it may be decided. During these visits she would live in *gurudwaras* (places of worship for Sikhs) and was allowed to meet Ainesh only for half an hour. She believed that solitude during his long incarceration was the cause for Ainesh's deteriorating mental health. Calling the death sentence a political weapon, she added that capital punishment is arbitrarily imposed and serves no purpose in society as it stands today.

Five months after our interview with Simran, the Supreme Court in *Shatrughan Chauhan* held that TADA offences should not be distinguished from other crimes while considering delay in the execution of the death sentence.¹⁶ Following this decision, in a writ petition filed by Simran seeking commutation of her husband's death sentence, the Supreme Court reduced his sentence considering his mental illness and the delay of eight years and four months in the disposal of his mercy petition.

INSANITY

One of the supervening factors considered by the Supreme Court in *Shatrughan Chauhan* was insanity, mental illness or schizophrenia.¹⁷ While arriving at its decision, the Court referred to India's international obligations under various instruments¹⁸ along with the existing provisions under state prison manuals. These manuals provide that the prison superintendent shall stay the execution of a prisoner who shows signs of insanity. As per some manuals, the prisoner must thereafter be observed by a medical officer or board to determine whether the prisoner's signs of insanity are "feigned" or not.¹⁹ Subsequently, a report on the prisoner's mental health is submitted to the concerned government department, which varies from state to state.²⁰ In Bihar, on receipt of orders from the government, the superintendent gives effect to them and if the orders direct that the sentence of death be carried out, then a fresh date for execution is fixed.²¹ In an effort to provide relief to prisoners suffering from mental illness beyond the stay of execution, the Supreme Court's ruling in *Shatrughan Chauhan* allows for the death sentences of such prisoners to be commuted to life imprisonment.

¹⁶ (2014) 3 SCC 1, paragraph 72.

¹⁷ (2014) 3 SCC 1, paragraphs 86 and 87.

¹⁸ The Court referred to Article 7 of the International Covenant on Civil and Political Rights, Clause 3(e) of the Resolution 2000/65 dated 27 April 2000 of the U.N. Commission on Human Rights, Clause 89 of the Report of the Special Rapporteur on Extra-Judicial Summary or Arbitrary Executions dated 24 December 1996.

¹⁹ Rule 642, Bihar Prison Manual, 2012; Rule 16, Chapter XLII, Maharashtra Prison Manual, 1979; Rule 488, Madhya Pradesh Jail Manual, 1968.

²⁰ Rule 642, Bihar Prison Manual, 2012; Rule 16, Chapter XLII, Maharashtra Prison Manual, 1979; Rule 386, Uttar Pradesh Jail Manual; Rule 488, Madhya Pradesh Jail Manual, 1968.

²¹ Rule 642, Bihar Prison Manual, 2012.

Pranay Singh, a prisoner sentenced to death for the murder of five persons belonging to his cousin's family, was reprieved by the Supreme Court on the grounds of his mental illness. After the confirmation of his death sentence by the Supreme Court, his mercy petition was sent through the prison to the President stating that he committed the offence due to insanity. A month after the submission of his mercy, Pranay Singh was admitted in a mental hospital, where he was diagnosed with schizophrenia. About 10 months after his discharge from the hospital, Pranay was orally informed about the rejection of his mercy petition by the President. As discussed in Chapter 8 on 'Living on Death Row', Pranay's incoherent responses during his interview pointed towards his deteriorating mental condition. Our interactions with his family revealed that he developed his mental illness prior to the incident. Considering that the opinion of the Ministry of Home Affairs on Pranay's mercy petition did not refer to his mental condition, the Supreme Court concluded that his mental health had not been factored while deciding his mercy petition.

Bhupendar who was convicted for the murder of four people, including his wife and children, shared that he was mentally disturbed at the time of the incident. During the interview, he did not remember the details of the crime or the court proceedings. Bhupendar spends most of his time in prison doing gardening work for which he is paid a nominal amount. Despite being incarcerated for more than a decade, Bhupendar has never had a visitor. Parth, one of Bhupendar's surviving children, told us that he has never visited his father in prison and does not even know the prison in which he is lodged. Recounting the night of the incident, he said that after committing the murders, Bhupendar kept the *dao* (sword) and his brother's head in a bag and surrendered before the police. Holding his father responsible for the death of his mother and siblings, Parth said that if Bhupendar ever returned to their village, he would set him on fire. At the time of his interview, Bhupendar had spent almost 12 years in prison, with his mercy petition pending for eight years and six months.²²

EXPERIENCE OF SEEKING MERCY

Typically, a plea for clemency is filed after the final judicial determination of the prisoner's guilt. Therefore, the importance of a prisoner's involvement in the process of submitting her mercy petition cannot be overstated, as it may be the final opportunity for the prisoner's sentence to be reduced. Most prison manuals provide that upon receipt of intimation regarding the dismissal of the

²² Almost 10 years after its submission, Bhupender's death sentence was commuted to life imprisonment by the President.

criminal appeal or special leave petition by the Supreme Court, the superintendent shall forthwith inform the prisoner sentenced to death that if she desires to submit a mercy petition, she may do so within seven days of such intimation.²³

However, it may be noted that these manuals do not provide for filing of review petitions against the decisions of the Supreme Court in criminal appeals or special leave petitions. In absence of such a provision, the prison authorities advise the prisoners to directly file their mercy petitions after the confirmation of their death sentence by the Supreme Court, resulting in most prisoners not exercising their option to seek review under Article 137 of the Constitution. This remedy has assumed even greater significance after the decision in *Mohd. Arif @ Ashfaq v. The Registrar, Supreme Court of India*, where the Court held that review petitions in death sentence cases should be heard in open court before a three-judge bench.²⁴ The Supreme Court has also clarified that issuance of a warrant for execution of a prisoner before she has exhausted her right to seek review under Article 137, or has been given reasonable time to file mercy petitions before the Governor and President once the limitation period for filing the review petition lapses, would be in violation of the right to life under Article 21.²⁵

Given this development in the Court's jurisprudence on the procedure to be observed in death sentence cases, it has become imperative that the state prison manuals be amended accordingly. In order to ensure a meaningful realisation of the right to seek mercy under Articles 72 and 161 of the Constitution, the Supreme Court in *Shatrughan Chauhan* passed guidelines to be followed in death sentence cases. In these guidelines, the Court observed that every prisoner has a right to legal aid until her last breath and directed the superintendents of prisons to inform the nearest legal aid cell regarding the rejection of a prisoner's mercy petition. The Court also directed that copies of the relevant materials such as trial court papers and judgments of all courts must be provided to the prisoner within a week, in order to assist her in drafting the mercy petition.²⁶ In the background of these safeguards in law, this section seeks to assess the prisoners' experiences while submitting their mercy petitions, and to examine their involvement as they make a final attempt to seek pardon.

²³ Rule 15, Chapter 11, Delhi Jail Manual, 2000; Rule 640, Bihar Prison Manual, 2012; Rule 13, Chapter XLII, Maharashtra Prison Manual, 1979; Rule 548, Haryana Jail Manual; Rule 384, Uttar Pradesh Jail Manual; Rule 913, Tamil Nadu Prison Manual 1983.

²⁴ (2014) 9 SCC 737, paragraphs 35, 39 and 46.

²⁵ *Shabnam v. Union of India & Ors* (2015) 6 SCC 702, paragraph 12.3.

²⁶ (2014) 3 SCC 1, paragraphs 241.2 and 241.11.

Out of the 38 prisoners who spoke about the status of their mercy petition, 33 were aware of whether it was pending before the President or the Governor, or if it had been rejected. While there was a certain degree of awareness about the time that had elapsed since the Supreme Court confirmation, the extent of unawareness concerning the contents of their mercy petitions must be a cause for grave concern. Even where effective access was not a concern, the use of English in drafting mercy petitions posed a significant impediment. Even at this very last stage, alienation from the legal process continues to be an issue. Further, out of the 27 prisoners who spoke about legal assistance while preparing the mercy petition, 19 had no lawyers during this process. The mercy petitions for such prisoners were drafted by the prison officials, fellow inmates or by the prisoners themselves.

In this context, the story of Chetak represents the extreme alienation faced by these prisoners at the final stages of the criminal justice system. Chetak was sentenced to death for murdering four members of his employer's family and their other domestic help.

Represented by state appointed counsels throughout the trial and appeal process, Chetak never had an opportunity to discuss his case with his lawyers. After the confirmation of his death sentence by the Supreme Court, Chetak had no knowledge about his remaining legal recourses. Thereafter, he was informed by his fellow inmates that he could seek clemency and a month after the confirmation by the Supreme Court, his mercy petitions were sent to the President and the Governor through the prison. However, Chetak did not receive any legal assistance for preparing his mercy petitions nor did he have copies of the same. While the President denied Chetak's request for pardon over three years later, the prison received an official communication

regarding the rejection after a delay of three months. During this time, he had learnt about the rejection of his mercy petition through a local Hindi newspaper. Further, Chetak was not provided with a copy of the letter intimating the prison regarding the rejection of his mercy petition.

On being asked about his experience with the criminal justice system, Chetak despaired that he was alone throughout this complex process, with "no one to listen to his voice or look out for him." Consumed by the fear of his uncertain fate, he spent sleepless nights after he learnt about the rejection of his mercy petition. Subsequently, the Supreme Court commuted his death sentence considering the delay of three years and 10 months in disposal of his mercy petition. The Court also took into account that Chetak was kept in solitary confinement for six years and seven months, after he was sentenced to death by the trial court.

**“The gallows are
16 steps away.”**
Joginder Singh

THE LAST MILE

Nimish, along with his co-accused, was convicted and sentenced to death for the murder of six members of a family and their help. One year and five months later, the High Court confirmed their death sentences, which were subsequently upheld by the Supreme Court. After the dismissal of his review petition as well, Nimish tried to seek legal assistance in preparing his mercy petition from a few criminal lawyers but his attempts did not yield any results. In order to understand his rights, he also asked the prison officials for a copy of the prison manual. However, his demands irked the officials and were ultimately rejected. These instances compelled him to prepare his own mercy petition. Having received no news regarding the fate of his mercy petition for 10 years, Nimish sent an application under the Right to Information Act, 2005 to the President's Secretariat seeking information regarding the status of his petition. In response, he learnt that the petition was still pending before the Governor. However, on enquiring with the state government, Nimish learnt that his mercy petition had already been rejected by the Governor, but no documents regarding the same were available as they were destroyed in a fire in the concerned department. 14 years after submitting his mercy petition, Nimish is still waiting to receive the outcome of his plea for commutation.

In almost twenty years of incarceration, Nimish has completed his secondary education, attained a bachelor's degree in Arts and Commerce and was pursuing his master's degree in Arts at the time of his interview. He

sometimes wonders whether the President would consider his endeavours to educate himself in prison while deciding his mercy petition. He hopes that someday he will “get back to the society and lead a life of dignity.”

In contrast, Joginder Singh did not attempt to challenge the death sentence imposed by the trial court, as he had made peace with the “idea of death”. Joginder Singh was convicted for the assassination of a political figure along with the death of 17 others. Recounting the incident, Joginder said that he did not intend to harm the public but sought revenge for the massacre of countless innocent people, which he believed was triggered by the ruling party. After being sentenced to death by the trial court, he refused to file an appeal before the High Court. However, in accordance with the procedure for mandatory confirmation of a death sentence by the High Court, Joginder's death sentence was confirmed. Thereafter, Joginder abstained from filing an appeal before the Supreme Court as well, since he believed that he had “done what he wanted to do and the State could do whatever it wanted.” While Joginder refused to file a plea for clemency, a mercy petition was filed on his behalf by a religious organisation.

Referring to the hanging of Mohammad Afzal Guru, Joginder thinks that a clandestine execution is a real possibility in his case, as his hanging would cause uproar amongst the public. Prepared to be executed even at a moment's notice, Joginder says that he has measured the distance between the gallows and his cell. The gallows are 16 steps away.

DEATH WARRANT

Sections 413 and 414 of the Code of Criminal Procedure, 1973 (CrPC) provide that when a death sentence is confirmed or passed by the High Court, then the sessions court shall, on receiving the order of the High Court, issue a warrant to cause the sentence to be carried out. Section 415 of CrPC provides that the High Court shall postpone the execution of sentence if the convict intends to prefer a challenge before the Supreme Court under Articles 132, 134 or 136 of the Constitution. In *Peoples' Union for Democratic Rights v. Union of India*, the Allahabad High Court outlined safeguards that should be observed while issuing a warrant for execution of the death sentence,²⁷ which were subsequently upheld by the Supreme Court in *Shabnam v. Union of India & Ors.*²⁸ The Supreme Court confirmed that principles of natural justice must be read into Sections 413 and 414 of the CrPC and sufficient notice should be given to the convict before the issuance of the warrant so that she can consult her advocates and be represented in the proceedings. To avoid uncertainty, the warrant must specify the exact date, time and place of execution. The Court also held that sufficient time must elapse between issuance of the warrant and the date of execution to allow the prisoner to pursue available legal remedies and have a final meeting with her family members. Prisoners sentenced to death must also be provided with a copy of the execution warrant and legal aid must be provided in cases where the prisoner is unable to afford a counsel.²⁹

During the course of interviews, prisoners shared their experiences after the issuance of their death warrants. In an intense account, describing what he believed to be his last meal, Gorakh recounted that he was served *dal* (lentils), *roti* (Indian bread) and *sabzi* (vegetables) as his final dinner until he was informed, just a few hours before the scheduled time of his execution, that it had been stayed. Gorakh was convicted for the murder of his five daughters and his special leave petition

was dismissed *in limine* by the Supreme Court. Thereafter, a mercy petition was filed on his behalf by the prison authorities, which stated that he was suffering from a mental illness and was undergoing treatment. Nonetheless, Gorakh's mercy petition was rejected by the President, a year and a half later. The date for Gorakh's execution was set in a death warrant proceeding before the appropriate sessions court without producing him or having his lawyer present. The prison in which Gorakh was

²⁷ PIL No. 57810 of 2014 (High Court of Judicature at Allahabad).

²⁸ (2015) 6 SCC 702, paragraph 21.

²⁹ (2015) 6 SCC 702, paragraph 21.

**“There is no life in waiting
for a death sentence.
I can’t tell you how many times
I have died.”**

Hanut

lodged went out of its way to arrange for his family to meet him on the evening before his execution. Strangely, it was only during this last meeting with his brother and sons the evening before that he learnt he was to be hanged the next morning. In his last few hours, while he was afraid of death, he recounted that he was also grateful that his ordeal as a death row prisoner would soon end.

The stay on Gorakh's execution was achieved through a public interest litigation (PIL) initiated by a human rights organisation which learnt about his impending execution through newspaper reports, a day before the scheduled hanging. On the day fixed for Gorakh's execution, the Supreme Court issued a stay order considering that he had received no official communication regarding the rejection of his mercy petition by the President and did not have sufficient time to pursue any post-mercy judicial remedies. In the course of this litigation, the Supreme Court commuted his death sentence and noted that while Gorakh's mercy petition mentioned that he suffered from a mental illness since his trial, the Home Ministry failed to consider this important factor.³⁰

The account of Harikishan highlights the sense of grave injustice that he felt after the issuance of the death warrant. Sentenced to death for rape and murder, Harikishan filed a mercy petition to the President which was rejected six years later. Thereafter, he learnt about the issuance of his death warrant through the news he saw on television in prison.

Harikishan recounted that even though a senior prison official visited him in prison, he did not inform him about the death warrant. While the news of his death warrant was making headlines, Harikishan received no official communication regarding the same. Shocked at the absence of any official communication Harikishan remarked that, “while I did not know about the date of my own execution, the media knew all about it.” The local police informed his family of the execution only six days prior to the scheduled date. Disturbed by the demonic image that the media had created of him, Harikishan cut his genitals with a piece of floor tile, in an attempt to kill himself before he could be executed by the State. During his interview, he shared that his inability to prove his innocence in court caused him immense mental agony and prompted him to commit suicide.

A day before Harikishan's scheduled hanging, the Supreme Court stayed his execution in a writ petition challenging the inordinate delay of six and a half years in rejection of his mercy petition. Considering the executive delay, the Supreme Court ultimately commuted his death sentence.

AMARPREET AND HANUT were convicted and sentenced to death for the murder of Amarpreet's parents and six other members of her family. The High Court confirmed their conviction but commuted their sentence to life imprisonment. The Court noted that no materials had been placed before it to

³⁰ The Court also noted that no consideration was given even to the fact that Gorakh's special leave petition before the Supreme Court had been dismissed *in limine*.

“I do not want to live like an insect anymore.”
Amarpreet

suggest that Amarpreet and Hanut would be a “menace to the society.” As a mitigating factor, the Court also considered that they had a child, who was four years old at the time of the incident. However, almost two years later, the Supreme Court overturned the decision of the High Court and held that the murders had been committed in a “diabolic manner” while the victims were sleeping. Without commenting on the possibility of reformation, the Court observed, “if this act is not revolting or dastardly, it is beyond comprehension as to what other act can be.” Therefore, it would be a “failure of justice in case death sentence is not awarded in the present case.”

During her interview, Amarpreet recounted that a warrant fixing the date of her execution was issued a few months after the decision of the Supreme Court. She believed that in order to inherit the family property, her uncle influenced the court’s decision and prompted the issuance of her death warrant. While her execution was stayed through the efforts of a few human rights lawyers, she recounted the extreme anguish she felt when Mohammad Afzal Guru and Mohammad Ajmal Amir Kasab were hanged, fearing that the date of her execution would also come soon. At the time of her interview, Amarpreet shared that she was kept in solitary confinement and was allowed out of her cell for only 30 minutes in a day.

Describing the attitude of the other inmates as hostile, she said that they often taunt her for “eating up her entire family.”

Lodged in the same prison is Amarpreet’s husband Hanut, who resorts to sleeping pills due to the anxiety he feels on thinking about his uncertain doom. While discussing the issuance of his death warrant, Hanut was aghast that a warrant was issued against him even before the rejection of his mercy petition. He described the feeling of waiting for the execution of the sentence as “dying everyday.” Talking about his interaction with their son, Hanut shared that his son did not know about the case when they were arrested but believes that people must have told him about it over the years. Hanut feels that their son has become quite reserved when he meets them now.

A common concern shared by Amarpreet and Hanut was regarding the court’s assessment of their ability to reform. While sharing his views, Hanut wondered if the court had a “thermometer” to check if certain prisoners were capable of reformation. Amarpreet, who reads the newspaper daily, believed that she was wasting her life in prison and expressed her desire to work on the issue of female foeticide. Hoping for a future outside the walls of the prison, she shared that she does not want to “live like an insect anymore.”³¹

³¹ The Supreme Court commuted their death sentences on the ground of unexplained delay of six years and five months in the rejection of their mercy petition.

The narratives of these prisoners seeking mercy allow us to understand their fears, anguish and despair, which are further aggravated by the obscurity of the process. With little or no means to understand the complexities of the system, the prisoners find themselves torn between abandoning hope and thinking of their life ahead. While the law guarantees all prisoners the right to life until their last breath, grave procedural irregularities discussed in this chapter reflect that the system completely fails in ensuring its meaningful realisation. Due to the lack of information, prisoners spend their time constantly wondering if the end has come, every time the huge iron doors of the barracks are pushed open. Even after the rejection of the mercy petition, the criminal justice system lacks the basic capabilities to ensure that the prisoners explore the available constitutional options at the very end of their legal battle. With this kind of inhumane treatment meted out by the State as it prepares ‘the final scene’, the grand constitutional protections against the deprivation of life often ring shallow for the prisoners sentenced to death.





10. impact

The dynamics of crime and punishment are often sought to be understood only in terms of its impact on victims, their families and offenders. Interaction with the criminal justice system often leaves the families of the offenders as collateral sufferers. Particularly in the context of the death penalty this presents a rather curious paradox. The moral universe of the death penalty at its very core survives on extreme and exclusive individual responsibility. It relies on an understanding of crime that holds individuals solely responsible for the crimes they commit. In taking life for certain crimes, there is an inherent assumption that no social process or systemic circumstances have a bearing on the understanding of crime in society and that crime is purely a function of individual criminality. And yet, when such a punishment is imposed there is very little space for grappling with its impact on people who hold absolutely no moral responsibility for the crime. While there has been a movement within the criminal justice system to provide for compensation to victims and their families,¹ there has been a complete absence of discussion to absorb the consequences of the State's decision to punish. Undoubtedly it raises a very difficult moral and normative question—whether the State can turn a blind eye towards the lives of family members of prisoners? For example, if the sole earning member is incarcerated for life or executed, does the State owe an obligation to provide for welfare of the family? If children are at the risk of being pulled out of school because either of their

parents are imprisoned, is the State morally obligated to take responsibility? The question whether the State must compensate family members of incarcerated persons forces us to confront some very uncomfortable questions about the manner in which we perceive crime and punishment in our society.

As a society, we have never really paid any serious attention to the consequences faced by families when one of their members is in a position of conflict with the criminal justice system. Before we can begin conversations about the manner in which States might be obligated to compensate family members of individuals they imprison, it is important we understand the manner in which crime and punishment affect the families of those convicted. In that context, the crimes for which death sentences have been imposed present the starker picture. The crimes in question and the reactions to them tend to have wider connotations that go much beyond just the fact of the crime. These social and political meanings attached to the crime then translate into myriad social, economic, legal and psychological consequences for family members of the accused/convict.

During the interviews with prisoners and their families, we understood in depth, various experiences that families confront as a consequence of their family member being arrested, tried and convicted for grave offences. The crimes associated with the prisoners in this study were invariably high profile events as the death penalty was in play for these offences. Even though many of the crimes might not

¹ Section 357A of the Code of Criminal Procedure, 1973 provides that the State Government shall, in coordination with the Central Government, prepare a scheme providing for compensation to victims and their dependants who have suffered loss as a result of the crime and require rehabilitation.

have been high profile in terms of the English national dailies or news channels, in their own local contexts, these were crimes that attracted tremendous attention and pressure. Different crimes, depending on their contexts, attracted a wide spectrum of reactions towards family members of the accused—ranging from outright violence, social and economic boycott and debilitating poverty, to strong community backing and mobilisation to support the accused and her family. In grappling with these consequences of being dragged into conflict with the criminal justice system and society at large, families experience suffering in multiple ways that can be difficult for an outsider to comprehend. It was evident that the time around the arrest and the reactions surrounding it was often much worse than the conviction itself.

The consequences were often most intense at this stage and yet the full scale of the consequences would play out much slowly over a longer period of time. Given the nature of death sentence proceedings across the various tiers of the judiciary, as the case moved from one stage to the other, families had to grapple with the reinforcement that the prisoner was one step closer to being executed. For many families, the spectre of death slowly became a part of their daily lives as cases navigated their way through the labyrinth of the criminal justice system. However, that in no way meant that the sheer cruelty of constantly oscillating between the probability of life and death lost its intensity. It was an existence that was mixed with helplessness and despair at being unable to meaningfully help the prisoner in any way. Poverty, distance, and many times the need to conceal the deteriorating conditions of their

life forced families to not visit the prisoners often. While grappling with this constant shadow of death in their lives, there was a pervasive feeling of being made to pay a price for something they had no role in—a feeling that they were collateral damage that stakeholders in the criminal justice system and the society at large were happy to sacrifice.

In stark contrast to the above, there were also families that felt a deep sense of shame due to the crime in question. There were instances of abandonment of the prisoner as an expression of their intense revulsion of what they believed the prisoner had done, or abandonment as an attempt to show the community that they also believed that the prisoner deserved harsh punishment. Some families had gone to great lengths to put the episode concerning the prisoner behind them—building new lives and refusing to discuss any matter that brought back memories that they were trying very hard to suppress.

The narratives below are meant to demonstrate the complexities of experiences that families of prisoners have undergone. They reflect something very deeply uncomfortable about the manner in which revenge and disapproval play out in the context of society's views on crimes and those who commit crimes. While the experiences of families documented below undoubtedly convey a profound sense of tragedy, we would be ill-advised not to see the structural concerns that emerge from them. Since these narratives are in the context of crimes that were thought to deserve the death penalty, they present the structural concerns very sharply and in a manner that is difficult to ignore.

IMPOVERTHMENT, INDEBTEDNESS AND EXCLUSION

GOPICHAND RAVIDAS had spent more than 20 years in prison by the time we interviewed him. Gopichand and three others were sentenced to death for their alleged role in a caste massacre with victims from an upper caste community. Nine years after their arrest, Gopichand, Govardhan, Mahant and Yudhishtir were convicted and sentenced to death by a designated court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA). While deciding their appeal about a year later, the Supreme Court bench hearing their appeal was split on the issue of punishment. The death sentence was upheld by a majority of 2:1 judges in the criminal appeal and later at the review petition stage. During these two decades in prison, Gopichand has never been released on bail, furlough or parole and rarely meets his wife, Lalita Devi, and his five children in prison.

The Ravidas' live in extreme poverty with very little work and income. Lalita Devi had to incur significant debt in looking after the children and could not afford to send her children to school beyond the sixth standard. The children grew up working and her three sons are now daily wage manual labourers. In order to get her two daughters married, Lalita Devi

had to borrow significant sums from people in the village. She is yet to repay those debts and sees no real way of doing it in the future either. Mahant's wife, Hem Lata Devi, also has a similar story to tell of her struggle with poverty and indebtedness. After her husband's arrest, she said she could not educate her three children because they had to work in order to survive. The people in the village have lent her money many times for bare survival and her son had to finally leave home to work in a factory in another state. Working as a daily wage labourer herself, Hem Lata Devi rarely has the money to make the journey to meet Mahant. Though their lives have been unimaginably hard and difficult for over two decades now since the incident, Lalita Devi continues to hope that Gopichand will come back home some day. She told us that neither the passage of time nor the difficulties that she has faced has dulled the pain of Gopichand being taken away.

RANJAY'S trial lasted for just three months before he was sentenced to death for murdering a one year old child by firing a country-made pistol. The prosecution case against Ranjay was that the incident occurred due a dispute over Rupees 100. The trial court

and High Court rejected Ranjay's claim that it was an accident under the influence of alcohol. Shivmani, Ranjay's wife, recounted that her efforts to build her life came to nought because of the case. She said it was after nearly two decades of struggle that she had got Ranjay to give up a life of petty crime and take up a stable job. Ranjay's job at a toll tax booth ensured that their family had enough for their necessities, including the education of their two daughters and three sons. They were quite content for a few years before this incident destroyed their lives. Overnight, they had to sell most of their possessions in an attempt to secure competent legal assistance for Ranjay.

Two of her children had to be withdrawn from school and it had a severe impact on her eldest daughter, Radhika, who failed to clear her tenth standard exams in three attempts. They were driven away from their locality due to threats from relatives of the victim. Their house was vandalised and she was explicitly told that her children would be harmed if she returned. Every locality they moved to, the owners would evict them as soon as they

found out about the case. Shivmani and her children have moved houses 18 times since the incident. However, it was not their abject poverty that has really crushed Shivmani. Her eldest daughter, Radhika, was her pillar of strength ever since Ranjay went to prison. Radhika had found employment in a hotel but subsequently left home and broke all contact, leaving Shivmani to wonder if she would ever get through this ordeal.

At the time of the interview, Shivmani had managed to re-enrol her younger daughter in school after she had spent a couple of years working in different places. Her eldest son was also back in school and she hopes that he will join the police force some day. Shivmani has been making ends meet by incurring a lot of debt from people in her village and the frequent moving of houses along with the difficulty in finding work has left her immensely worried about the future of her children. Reflecting on the cruel twist of fate in her life, Shivmani feels that though it is the prisoner who is sentenced to death by the courts, his family also dies a little everyday.

GENERATIONAL IMPACT—THE LIVES OF THE CHILDREN OF PRISONERS

It is perhaps no surprise that children of prisoners seem to have suffered a great deal in terms of diminished educational opportunities, ridicule and stigma due to the arrest and conviction of a parent. Prisoners and their families were often emotionally overwhelmed when reflecting on the impact the case had on their children. Different approaches in helping children deal with the situation involved attempting to shield children from the fact that their parent(s) faced the prospect of being executed to making up stories about the reasons for their parent(s) being in prison. However, the high profile nature of the cases involving the death penalty meant that it was difficult to protect children from adverse social and economic consequences, more so when both parents were imprisoned. While reflecting on the cruel turn of fate for their children, there was nonetheless a common feeling of injustice and unfairness that ran through such accounts. Prisoners and families struggled with the helplessness they felt about the future of their children with no real support in sight.

ROSHINI and her husband, Urvi, were sentenced to death for the murder of a minor in connection with human sacrifice. They have two daughters and a son (aged between 12–16 then) who were also taken into police custody and detained at the police station for three days, before being transferred to an observation home. Presently, they live with Roshini's sister, Asha, who has been responsible for their care since their parents were arrested.

Asha believes that the arrest and conviction of their parents has left a very deep psychological impact on the children. Asha shared that the incarceration of their parents "stole their childhood" and that they had to grow up much faster than other children of their age. Roshini's

eldest daughter is worst affected as she was old enough to understand the implication of her parents' arrest and conviction. Shaken by the arrest of their parents and the taunts from members of the neighbourhood, the children are extremely quiet and do not interact with other children. Asha said she tries her best to pacify the children by telling them to think about it as a bad dream and forget about it.

AKIRA and her husband Omkar, were sentenced to death for their alleged role in extremely high profile cases of murder and dacoity. Their three children, two girls and a boy, were very young at the time of the arrest of their parents. Akira and Omkar

Though it is
the convict
who is sentenced
to death,
it is
his family that
dies everyday.

Shivmani

worked as *coolies* (daily wage labourers) for a living and lived in extremely weak economic circumstances. After their arrest, the situation worsened for their three young children, especially with no one left to take care of them.

Akira fears that her children survived by eating out of dustbins as there was no one to take care of them. In a story that is reaffirming of our faith in humanity, Akira was grateful for the assistance of a police officer who got her children admitted to a hostel. Almost 14 years after her arrest, her son works as a *coolie* and one of her daughters is completing her graduation.

FAZIL was convicted and sentenced to death for his alleged role in a high profile terror case. Arrested from his home in Kashmir, he had left behind his pregnant wife, Saleema, and

their three year old daughter Zoya. Saleema gave birth to their second daughter, Afreen, after his arrest. While she could take care of their daughters, Saleema had the perennial fear of their future being affected due to their father being labelled a 'terrorist'. Having studied only till eighth standard herself, she had a deep desire that her daughters study in an English medium school. However, she was unable to enroll her elder daughter on time in school due to the case. In a profound account, she told us that her daughters believed her story that their father was a mechanic who repaired police vehicles, due to which he had to stay away in prison. She dreamed of a future where her daughters would be able to meet their father without the iron bars separating them.²

COVERING AND INFLUENCING PUBLIC SENTIMENT— ROLE OF THE MEDIA

In reporting high profile crimes in general and the death penalty in particular, the media has a symbiotic relationship with public sentiment where it feeds off it and in turn also feeds it. Across the spectrum between national and hyper local reporting, this inextricable relationship generates a macabre performance of death and vengeance characterised by hyperbole, distortion, fear, violence and ostracisation. While a large majority of the death penalty cases do not grab national attention until the prisoner is on the verge of execution, the local media is a whole different ballgame. Almost all incidents that lead to a death sentence have tremendous local significance

² Subsequent to the interview, the Supreme Court acquitted Fazil along with his five co-accused, while admonishing the investigating agencies for implicating innocent persons. By then Fazil had spent 11 years in prison and more than seven of those years on death row.

and invariably tend to attract intense media attention from the local press. Since all actors in the initial stages of the criminal justice system are immersed in this local context, the impact of the local media cannot be ignored. Just as importantly, it carries with it tremendous potential to define the contours of the social and political reaction to the crime in question and in turn influence the attitudes towards the family members of the arrested person. The media coverage of such cases predominantly present the narrative of the state agencies and given the socio-economic profile of the families in question, their voices are rarely sought or heard. As a result of these structural realities of information dissemination, families are often left to confront the resultant intimidation, shame and fear on their own.

KALYAN SINGH has been convicted and sentenced to death in one of the most high profile cases in India's independent history. In a case characterised by unprecedented public outcry, mass mobilisation and swift political responses, it was not surprising that there was tremendous media attention on the lives and backgrounds of the six co-accused. Print and television journalists swarmed the localities in which the accused persons lived and for weeks together the entire country's focus remained on the case. Amidst this, an angle that has rarely been explored has been the impact of these events on the lives of the family members of the six individuals convicted in this case. Our attempt to interview Kalyan Singh's mother made us realise the extent of the devastating impact that intrusive journalism could have on the lives of ordinary people.

When our researchers attempted to interview Kalyan Singh's mother, other members of the locality insisted on first establishing that our researchers were not journalists. There was a strong sense that their locality and community had been tarnished in public imagination by the media. They were particu-

larly upset about the fact that journalists had portrayed that there was significant support for giving Kalyan Singh the death penalty, which they said has led to a lot of misunderstanding with the family. Once our researchers were taken to meet Kalyan Singh's mother, they were met with a resolute refusal to talk. Kalyan Singh's mother refused to discuss the case and recounted her experience with a deep sense of sorrow and disappointment. She narrated an incident where a journalist from Delhi had presented a very distorted picture of her financial position by claiming that she lived in a place other than her *kuchcha* house (place of dwelling made of mud). Urging the researchers not to insist on an interview, Kalyan Singh's mother, in a frail and tired voice, said that she had done all that she could. She said her life had been made hell by the media reports and that there was very little else to be done now.

GOPESH'S case has created an obsession, both with Gopesh as a person and the crimes he is alleged to have committed, which has achieved epic proportions in his home state. Not only have countless articles been written

and news programmes broadcast, there have been two mainstream films made on him in the local language. However, the matter that irks Gopesh the most in this regard is the manner in which he was manipulated by a journalist of a popular international magazine.

Gopesh told us that Charlie Adams, an American journalist,³ visited the prison wanting to interview him. Despite telling the prison administration that he did not wish to talk to Charlie Adams, he was brought in with his translator to meet Gopesh. Other prisoners in the barrack also urged Gopesh to agree to the interview in the hope that it would help his case. Charlie Adams assured Gopesh that he would get him an excellent lawyer in the Supreme Court and that the story he would write would prove Gopesh's innocence to the world. When Gopesh finally got hold of the article that Charlie Adams published, he was shocked to find that the article portrayed him as a ruthless serial murderer and even compared him to 'Jack The Ripper'. Gopesh told us that he had placed his faith in Charlie Adams by showing him all his case records in the hope that he would get the legal assistance he was promised. Similarly, the two films released about him portray him as a serial rapist and murderer, cross-dresser and necrophiliac. Gopesh wondered about the fairness to him and his family in portraying him in such a manner, without his permission, to millions of people across the state and country.

Given the smear campaign and revulsion that he has been subject to in all forms of the

media, Gopesh said that he was surprised that he and his family had survived this long.

DIYA, dubbed as the first woman to be sentenced to death in her city, and her two co-accused, were sentenced to death for murdering three women for economic gain. In sentencing them to death, the court viewed the crime as falling within the 'rarest of rare' framework for causing the death of three helpless women. Diya was 23 years at the time of arrest and was pursuing an undergraduate degree in commerce while also working in an insurance company. Her family told us about the manner in which Diya cared intensely about them and had promised to take care of all their needs once she completed her education.

Diya's arrest and trial came as an extreme shock to her family. As an extremely high profile case in the state, it attracted widespread local media attention. Manipulated by some journalists into believing that they would help in proving their daughter's innocence, Diya's family shared all the details of her life and the case. They even provided the journalist with Diya's photographs which were later used by the media while publishing reports about her hearings, invariably showing her in very poor light. The family noted the manner in which the photographs of the other co-accused never appeared in the media. Reflecting on the manner in which Diya's case had unfolded, her father said that "there is no justice at all in this country, only injustice."

³ The name of the journalist has been changed in order to maintain confidentiality.

OSTRACISATION AND VIOLENCE

Families of prisoners on death row invariably started facing stigma from the time of arrest. This was particularly pronounced in cases involving sexual violence and terrorism. Apart from facing social ostracisation, there were multiple instances where families of the prisoners were forced to move houses, denied jobs and further impoverished. Since a very large proportion of the prisoners were men, we frequently encountered situations where the women of the family were suddenly exposed to hostile social environments and debilitating economic circumstances. In addition to the helplessness they felt in being unable to help the prisoner, there was also a strong sense that they were being victimised for no fault of their own.

As stated before, many of these reactions are triggered by the crime itself much before the prisoner is sentenced to death. These reactions, however, are extremely significant in locating some of the meanings of phrases like 'collective conscience' and 'society's cry for justice'. These are phrases that have repeatedly found their way into the judicial discourse on the death penalty and the narratives in this section serve to present some social meanings of these phrases. They force us to confront certain actions taken in the name of 'justice' and the manner in which justice guided by public sentiment can be extremely dangerous.

UMANG was arrested and sentenced to death in nine days for the rape and murder of a three and a half year old girl. When our researchers reached Umang's village to talk to his mother, they were told that she would return only after sunset. When they returned in the evening, there were no lights in that part of the village and the entire interaction that followed took place in the flashlights from a couple of mobile phones. While researchers usually avoided visiting families at night, in this particular situation, it was the only time they could have met Umang's mother because she would drag herself to the town everyday to beg for food and aid.

Bystanders told our researchers that many men and women in the *musahari tola* (poorest Dalit dwelling) ill-treated her regularly, including

beating her for what her son had done. It became evident that there was nobody to support or help her. Many villagers, most of whom were intoxicated, had gathered around her mud hut as the researchers entered. Despite repeated attempts to talk to her, all she could manage were a few inaudible words. Tossing around on the floor in front, she seemed to have lost her mental balance and capacity to comprehend the nature of her surroundings. Intermittently, she would gather strength and force herself into consciousness and shout, "He is innocent. These people are liars. Help him. I beg of you, help him, save his life." As the gathering grew agitated at her claims, every desperate plea of hers would be met with the crowd hurling abuses at her. The victim's father led the charge against Umang's mother and

Evicted from
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a nearby
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during the monsoons.
They bathe in
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eat at nearby
food stalls.

also insisted that our researchers hear his side of the story. As the situation worsened, our researchers left Umang's mother and moved to the victim's house and the crowd followed them.

A conversation with a woman in the crowd, who explained the reasons for Umang's wife and child leaving the village, left a deep impact on our researchers. They left the village after the victim's father threatened the family, saying, *"Jo usne meri beti ke saath kiya, woh mai uski beti ke saath karunga. Tabhi usse ehsaas hogा ki kya kiya hai usne, aur tabhi jee paunga main."* (I will do to his daughter exactly what he did to mine. Only then will he realize what he has done and only then will I be able to live in peace).

PRAYAG was sentenced to death in a high profile sexual violence case that received tremendous local and national attention. Unfortunately, the public outrage towards the crime in question had disastrous effects on Prayag's family. His parents, Jaya and Bhuvan, were barely literate and used to live in a metropolitan suburb eking out a living by working as a domestic help and a cleaner in the local municipal corporation, respectively. Our researchers, however, interviewed Jaya and Bhuvan on the pavement outside the city's prison, where their son had been lodged as an undertrial. Jaya and Bhuvan's journey from living in a house to a pavement outside the city's prison is one characterised by hostility, acute social stigma and violent dispossession.

They had lived in their tiny house in the suburb for about six–seven months before Prayag was arrested. Within a couple of days, the building management used the intense media spotlight and repeated police visits as

reasons to ask them to leave the building. Due to the intense pressure from within the housing society and increasing fears that they might be attacked, Jaya and Bhuvan left the housing society immediately, leaving behind all their possessions locked in the house. Little did they know then that they would never be allowed to return. Their daily existence on the pavement outside the city's prison is a heartbreakingly sight. Bhuvan had to give up his job due to a massive and painful swelling in his foot and Jaya's monthly income of Rupees 1100 as a domestic help brings very little their way. They sleep on the pavement at night and in the premises of a nearby government hospital during the monsoons, they eat at nearby food stalls, and bathe in public toilets. Jaya and Bhuvan struggle to make sense of the manner in which their world has been destroyed.

BRIJMOHAN was arrested and sentenced to death along with a co-accused in four years and four months for the rape and murder of a 22-year old woman. Brijmohan came from a poor household and his mother Urmilla worked in a factory before Brijmohan's arrest. When Urmilla went to the factory for work after Brijmohan's arrest, she was told that her job was given to another person and she would be informed if her services were needed. She was then forced to take up work as a domestic help in various households to earn a living. Though Urmilla had a small house where she lived with her two daughters, the reactions to her son's arrest forced her to move out.

In the initial days after the arrest, people started pelting stones at their house and dumping piles of garbage in front of their house. Also, the school in which her younger daughter was studying refused to let her into

the school in the aftermath of the case. The increasing hostility forced Urmilla to leave her house and her changed economic circumstances compelled her to find a place in one of the slums in the city. While living in the slum, Urmilla became increasingly concerned about the safety of her daughters and she felt that living by herself with her two daughter made them particularly vulnerable. In search of a little more safety, she had her daughters moved to another part of the city.

ASAD was sentenced to death for being a conspirator in a terror case. Zeba married Asad a couple of weeks before the incident and she was arrested along with Asad. Zeba was imprisoned for several years before being acquitted. Her life outside prison has been just as tough. While her family insists that she must have nothing to do with her husband anymore, Zeba continues to be torn between supporting her husband and listening to her family. When our researchers finally found the house where Zeba was supposed to be staying, she answered the door by saying that there was nobody by that name there. As the researchers were leaving, she called out to them from the back door to say that the house belonged to her sister's family and that she was forbidden from talking to anyone about the case. She quickly gave them her phone number and asked them to call, to set up a meeting outside. Over numerous phone calls, we realised that Zeba's reluctance to discuss the case over the phone or in person stemmed from her entirely reasonable belief that she was under the surveillance of intelligence agencies.

After a few weeks, she finally met our researchers in a cafe far away from the house in which she was staying. Zeba revealed the

intense pressure on her from her sister and mother to sever all ties with Asad to the extent that she was not even allowed to take Asad's name in conversations at home. During the weeks immediately after the arrest, Zeba's sister had trouble with her employers due to the case and had to submit a detailed written explanation of the extent of her association with them. Zeba told us that her entire extended family had slowly severed ties with her in the fear of being dragged into the case.

While Zeba now lives in the fear that she could be targeted again, she refuses to be intimidated or coerced into giving up on Asad. She has found it extremely difficult to find work due to the stigma attached to her earlier arrest and her deteriorating health. Despite her increasing economic vulnerability, Zeba continues to single handedly help Asad establish his claim that he has spent a decade-and-a-half in prison for a crime he did not commit. Though they were married only for 15 days before the incident, Zeba is very clear that this battle will be fought till the very end.

AAMER was sentenced to death on charges of 'waging war' under Section 121 of the Indian Penal Code, 1860. Though there was no loss of life, Aamer and seven others were convicted and sentenced to death for their alleged role in the explosions across different states. Aamer's arrest in this case had widespread and tragic impact on his family. Even as the trial started, Aamer's sister's husband divorced her due to all the hostility surrounding the case. This took a severe toll on her health which eventually led to her death. The wedding prospects for Aamer's brothers were severely affected as everyone in the community wanted to maintain their distance from the family.

My husband
has access to
basic necessities
in prison...

it is my
children and I
who suffer
in the
real world.

Aamin

However, one of Aamer's brothers-in-law did stand by them though no one else from his family wanted anything to do with Aamer's family. Finding work became increasingly difficult for members of the family and they were even driven out of their small incense

stick business. First, the landlord drove them out of the shop that Aamer's father had run for decades and when his brother tried selling incense sticks on the footpath, other traders were extremely hostile due to the news they had read in the papers about the case.

COMMUNITY SUPPORT AND ASSISTANCE

While the dominant narratives we encountered regarding the impact on the families were concerned with ostracisation, violence and exclusion, there were narratives that also showed us the manner in which local communities can rise to support the family of persons arrested/ convicted. These instances of community and organisational support were largely seen in cases where there was a very strong perception that the persons arrested/ convicted were being unfairly targeted by the State. While this was most pronounced in terrorism related cases, there were remarkable narratives of community support in other cases as well.

HARMEET AND ASAVER belonging to a poor agricultural family have been sentenced to death for murdering three members of a family. However, there was a widespread feeling in the community that they have been framed. As a result, Harmeet's mother, Virmati, has received tremendous support from the village. She repeatedly stated that without the generous support of people in the village, she and her family would not have survived the economic consequences of Harmeet's arrest. The panchayat has raised money and provided tremendous financial assistance to the family, including paying the fees to ensure that Harmeet's daughter goes to school.

The incredible part of the community's support has been to ensure that Harmeet and Asav receive competent legal representation. Virmati narrated the manner in which people of

the village contributed anything they could to ensure that nearly Rupees one lakh was raised to meet the expenses of the lawyer. The people of the village even ensured that transport arrangements were made for Virmati to attend the court proceedings. While expressing her profound gratitude for the manner in which she and her family have been taken care of by the village, she recollects the gloom that consumed the village when Harmeet and Asav were sentenced to death.

CHITTARANJAN'S family also received significant support from community based organisations. Chittaranjan and three others were sentenced to death under TADA for their alleged involvement in killing over 20 security personnel. After being sentenced to life imprisonment by the TADA Court at the

My family,
whatever little
is left of it,
would not
have survived
without the support
of the villagers.

Virmati

end of a trial that lasted eight years and five months, the Supreme Court rather extraordinarily enhanced their punishment to death. Living in villages that were located in extremely inaccessible areas, their families struggled to find help to fight the case. Chittaranjan's father, Aaron, provided an account of the manner in which certain grassroot organisations had provided support for nearly 20 years in various ways. The organisation had facilitated visits to

the prison along with providing for education of the children and assistance with fighting the case. These organisations have played a tremendous role in raising awareness about the case in public consciousness. Without their support, it would have been extremely difficult for these resource-starved families living in extremely remote areas to draw mainstream attention to their cases.⁴

Terrorism cases in which the death penalty is a serious possibility are perhaps the most demanding on the family. Not only is there tremendous social stigma, families also have to contend with different kinds of pressure from the State. It can be extremely difficult to find lawyers to argue such cases. In such circumstances, the defendants often rely on community support.

MAHMUD and five others were arrested for their alleged role in a high profile terror case under the Prevention of Terrorism Act, 2000, which led to the usual hysteria in the national and local press. Given the magnitude of the charges and that the death penalty was imposed on Mahmud and two others (Zaid and Fazil), the families realised the importance of ensuring competent legal representation. Friends and well-wishers of Mahmud approached a prominent Islamic organisation to assist them with the case. They told the organisation that the legal battle would be a long one and that they would need financial assistance to hire the services of competent counsel. The working committee of the organisation was convened and a

decision was taken to support the litigation on behalf of those sentenced to death. Mahmud's friend, Habib, while talking to our researchers emphasised that all transactions were strictly through cheques and that they ensured that all financial procedures were followed to the smallest detail. He felt that the high profile nature of the case and its political context made them particularly vulnerable and therefore they had to guard against even the smallest violation, however innocuous. Habib informed us that the organisation had taken care of all legal expenses with no exception whatsoever. He said they even offered to cover their expenses of travelling to Delhi, which he politely refused saying that they had enough resources to cover such expenses.⁵

⁴ The death sentences were commuted to life imprisonment by the Supreme Court on the grounds of undue delay in deciding their mercy petitions.

⁵ Mahmud, Zaid and Fazil were represented by some of India's leading lawyers in the Supreme Court. They were acquitted of all charges by the Supreme Court.

ATTITUDES OF FAMILIES OF PRISONERS—UNDERSTANDING ABANDONMENT

We encountered a wide spectrum of reactions from families of prisoners when we approached them for a conversation about the background of the prisoner and their experience with the criminal justice system. Just as there were families that were extremely keen to have us document their experience as an effort towards making their voices heard, there were others who refused to talk to us as soon as they realised the purpose of our visit. The fear of getting into trouble with the law, moving on to a completely new life after abandoning the prisoner due to the shame caused to the family, extreme anger towards the prisoner for killing members of her/ his own family were some of the reasons due to which families did not want to talk to us about the prisoners concerned. At times, the reasons for families maintaining no contact with the prisoner fell at the intersections of the abovementioned reasons.

GIRISH KUMAR'S wife refused to meet us or have an extended conversation with us over the phone. She said after his arrest, she had struggled very hard to pull her life back together and was raising their son on her own. Their son was a toddler when the incident occurred and she had never told him about his father being in prison. She also said that she could not go through the torture of recollecting the painful details of that period. We observed that the social dynamics involved in the process of families abandoning the concerned prisoner were incredibly complex, often located at the intersection of social pressure, personal shame and sheer helplessness.

RAJUL AND GHALIB were sentenced to death for abducting and murdering a 20-year old woman. Rajul has four children and was married to Aamin for 19 years before he was arrested. Aamin had a lot of anger against Rajul and felt that the villagers would “set him

right” if he dared to come back to the village. She had no intention or desire to live with him anymore and was certain that she would seek a separation from him if he ever returned. Now, her concern was only the well-being of her four children and to ensure that they did not suffer. In the initial months after his arrest, Rajul would call Aamin from prison requesting her to send him some money to buy things like soap, bucket, oil etc. in the prison. Aamin said that she categorically told Rajul not to call her with such requests as she now had to take care of the children herself with meagre resources. She clearly led a very difficult life managing different jobs to take care of her children and had chosen not to concern herself with the difficulties of Rajul's life in prison. Aamin asked our researchers about prison conditions and remarked that while Rajul had access to food and essentials in prison, it was she and her children who had to bitterly suffer in the real world. Interestingly, Rajul during his interview

echoed the same sentiment by saying that while he got to eat daily, it was his children and his wife that he was worried about. Aamin claimed to be indifferent to Rajul's fate in terms of being executed or being commuted to life imprisonment. It was almost as though Aamin could not afford the luxury of thinking about these questions when she had the harsh realities of daily existence to confront.

RAMANAND was sentenced to death for the rape and murder of two adult women (mother and daughter). At the time of his arrest, Ramanand lived with his wife and three daughters. His wife, Chandini, now lives with their two daughters and her mother, while their eldest daughter lives separately with her husband. Neither Chandini nor anybody else from the family had visited Ramanand in prison in the six years since his arrest. The decision of Ramanand's family to sever ties with him seems to be a combination of extreme shame, anger and disappointment along with an evident fear of incurring the wrath of the

community if they were seen to be supporting him. Chandini was very categorical in stating that she wanted nothing to do with him after he had confessed to the police. She said the reason for not helping him fight the case was that such a move on her part was likely to invite hostility from the community she lived in. Chandini said that she was acutely aware that the people in her village closely observed her attitude towards Ramanand for a year after his confession before realising that she had no intention of helping him. Even while getting her eldest daughter married, Chandini made it a point to explicitly inform the bridegroom and his family that she had severed ties with Ramanand. Chandini does not enquire about the progress of the case as that would require her to establish contact with Ramanand, which would in turn risk isolating the community.

Chandini said that it had been many years since the incident and that she had reached a stage where she genuinely felt that Ramanand's execution would not make a difference to her life.

It is in the interest of society to recognise the importance of not furthering the marginalisation and vulnerabilities of such families. It only exacerbates the risk of more conflict with the criminal justice system and contributes towards triggering a cycle of violence. Irrespective of the relevant philosophical motivations for punishing the guilty, no defensible model of culpability can lay any responsibility, moral or otherwise, at the doorstep of the family members of individuals guilty of crimes. Society's need for retribution certainly cannot extend to the families of prisoners and we must acknowledge that the manner in which crimes, punishments and the image of those guilty of crimes are constructed in society has very real consequences. These consequences do not end with sending the guilty to prison and we have to account for its serious ripple effects in society. Any meaningful notion of justice would demand that we view the families of prisoners as victims in need of care and protection rather than as abettors deserving scorn and punishment.

death sentences in India (2000-2015): an overview

During the course of the Project we realised that there is a considerable lack of information about prisoners sentenced to death in India. While the current research on the death penalty in the country has highlighted the grave inconsistencies in the judicial process, we believe that empirical research on the number of prisoners sentenced to death, the number of death sentences confirmed in the appellate courts and an analysis of the nature of offences at different stages would contribute towards a more informed debate on the issue.

We present an overview of the death sentence cases in India during the period from 2000 to 2015 in this chapter. We have attempted to trace the outcome of each death sentence case through the criminal appeal process, categorised the cases as per the nature of offence and recorded other details such as gender of the accused and number of deceased victims. In the process, we were able to reasonably determine the number of death sentences that were confirmed and commuted by the appellate courts along with determining the number of death sentences that were ultimately converted into acquittals during the appeals process.

The death penalty is invoked without justification far too often in India. The abysmal confirmation rate points to the troubling

phenomenon that the trial courts routinely invoke the death penalty in a large number of unwarranted cases. It is then left to the appellate courts to deal with the sentences as they see fit.

The figures presented below along with anecdotal evidence from our conversations with prisoners and families during the fieldwork for the Project confirm the suspicion that trial court judges invoke the death penalty because they do not want to appear lenient towards crime. By being over-inclusive in their use of the death penalty, the trial courts are clearly leaving large parts of the burden of filtering the 'rarest of rare' to the appellate courts. While such a judicial approach demonstrates a complete breakdown of the administration of the death penalty, it also means a terrible violation of human rights. The large proportion of commutations by appellate courts is inescapable evidence of how thin the legal justification is in these cases.

But perhaps the most unconscionable part of India's administration of the death penalty is the significant number of individuals who go from being under the sentence of death to being acquitted by the appellate courts. It shows the extent and depth of the crisis in the criminal justice system and that it is a system willing to invoke the death penalty for reasons that have very little to do with the law.

METHODOLOGY

The information in this section is based on the data provided by various High Courts regarding death sentence cases admitted by them from 2000 onwards. For the purposes of this chapter, the data received from each High Court is presented as that of the state where it is located and not the actual jurisdictional boundaries of that High Court. Out of the 24 High Courts, we did not receive any information from the High Court of Madhya Pradesh. Further, the information provided by the Calcutta High Court has not been included in this study as it was largely incomplete.¹

We also found that the information regarding death sentence cases received from other High Courts was either incomplete or partially inaccurate. We have attempted to make the data as comprehensive as possible by adding the cases found through our research using several legal databases and online newspaper reports, to the information provided by the High Courts. At this point, it is important to reiterate the unreliable nature of our public data and the pressing need to increase investment in the creation and maintenance of these records by our courts.

The data in this exercise has been compiled with the aid of lists provided by the High Courts and information gathered from reported cases as well as online newspaper reports. We would also like to thank Mr. Bikram Jeet Batra and

Dr. Yug Mohit Chaudhry for sharing the list of death sentence cases at appellate courts, as compiled by them. We have examined the outcomes in death references and criminal appeals in the High Courts, and special leave petitions and criminal appeals in the Supreme Court. However, we have not traced other type of proceedings concerning prisoners sentenced to death such as review petitions, writ petitions and curative petitions.

During our research, we did not rely on the data published by the National Crime Records Bureau (NCRB). We found that its data regarding the imposition of death sentences did not allow us to trace the fate of each prisoner through the course of appeal in the time period covered during this exercise. Although the NCRB data provides the number of commutations of death sentences in any given year, it does not indicate which cases correspond to those commutations, and when the death sentences were imposed by the trial courts in those cases. Therefore, on several occasions the number of commutations of death sentences exceeds the number of prisoners sentenced to death in a particular year.

A much clearer picture is provided through the adoption of a methodology that examines each case through the different stages of the judicial process.

¹ As per the list provided by the Calcutta High Court, only nine death references were said to be admitted by the Court from 2000 to 2015. Since four out of five prisoners from West Bengal who were interviewed as part of the Project were not included in the data provided by the Calcutta High Court, it appears that the information provided is incomplete.

CALCULATING THE FIGURES

Between 2000 to 2014, 1,810 individuals were sentenced to death by the trial courts. Of these, the cases of 134 prisoners were pending before the High Courts, and of another 22 were pending before the Supreme Court.² While these cases were yet to be decided either by the High Courts or the Supreme Court, we have included them while examining the number of death sentences imposed by trial courts in India, and where cases were pending before the Supreme Court, in analysing the number of death sentences imposed by High Courts in India.

Further, despite our best efforts, we were unable to ascertain the outcomes of cases concerning 111 prisoners which have been decided by the High Courts. We have included these cases only while ascertaining the number of death sentences imposed by trial courts, and have excluded them while analysing the High Court and Supreme Court statistics on the death penalty. The percent-

ages have been calculated after including the relevant figures.

It must also be noted that the number of prisoners sentenced to death by trial courts in 2015 has not been provided in this data. We have relied on the year of admission in the High Court as provided in the lists supplied by High Courts, to calculate the number of prisoners sentenced to death by trial courts each year.³ Since the lists were provided to us by different High Courts in early 2015, we did not have access to details of death sentence cases which would have been admitted in the High Courts in the latter months of 2015. Given the unavailability of data on death sentence cases admitted in High Courts in 2015, we have not compiled the number of death sentences imposed by trial courts in 2015.⁴ However, we have traced the outcome of all cases admitted in High Courts prior to 2015, at the appellate stages, till September 2015.

DEATH SENTENCES BY TRIAL COURTS IN INDIA

Between 2000 to 2014, 1,810 prisoners were sentenced to death by the trial courts in India across 1,118 cases (**Graphic 1**). Out of the 1,810 prisoners, 1,787 prisoners were sentenced to death by ordinary trial courts in 1,112 cases.

Additionally, 23 prisoners involved in six cases were given the capital punishment by special courts constituted under the Terrorism and Disruptive Activities (Prevention) Act, 1987 (TADA).⁵

² Apart from these, one case was sent for retrial by the Supreme Court, one was remitted to the High Court and another was abated. The case of one prisoner whose death sentence was confirmed by the High Court could not be traced at the Supreme Court. Yet another case could not be decided as the prisoner was absconding.

³ As per Section 366 of the Code of Criminal Procedure, 1973 it is mandatory to refer a case to the High Court for confirmation of death sentence whenever a death sentence is imposed by an ordinary trial court. We have relied on the date of admission of death reference cases before the High Courts to determine the year in which the trial courts imposed the death sentence, taking both of them to be the same.

⁴ Only one prisoner whose case was admitted in the High Court in 2015 has been included in the study. Amin Manjhi, sentenced to death by a trial court in Bihar in 2014, had his appeal admitted in the Patna High Court on 12 January 2015, as Death Reference Case No. 1 of 2015.

⁵ The Terrorist and Disruptive Activities (Prevention) Act, 1987 mandates setting up of a designated court to try offences under the Act. It also provides that an appeal against the judgment, sentence or order of the designated court shall lie as a matter of right directly to the Supreme Court, on both facts and law.

Graphic 1

Prisoners sentenced to death by trial courts in India: 2000–2014

No. of prisoners sentenced to death by trial courts

1,810

No. of cases in which prisoners were sentenced to death

1,118

Table 1 Prisoners sentenced to death by trial courts across states: 2000–2014

STATE	NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	NO. OF PRISONERS SENTENCED TO DEATH PER 10 LAKH POPULATION
UTTAR PRADESH	463	25.6%	2.32
BIHAR	292	16.1%	2.81
MAHARASHTRA	144	8%	1.28
KARNATAKA	109	6%	1.78
PUNJAB	93	5.1%	3.35
TAMIL NADU	87	4.8%	1.21
DELHI	83	4.6%	4.94
JHARKHAND	79	4.4%	2.39
HARYANA	78	4.3%	3.08
GUJARAT	65	3.6%	1.08
KERALA	64	3.5%	1.92
ODISHA	48	2.7%	1.14
RAJASTHAN	48	2.7%	0.70
CHHATTISGARH	41	2.3%	1.60
UTTARAKHAND	37	2%	3.67
ASSAM	32	1.8%	1.03
ANDHRA PRADESH	31	1.7%	0.37
JAMMU & KASHMIR	11	0.6%	0.88
HIMACHAL PRADESH	3	0.2%	0.44
ARUNACHAL PRADESH	1	0.1%	0.72
TRIPURA	1	0.1%	0.27
TOTAL NO. OF PRISONERS	1,810		1.73

i. Figures for Madhya Pradesh and West Bengal have not been included in the exercise. While no information was supplied by the High Court of Madhya Pradesh, the information provided by the Calcutta High Court was incomplete.

ii. Data received from each High Court is presented as that of the state where it is located and not the actual jurisdictional boundaries of that High Court.

iii. Calculations for the rate of imposition of death penalty have been done as per Census 2011 population figures.”

A state-wise analysis of these figures reveals that the highest number of death sentences imposed by ordinary trial courts were in the three most populous states in India (**Table 1**). In Uttar Pradesh, 463 prisoners were sentenced to death from 2000 to 2014, accounting for 25.6% of the total persons sentenced to death by ordinary trial courts in India during this period. In Bihar, 292 prisoners were sentenced to death, and 144 prisoners were sentenced to death in Maharashtra, comprising 16.1% and 8% respectively of the total prisoners sentenced to death by ordinary trial courts in India during the same period.

On comparing the number of death sentences given by ordinary trial courts with the population of each state, a different picture emerges. In Delhi, where 83 prisoners have been sentenced to death during this period, the death sentence has been imposed at the rate of 4.9 persons per 10 lakh population. This is almost three times the national rate of 1.7 persons sentenced to death per 10 lakh population. Uttarakhand and Punjab impose the death penalty at a considerably higher rate than the national proportion, by sentencing 3.7 persons and 3.4 persons to death per 10 lakh population respectively. Interestingly, Andhra Pradesh, the fifth most populous state in India,

imposes the death penalty at a rate significantly lower than the national proportion. Only 31 prisoners have been sentenced to death between 2000 to 2014 in Andhra Pradesh, at the rate of 0.4 persons per 10 lakh population.

A year-wise break up of death sentences imposed by ordinary trial courts in India reveals that the death penalty has been administered in varying numbers from 2000 to 2014 (**Graphic 2**).⁶ The maximum number was seen in 2007, when 154 prisoners were sentenced to death while 66 prisoners were sentenced to death in 2001, which was the minimum number of death sentences imposed in a year.

An examination of the year-wise break up of death sentences imposed in each state over the past 15 years reveals that it is not imposed at a uniform rate within states (**Table 2**). Over the past 15 years, the maximum number of death sentences imposed by any state in India in a year was by Uttar Pradesh, sentenced 54 prisoners to death in the year 2011, at an average of more than one death sentence per week. Except for Jharkhand, Maharashtra, Punjab, Rajasthan and Uttar Pradesh, in all other states, the death penalty was not imposed either for years together or at least during one whole year.

⁶ Information on year of admission in the High Court was available for 1,784 prisoners.

Graphic 2

Year-wise no. of prisoners sentenced to death by trial courts in India

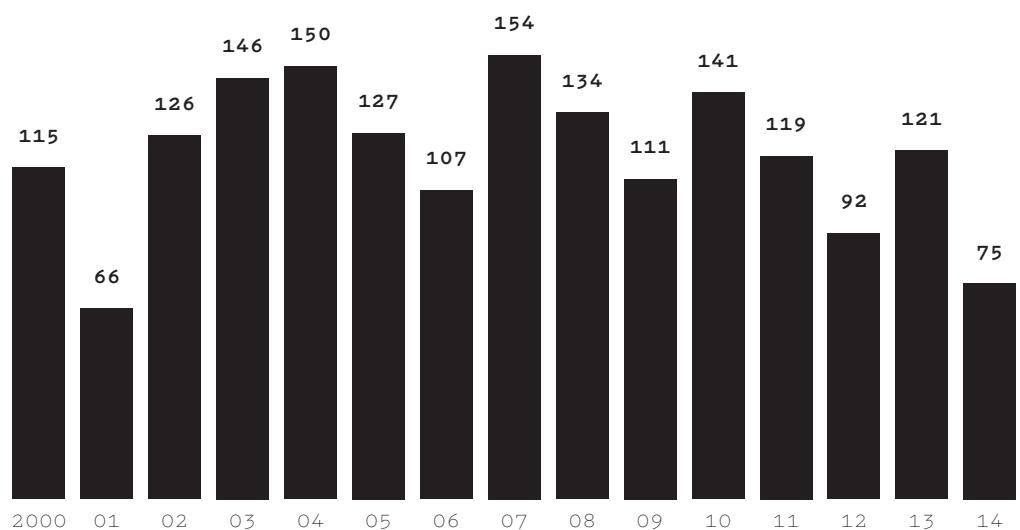


Table 2 Year-wise no. of prisoners sentenced to death
by trial courts across states

STATE	2000	2001	2002	2003	2004	2005	2006
ANDHRA PRADESH	2	4	2	3		2	
ARUNACHAL PRADESH			1				
ASSAM	1	1	3	2	1	10	5
BIHAR	7	10	38	28	18	12	17
CHHATTISGARH	1	1	6	2			1
DELHI	8	1		5	5	2	3
GUJARAT	4	2		5	17	7	4
HARYANA	5	5	7		10	7	1
HIMACHAL PRADESH					1		
JAMMU & KASHMIR							
JHARKHAND	10	2	2	13	6	6	8
KARNATAKA		5	2	5	2	8	3
KERALA	3			3	13	9	2
MAHARASHTRA	6	6	15	7	4	9	7
ODISHA	5	2	2	2	4	3	4
PUNJAB	6	5	11	4	5	10	2
RAJASTHAN	5	1	1	10	2	6	6
TAMIL NADU	16	4	10	15	1	7	6
TRIPURA						1	
UTTAR PRADESH	36	14	22	39	50	27	34
UTTARAKHAND		3	4	3	11	1	4
TOTAL NO. OF PRISONERS	115	66	126	146	150	127	107

										TOTAL NO. OF PRISONERS
2007	2008	2009	2010	2011	2012	2013	2014			
2		2			7	2	5		31	
								1		
1	1	1		1		1	1	2	30	
34	28	13	38		14	24	4		285	
6	1	1				10	12		41	
2	5	1	11	9	11	13	3		79	
4	3	2		13	3	1			65	
3	5	8	5	5	4	10	3		78	
1								1	3	
		1		8			2		11	
4	4	5	3	6	4	5	1		79	
2	16	19	29	2	6	5	5		109	
6	3	8	4	3	2	8			64	
8	15	15	4	4	11	13	8		132	
8	1		4	1	6	4	2		48	
11	8	3	9	7	6	4	2		93	
3	1	1	3	2	2	3	2		48	
9	7	2	5		2	3			87	
								1		
49	36	28	25	54	13	14	21		462	
1		2		5		1	2		37	
154	134	111	141	119	92	121	75		1,784	

Several anomalies become evident on a consideration of year-wise death sentences imposed within a particular state. For instance, although only 30 persons have been sentenced to death in Assam between 2000 to 2014, at an average rate of two persons per year, 10 of these death sentences were imposed by trial courts in 2005. Similarly, in Uttarakhand, of the 37 death sentences imposed by trial court judges, 11 were imposed in 2004. In Bihar, which has the highest number of death sentences imposed by ordinary trial

courts in India after Uttar Pradesh, no death sentence was imposed in 2011, and only four death sentences were imposed in 2014. In Gujarat, where 65 prisoners were sentenced to death since 2000, almost half of the total death sentences were imposed in 2004 (17 prisoners sentenced to death) and 2011 (13 prisoners sentenced to death, 11 in the Godhra train burning case). The trial courts in Jammu & Kashmir have imposed a total of 11 death sentences since 2000, and eight of these were given in 2011.

NATIONAL ANALYSIS OF DEATH SENTENCE CASES IN FIRST APPEAL

Of the 1,810 prisoners sentenced to death by trial courts from 2000 to 2014, the cases of 1,615 prisoners have been decided by the High Courts and for 23 prisoners convicted under TADA have been decided by the Supreme Court in first appeal.⁷ At the time of compiling this data, the cases of 134 prisoners were pending in High Courts while those of another 33 have been sent for retrial over the past 15 years.⁸ Of the total prisoners sentenced to

death in India over the past 15 years, nearly 98% were males. The death penalty has been imposed on only 32 female prisoners in the past one and a half decades (**Table 3**).⁹ While 12 states have invoked the capital punishment against women in the study period, two or more female prisoners were sentenced to death only in five states. Delhi and Maharashtra had the highest number of female prisoners sentenced to death in India.

⁷ Of the 1,615 prisoners whose cases were decided by the High Courts, the appeals of 1,495 resulted in acquittal, commutation or confirmation of death sentence. Nine prisoners were declared juveniles at time of commission of crime by the High Court. Additionally, outcomes for cases of 111 prisoners at the High Court could not be ascertained.

⁸ During this period, cases of three prisoners sentenced to death were abated in the High Court. The case of another prisoner was remitted by the High Court while that of another one could not be decided in the High Court as the accused was absconding.

⁹ Out of 1,468 prisoners, the gender of 1,450 prisoners could be traced through reported judgments and online newspaper reports. Of these, 1,418 prisoners (97.8%) were male while 2.2% of the total prisoners sentenced to death were females.

Table 3 Female prisoners sentenced to death across states in India

STATE	NO. OF FEMALE PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF FEMALE PRISONERS OUT OF TOTAL FEMALE PRISONERS SENTENCED TO DEATH BY TRIAL COURTS
DELHI	7	21.9%
MAHARASHTRA	6	18.8%
PUNJAB	5	15.6%
UTTAR PRADESH	5	15.6%
ODISHA	2	6.3%
BIHAR	1	3.1%
GUJARAT	1	3.1%
HARYANA	1	3.1%
JHARKHAND	1	3.1%
KARNATAKA	1	3.1%
KERALA	1	3.1%
TAMIL NADU	1	3.1%
TOTAL NO. OF PRISONERS	32	

NATURE OF CRIME

Of the 1,638 prisoners sentenced to death at the trial court and whose cases have been decided in first appeal either at the High Court or at the Supreme Court (for prisoners sentenced to death under TADA), we could determine the nature of offence for 1,468 prisoners through reported judgments and online newspaper reports. Wide variation in numbers was observed across different crimes (**Table 4**).¹⁰ In the past 15 years, most of the prisoners in India have been sentenced to death for murder *simpliciter* (1,039 prisoners, 70.8% of the 1,468 prisoners sentenced to death). The highest number of death sentences after those imposed for murder *simpliciter* were given for committing rape with murder (197 prisoners, 13.4%), followed by death sentences given for kidnapping with murder (143 prisoners, 9.7%).

A majority of the female prisoners sentenced to death in India were given the death penalty for murder *simpliciter* (21 prisoners, 65.6% out of the total female prisoners sentenced to death in India) while another 10 (31.3%) were sentenced to death for kidnapping with murder (**Table 5**). Amongst those sentenced to death for murder *simpliciter*, five female prisoners were from Delhi and Uttar Pradesh each, while the highest number

of female prisoners sentenced to death for kidnapping with murder were from Maharashtra (four prisoners). Further, one female prisoner was sentenced to death for a terror offence in Maharashtra while none were sentenced to death for dacoity with murder and drug offences in the past 15 years.

NUMBER OF VICTIMS

For the purpose of analysing the number of deceased in death penalty cases, we divided them into four categories: cases with no deceased victims, cases with a single deceased victim, cases with two to four deceased victims, and cases with five or more deceased victims.¹¹ An analysis of the cases in which prisoners were sentenced to death under each of these categories reveals that almost half (46.3%) of the prisoners were given capital punishment for causing death of one person (**Table 6**). Apart from this, 18 prisoners were sentenced to death in cases where no homicide was committed.

OUTCOME IN THE HIGH COURT

Of the 1,787 prisoners who were sentenced to death by ordinary trial courts, we could access the outcomes of 1,495 prisoners' cases at the High Court (**Table 7**). The death sentences

¹⁰ The offences for which prisoners were sentenced to death have been categorized into six broad categories. The details of each of these categories have been given in Chapter 3 on 'Nature of Crimes'. For the purposes of this chapter, the category of murder *simpliciter* also included cases where the prisoners were convicted under Section 300 of the Indian Penal Code, 1860 along with the Maharashtra Control of Organised Crime Act, 1999.

¹¹ Information on the number of deceased in death penalty cases was available for 1,451 out of 1,468 prisoners.

Table 4 Nature of crime composition of prisoners sentenced to death in India

NATURE OF CRIME	NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS FOR THE OFFENCE
MURDER <i>simpliciter</i>	1,039	70.8%
RAPE WITH MURDER	197	13.4%
KIDNAPPING WITH MURDER	143	9.7%
TERROR OFFENCES	51	3.5%
DACOITY WITH MURDER	33	2.2%
DRUG OFFENCES	5	0.3%
TOTAL NO. OF PRISONERS	1,468	

Table 5 Nature of crime composition of female prisoners sentenced to death across states in India

STATE	NATURE OF CRIME	NO. OF FEMALE PRISONERS SENTENCED TO DEATH BY TRIAL COURTS
BIHAR	Kidnapping with murder	1
DELHI	Murder <i>simpliciter</i>	5
	Kidnapping with murder	2
GUJARAT	Murder <i>simpliciter</i>	1
HARYANA	Murder <i>simpliciter</i>	1
JHARKHAND	Murder <i>simpliciter</i>	1
KARNATAKA	Murder <i>simpliciter</i>	1
KERALA	Murder <i>simpliciter</i>	1
	Murder <i>simpliciter</i>	1
MAHARASHTRA	Kidnapping with murder	4
	Terror offences	1
ODISHA	Murder <i>simpliciter</i>	1
	Kidnapping with murder	1
PUNJAB	Murder <i>simpliciter</i>	3
	Kidnapping with murder	2
TAMIL NADU	Murder <i>simpliciter</i>	1
UTTAR PRADESH	Murder <i>simpliciter</i>	5

Table 6 No. of victims in death penalty cases in India

NO. OF VICTIMS IN EACH CASE	NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS
0	18	1.2%
1	672	46.3%
2 TO 4	522	36%
5 AND MORE	239	16.5%

Table 8 Year-wise outcome of death reference cases decided by High Courts in India: 2000–2015

YEAR	NO. OF PRISONERS ACQUITTED	ACQUITTAL PERCENTAGE IN THE YEAR	NO. OF PRISONERS COMMUTED
2000	19	47.5%	17
2001	16	28.1%	20
2002	22	34.9%	37
2003	31	27.7%	62
2004	15	23.8%	40
2005	30	17.8%	114
2006	10	10.9%	61
2007	33	28%	71
2008	37	28.7%	78
2009	29	31.2%	46
2010	25	20.7%	77
2011	12	21.4%	33
2012	27	38%	37
2013	66	42.9%	78
2014	42	35.3%	62
2015	13	38.2%	17

The year of outcome could be ascertained for cases of 1,491 out of 1,495 prisoners whose death sentences were confirmed, commuted or their conviction was set aside by the High Court.

Table 7 Outcome of death reference cases decided by High Courts in India: 2000–2015

OUTCOME IN FIRST APPEAL	TOTAL NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF TOTAL NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS
ACQUITTED	428	28.6%
COMMUTED	851	56.9%
CONFIRMED	216	14.4%

COMMUTATION PERCENTAGE IN THE YEAR	NO. OF PRISONERS CONFIRMED	CONFIRMATION PERCENTAGE IN THE YEAR	TOTAL NO. OF PRISONERS SENTENCED TO DEATH IN THE YEAR
42.5%	4	10%	40
35.1%	21	36.8%	57
58.7%	4	6.3%	63
55.4%	19	17%	112
63.5%	8	12.7%	63
67.5%	25	14.8%	169
66.3%	21	22.8%	92
60.2%	14	11.9%	118
60.5%	14	10.9%	129
49.5%	18	19.4%	93
63.6%	19	15.7%	121
58.9%	11	19.6%	56
52.1%	7	9.9%	71
50.6%	10	6.5%	154
52.1%	15	12.6%	119
50%	4	11.8%	34

imposed on 56.9% of the prisoners were commuted by the High Courts. A further 28.6% prisoners sentenced to death were acquitted by the High Courts, while only 14.4% of death sentences were confirmed by them. It is clear that the High Courts were of the view that the death sentence was not warranted in the cases of over 85% of the prisoners sentenced to death by the trial courts over the past 15 years.

This calls for a deeper interrogation into the reason for the imposition of the death penalty by trial courts in the overwhelming number of cases where it is found to be unwarranted by the High Courts. In this context, it is important that we acknowledge the mental anguish as well as the social and economic repercussions of a death sentence on the prisoners and their families before the latter's eventual acquittal or commutation.¹²

JUVENILES SENTENCED TO DEATH

It must be noted that nine persons sentenced to death by trial courts in the past 15 years were found to be juveniles by the High Courts

(Table 9). These nine persons were sentenced to death in six cases, three in Bihar, two in Delhi and one in Tamil Nadu. The case of *State v. Jagtar & Ors* from Delhi calls for particular attention, as three juveniles were sentenced to death by the trial court in a single case.¹³ Section 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000 mandates that no juvenile in conflict with the law shall be imprisoned or sentenced to death. The Act also provides that juvenile offenders shall be subject to proceedings before a Juvenile Justice Board and cannot be tried in ordinary criminal courts.¹⁴ The Convention on the Rights of the Child, to which India is a party, similarly requires that children who break the law be kept separate from adults, and prohibits the imposition of the death penalty on persons below 18 years. It is a matter of grave concern that despite the statutory safeguards built to protect juvenile offenders they have been subjected to ordinary criminal proceedings and sentenced to death by the trial courts in the above cases.

¹² For more details on the mental anguish experienced by prisoners refer to Chapter 8 on 'Living on Death Row'. For more details on the impact on families of prisoners, refer to Chapter 10 on 'Impact'.

¹³ The case was admitted in the Delhi High Court as Death Reference Case No. 5 of 2010 and an order declaring the three prisoners as juveniles was passed in April 2012. However, the order for release of the three prisoners was passed more than two years later, in August 2014. By this time, the juveniles had spent more than three years in prison.

¹⁴ Sections 4 and 6, Juvenile Justice (Care and Protection of Children) Act, 2000.

Table 9 Juveniles sentenced to death by trial courts in India: 2000–2014

HIGH COURT DECLARING THE ACCUSED AS JUVENILE	HIGH COURT CAUSE TITLE	DATE OF HIGH COURT JUDGMENT	NO. OF JUVENILES SENTENCED TO DEATH BY TRIAL COURTS	TIME SPENT ON DEATH ROW BEFORE HIGH COURT JUDGMENT
DELHI HIGH COURT	<i>State v. Jagtar & Ors</i>	12 November 2014	3	3 years, 11 months
MADRAS HIGH COURT	<i>Selvam v. The Inspector of Police, Jaihindpuram Police Station, Madurai</i>	25 November 2011	1	3 years, 3 months
PATNA HIGH COURT	<i>State of Bihar v. Chandan Kumar son of Rajendra Prasad</i>	1 September 2010	2	2 years, 8 months
PATNA HIGH COURT	<i>State of Bihar v. Ajay Singh & Ors</i>	16 April 2012	1	2 years, 3 months
PATNA HIGH COURT	<i>State of Bihar v. Sudhanshu Kumar @ Madhu Mangal</i>	13 March 2012	1	1 year, 8 months
DELHI HIGH COURT	<i>State v. Vinod @ Dantla</i>	19 November 2012	1	9 months

ENHANCEMENTS IN THE HIGH COURT

Despite the death sentence not being imposed by the trial courts, the High Courts have enhanced the punishment to death for seven prisoners (across six cases) in the past 15 years (**Table 10**). Three of these cases were from Maharashtra, and one each from Delhi, Jharkhand and Uttar Pradesh. For five out of these seven prisoners, the High Courts enhanced life imprisonment to death. For the other two prisoners, where the trial court had acquitted the accused, the High Courts reversed the decision of the trial court and sentenced them to death. Interestingly, none of these death sentences withstood the scrutiny of the Supreme Court. In appeal, the sentences of five of these seven prisoners were commuted by the Supreme Court, one prisoner was acquitted and the case of another prisoner was remitted back to the High Court.

OSCILLATING BETWEEN LIFE AND DEATH: *SATISH v. STATE AND SAHDEO & ORS v. STATE OF UTTAR PRADESH*

In death penalty cases, one often finds that different courts and even different judges of the same court or on the same bench differ with each other on the guilt of an accused, and the quantum of punishment to be imposed on the accused. The cases of Satish and

Satyendra, both prisoners from Uttar Pradesh, embody the contrast possible in death sentence cases, where judicial determinations at the three stages have oscillated between the extremes of acquittal and imposition of death penalty. Satish was acquitted by the Allahabad High Court in October 2003, after having been sentenced to death by the trial court. On an appeal filed by the state of Uttar Pradesh, the decision of the Allahabad High Court was reversed by the Supreme Court in 2005,¹⁵ again imposing the death penalty on Satish. Satish's death sentence was eventually commuted by President Pratibha Patil in May 2012.

On the other hand, Satyendra was sentenced to death by the Allahabad High Court in November 2003, after he had been acquitted of all charges by the trial court. In *Sahdeo & Ors v. State of Uttar Pradesh*,¹⁶ the Supreme Court reversed the judgment of the Allahabad High Court, and issued an order of acquittal in favour of Satyendra.

NATURE OF CRIME AND OUTCOME IN FIRST APPEAL

The nature of crime for which prisoners have been sentenced to death over the past 15 years and the outcome of these cases at the appellate level¹⁷ are two significant parameters in understanding the way the death penalty has been administered in India over the past decade-and-a-half. Though both these param-

¹⁵ (2005) 3 SCC 114.

¹⁶ (2004) 10 SCC 682.

¹⁷ Outcomes in first appeal comprise outcomes at the High Court in appeal against decisions given by ordinary trial courts and outcomes at the Supreme Court in appeal to decisions given by designated courts constituted under the Terrorist and Disruptive Activities (Prevention) Act, 1987.

Table 10 Death sentence imposed at first instance by High Courts: 2000–2015

HIGH COURT	SUPREME COURT CAUSE TITLE	DATE OF SUPREME COURT JUDGMENT	TRIAL COURT VERDICT	HIGH COURT VERDICT	NO. OF PRISONERS ENHANCED TO DEATH SENTENCE BY HIGH COURT	SUPREME COURT VERDICT
BOMBAY HIGH COURT	<i>Haresh Mohandas Rajput v. State of Maharashtra</i>	20 Sep 2011	Life imprisonment	Death sentence	1	Life imprisonment
BOMBAY HIGH COURT	<i>Ajay Pandit @ Jagdish Dayabhai Patel v. State of Maharashtra</i>	17 Jul 2012	Life imprisonment	Death sentence	1	Remitted to High Court
BOMBAY HIGH COURT	<i>Sham @ Kishore Bhaskarrao Matkari v. State of Maharashtra</i>	30 Sep 2011	Life imprisonment	Death sentence	1	Life imprisonment
DELHI HIGH COURT	<i>Santosh Kumar Singh v. State through CBI</i>	10 Jun 2010	Acquitted	Death sentence	1	Life imprisonment
JHARKHAND HIGH COURT	<i>Sheo Shankar Singh v. State of Jharkhand</i>	15 Feb 2011	Life imprisonment	Death sentence	2	Life imprisonment
ALLAHABAD HIGH COURT	<i>Sahdeo & Ors v. State Of U.P.</i>	30 Apr 2004	Acquitted	Death sentence	1	Acquitted

Table 11 Outcome in first appeal for different nature of crimes in India

NATURE OF CRIME	OUTCOME IN FIRST APPEAL	NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF PRISONERS WITHIN THE PARTICULAR NATURE OF CRIME
MURDER	Commutted	604	59.8%
<i>SIMPLICITER</i>	Acquitted	295	29.2%
	Confirmed	111	11%

For calculating the confirmation rate at the first appellate level, the cases decided by designated courts under TADA have been included.

eters are independent of each other and no causal connection is suggested between them, a better understanding may be formed about the manner of the imposition of the death penalty if the two are considered together.

The picture that emerges when considering the various outcomes for a particular offence is quite different from the overall proportion of death sentences that were commuted, set aside on guilt, or confirmed in first appeal for all offences (**Table 11**).¹⁸ While 14.4% of all death sentences given in the past 15 years in the country were confirmed by the High Courts, only 11% of the death sentences imposed by the trial courts for murder *simpliciter* were confirmed at the first appellate stage. On the other hand, the rate of confirmation of death sentences for both rape with murder and terror offences was greater than 30%, which is more than double the national rate of confirmation for all offences combined (14.4%). Another noticeable deviation was in cases of kidnapping with murder where the acquittal rate at the first appellate level was 35.6%, a proportion significantly higher than the acquittal rate for all offences (28.6%). None of the prisoners sentenced to death for drug offences by trial courts over the past 15 years had their sentences confirmed in first appeal.

Certain interesting trends also emerge when we examine this data in the other direction, i.e. the crime-wise composition of outcomes in first appeal (**Table 12**). Of the prisoners who were acquitted in the first appeal, 73.6% of prisoners were involved in murder *simpliciter* cases. Further, 75% of the prisoners whose sentences were commuted in first appeal were implicated in murder *simpliciter* cases. However, the crime-wise composition of death sentences confirmed presents a significantly different picture. Of the 217 death sentences confirmed in first appeal, one-fourth (26.3%, 57 prisoners) were for rape with murder. This reveals an interesting trend as the corresponding proportion of rape with murder in the overall death sentence figures from trial courts was merely 13.4%. Similarly, in death sentences for terror offences, their proportion in first appeal confirmations (7.4%, 16 prisoners) is double their proportion in overall death sentences imposed by trial courts (3.5%). As is evident, the proportion of death sentences for rape with murder and terror offences significantly increases as we move from the trial court to outcome in first appeal.

¹⁸ Both nature of crime and outcome in first appeal could be ascertained for 1,423 prisoners sentenced to death by trial courts.

Table 11 (Continued) Outcome in first appeal for different nature of crimes in India

NATURE OF CRIME	OUTCOME IN FIRST APPEAL	NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF PRISONERS WITHIN THE PARTICULAR NATURE OF CRIME
RAPE WITH MURDER	Commutted	88	46.6%
	Acquitted	44	23.3%
	Confirmed	57	30.2%
KIDNAPPING WITH MURDER	Commutted	58	43%
	Acquitted	48	35.6%
	Confirmed	29	21.5%
TERROR OFFENCES	Commutted	30	58.8%
	Acquitted	5	9.8%
	Confirmed	16	31.4%
DACOITY WITH MURDER	Commutted	21	63.6%
	Acquitted	8	24.2%
	Confirmed	4	12.1%
DRUG OFFENCES	Commutted	4	80%
	Acquitted	1	20%

Table 12 Nature of crime composition for different outcomes in first appeal

OUTCOME IN FIRST APPEAL	NATURE OF CRIME	NO. OF PRISONERS SENTENCED TO DEATH BY TRIAL COURTS	% OF PRISONERS WITHIN THE PARTICULAR OUTCOME
COMMUTED	Murder <i>simpliciter</i>	604	75%
	Rape with murder	88	10.9%
	Kidnapping with murder	58	7.2%
	Terror offences	30	3.7%
	Dacoity with murder	21	2.6%
	Drug offences	4	0.5%
ACQUITTED	Murder <i>simpliciter</i>	295	73.6%
	Rape with murder	44	11%
	Kidnapping with murder	48	12%
	Terror offences	5	1.2%
	Dacoity with murder	8	2%
	Drug offences	1	0.2%
CONFIRMED	Murder <i>simpliciter</i>	111	51.2%
	Rape with murder	57	26.3%
	Kidnapping with murder	29	13.4%
	Terror offences	16	7.4%
	Dacoity with murder	4	1.8%

For calculating the confirmation rate at the first appellate level, the cases decided by designated courts under TADA have been included.

STATE-WISE ANALYSIS OF DEATH SENTENCE CASES IN FIRST APPEAL

As expected, the state-level narratives significantly differ from the pan-India picture when considering the nature of crime composition of death sentences (**Table 13**).

NATURE OF CRIME

While 70.8% of death sentences at the all-India level were for murder *simpliciter*, the corresponding figure for Uttar Pradesh was 84.5% (306 out of 362 prisoners), which is the maximum number of prisoners sentenced to death for a particular nature of crime in any state. Amongst states with 30 or more prisoners sentenced to death, Kerala (32 out of 35 prisoners, 91.4% of all prisoners sentenced to death in the state), Jharkhand (56 out of 70 prisoners, 80%), Punjab (58 out of 75 prisoners, 77.3%), Odisha (35 out of 46 prisoners, 76.1%) and Rajasthan (33 out of 44 prisoners, 75%) showed death sentences for murder *simpliciter* at a rate higher than the national proportion of death sentences.

While Bihar and Maharashtra imposed the most death sentences in the country after Uttar Pradesh, both of them sentenced prisoners to death for murder *simpliciter* at a rate lower than the national proportion. In Bihar, 191 prisoners (68.7% of 278 prisoners) were sentenced to death for murder *simpliciter*

while the corresponding figure for Maharashtra was significantly lower than the national average at 50% (66 out of 132 prisoners). In terms of national figures at the trial court level, death sentences for rape with murder comprised 13.4 %. In the state-wise analysis for death sentences for rape with murder, Uttar Pradesh had the maximum number of such prisoners (42 out of 362 prisoners, 11.6%) while Uttarakhand had the highest proportion of such prisoners within any state (11 out of 35 prisoners, 31.4%). Amongst other states with more than 30 prisoners sentenced to death, the proportion of prisoners sentenced to death for rape with murder in Rajasthan (10 out of 44 prisoners, 22.7%), Haryana (12 out of 54 prisoners, 22.2%), Gujarat (11 out of 52 prisoners, 21.2%) and Tamil Nadu (13 out of 65 prisoners, 20%) was higher than the national proportion (13.4%). Out of all states where 30 or more death sentences were imposed, Bihar had the lowest proportion (19 out of 278 prisoners, 6.8%) of prisoners sentenced to death for rape with murder.

Death sentences for kidnapping with murder comprised 9.7% of the all-India number of death sentences but in the state-wise figures Bihar had the highest number of death sentences in this category (48 out of 278 prison-

ers, 17.3%). Amongst states with more than 30 prisoners sentenced to death, Haryana (11 out of 54 prisoners, 20.4%) and Maharashtra (20 out of 132 prisoners, 15.2%) had a significantly higher proportion of prisoners sentenced to death for kidnapping with murder as compared to the national average.

As far as terror offences are concerned,¹⁹ only five states have invoked the death penalty in the past 15 years—Maharashtra, Karnataka, Gujarat, Delhi and Bihar. While 28 death sentences were given by ordinary trial courts for terror offences, another 23 were inflicted by special courts constituted under TADA. While the maximum number of prisoners sentenced to death for committing terror offences was in Maharashtra (16 out of 132 prisoners, 12.1%), the highest proportion of prisoners sentenced to death under terror offences within a state was from Karnataka (12 out of 74 prisoners, 16.2%). Eight prisoners each were sentenced to death for terror offences in Gujarat and Delhi while another seven prisoners were given the death penalty for terror offences in Bihar.

Over 15 years, 33 prisoners from eight states have been sentenced to death for dacoity with murder. Of these, 13 out of the 33 prisoners were sentenced to death in Bihar, and six each in Karnataka and Maharashtra. Amongst all the categories of offences, the

least number of prisoners were sentenced to death for drug offences. Of the five prisoners in this category over the past 15 years, two were sentenced to death in Maharashtra while one prisoner each was given the death penalty for drug offences in Gujarat, Haryana and Punjab.

The analysis of the nature of crime so far looked at the state figures. However, on examining the data the other way i.e. starting with the total figures for each kind of crime and then looking at their state-wise composition, we come across other interesting details (**Table 14**). Bihar accounted for 18.9% of all the prisoners sentenced to death in the country. However, as regards two categories of crime, the state's percentage for those sentenced to death is comparatively much higher. Of all prisoners in India sentenced to death for kidnapping with murder it accounts for 33.6% and of those sentenced for dacoity with murder, its share is 39.4%. Compared to their proportion of death sentences for other crimes, Maharashtra, Karnataka and Gujarat account for an excessively high number of death sentences for terror offences. While Karnataka, Maharashtra and Gujarat contributed 9%, 5% and 3.5% respectively to all death sentences in India, their contribution to death sentences for terror offences was 31.4%, 23.5% and 15.7% respectively.

¹⁹ This category includes cases where the prisoners were convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987, Prevention of Terrorism Act, 2002, Unlawful Activities (Prevention) Act, 1967, and the offence of 'waging war' under Section 121 of the Indian Penal Code, 1860. It is to be noted that the study set comprises only cases where death sentence was imposed by trial courts in 2000 or later. Consequently, the figures for terror offences do not include the 26 persons who were sentenced to death in the Rajiv Gandhi Assassination case by a court constituted under the Terrorist and Disruptive Activities (Prevention) Act, 1987 in January 1998.

Table 13 Nature of crime composition of death sentence cases in states across India

	<i>Murder simpliciter</i>	Rape with murder	Kidnapping with murder	Terror offences
ANDHRA PRADESH	14 87.5%	2 12.5%		
ARUNACHAL PRADESH	1 100.0%			
ASSAM	11 55.0%	5 25.0%	4 20.0%	
BIHAR	191 68.7%	19 6.8%	48 17.3%	7 2.5%
CHATTISGARH	19 73.1%	5 19.2%	1 3.8%	
DELHI	51 63.8%	15 18.8%	6 7.5%	8 10.0%
GUJARAT	27 51.9%	11 21.2%	3 5.8%	8 15.4%
HARYANA	30 55.6%	12 22.2%	11 20.4%	
HIMACHAL PRADESH	1 100.0%			
JAMMU & KASHMIR	1 100.0%			
JHARKHAND	56 80.0%	6 8.6%	8 11.4%	
KARNATAKA	38 51.4%	8 10.8%	10 13.5%	12 16.2%
KERALA	32 91.4%	3 8.6%		
MAHARASHTRA	66 50.0%	22 16.7%	20 15.2%	16 12.1%
ODISHA	35 76.1%	7 15.2%	4 8.7%	
PUNJAB	58 77.3%	6 8.0%	10 13.3%	
RAJASTHAN	33 75.0%	10 22.7%		
TAMIL NADU	46 70.8%	13 20.0%	3 4.6%	
TRIPURA	1 100.0%			
UTTAR PRADESH	306 84.5%	42 11.6%	13 3.6%	
UTTARAKHAND	22 62.9%	11 31.4%	2 5.7%	

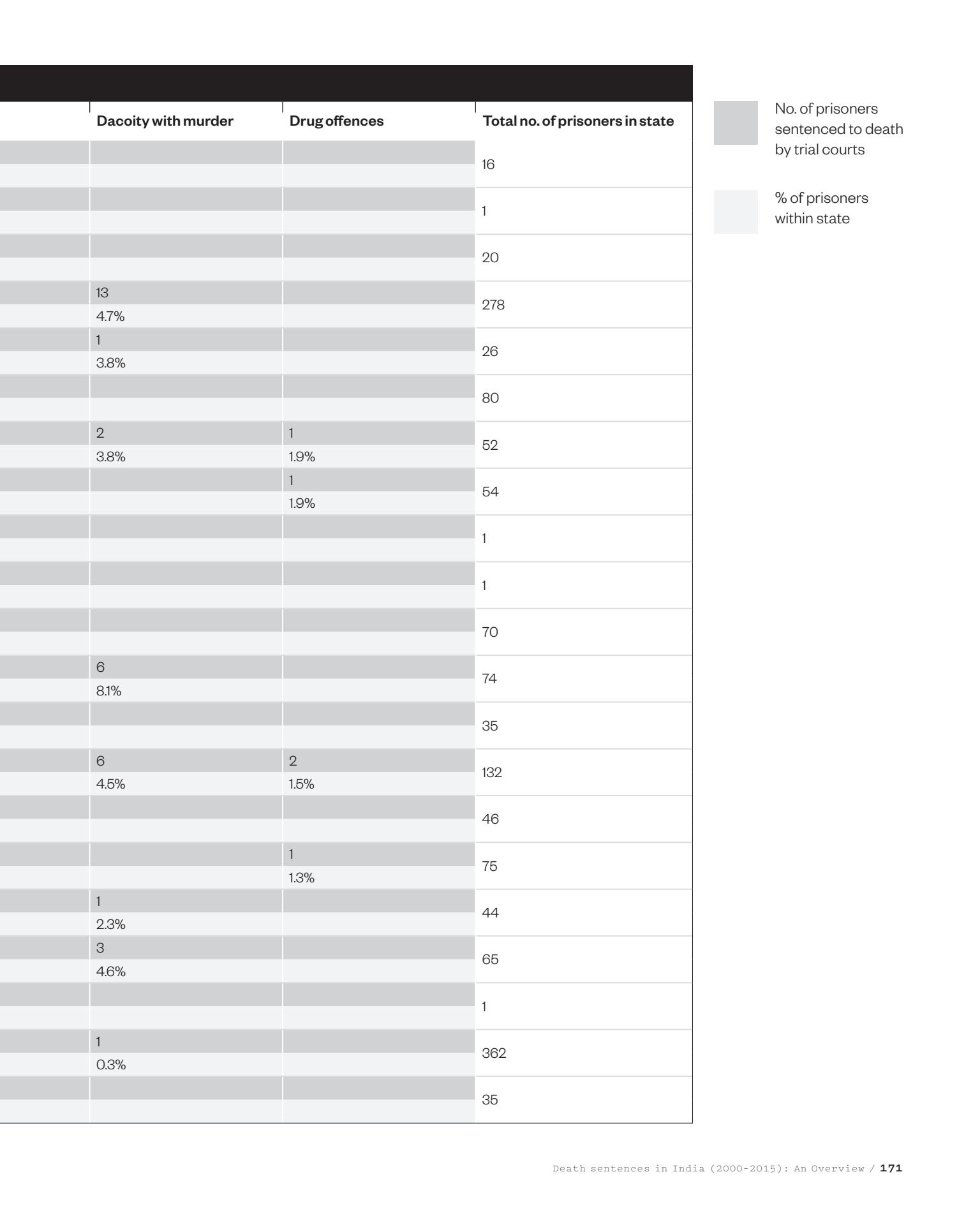


Table 14 State-wise composition for each nature of crime category

STATE	NATURE OF CRIME (NoC)					
	Murder <i>simpliciter</i>		Rape with murder		Kidnapping with murder	
	No. of prisoners	% of prisoners for particular NoC in India	No. of prisoners	% of prisoners for particular NoC in India	No. of prisoners	% of prisoners for particular NoC in India
ANDHRA PRADESH	14	1.3%	2	1.0%		
ARUNACHAL PRADESH	1	0.1%				
ASSAM	11	1.1%	5	2.5%	4	2.8%
BIHAR	191	18.4%	19	9.6%	48	33.6%
CHHATTISGARH	19	1.8%	5	2.5%	1	0.7%
DELHI	51	4.9%	15	7.6%	6	4.2%
GUJARAT	27	2.6%	11	5.6%	3	2.1%
HARYANA	30	2.9%	12	6.1%	11	7.7%
HIMACHAL PRADESH	1	0.1%				
JAMMU & KASHMIR	1	0.1%				
JHARKHAND	56	5.4%	6	3.0%	8	5.6%
KARNATAKA	38	3.7%	8	4.1%	10	7.0%
KERALA	32	3.1%	3	1.5%		
MAHARASHTRA	66	6.4%	22	11.2%	20	14.0%
ODISHA	35	3.4%	7	3.6%	4	2.8%
PUNJAB	58	5.6%	6	3.0%	10	7.0%
RAJASTHAN	33	3.2%	10	5.1%		
TAMIL NADU	46	4.4%	13	6.6%	3	2.1%
TRIPURA	1	0.1%				
UTTAR PRADESH	306	29.5%	42	21.3%	13	9.1%
UTTARAKHAND	22	2.1%	11	5.6%	2	1.4%
TOTAL NO. OF PRISONERS	1,039		197		143	

Prisoners sentenced to death in India by offence category (2000-2015)						
Terror offences		Dacoity with murder		Drug offences		
No. of prisoners	% of prisoners for particular NoC in India	No. of prisoners	% of prisoners for particular NoC in India	No. of prisoners	% of prisoners for particular NoC in India	% of prisoners in India
						1.1%
						0.1%
						1.4%
7	13.7%	13	39.4%			18.9%
		1	3.0%			1.8%
8	15.7%					5.4%
8	15.7%	2	6.1%	1	20%	3.5%
				1	20%	3.7%
						0.1%
						0.1%
						4.8%
12	23.5%	6	18.2%			5.0%
						2.4%
16	31.4%	6	18.2%	2	40%	9.0%
						3.1%
				1	20%	5.1%
		1	3.0%			3.0%
		3	9.1%			4.4%
						0.1%
		1	3.0%			24.7%
						2.4%
51		33		5		

OUTCOME IN THE HIGH COURT

A state-wise analysis of the decisions of High Courts reveals interesting trends (**Table 15**). In Bihar, which has the second highest number of death sentences imposed by trial courts (260 prisoners), 49.2% prisoners were acquitted by the Patna High Court. Further, 46.2% of the death sentences were commuted, and only 4.6% were confirmed by the Patna High Court. A similar trend was observed in Uttar Pradesh, where trial courts have sentenced 464 prisoners to death. Of the 399 prisoners whose outcomes could be traced at the High Court level, the sentences of 62.2% prisoners were commuted to life imprisonment, 31.8% were acquitted, and only 6% of the death sentences were confirmed by the Allahabad High Court.

After the Patna High Court, the Madras High Court was found to have acquitted the maximum proportion of prisoners sentenced to death by the trial courts, acquitting 40.3% of the 67 prisoners thus sentenced.

An examination of the decisions of the Andhra Pradesh High Court reveals that it has not confirmed a single death sentence in the past 15 years. In contrast, the Bombay High Court has confirmed 39.7% of the death sentences referred to it, which is more than twice the national rate of confirmation for all death sentence cases (14.4%). However, even at the Bombay High Court, 40.5% of the death sentences were commuted, and 19.8% of the prisoners sentenced to death by trial courts were acquitted.

NATURE OF CRIME AND OUTCOME IN FIRST APPEAL

In many states, the rate of confirmation, acquittal and commutation of death sentences in first appeal for the crimes considered was significantly different from the national rate for the same (**Table 16**).

Amongst states where we have information on nature of crime as well as outcome at the first appellate level for 30 or more prisoners, Punjab (34.5% of all prisoners sentenced to death in the state for committing murder *simpliciter*), Kerala (28.1%) and Maharashtra (23.1%), confirmed death sentences imposed for the crime of murder *simpliciter* at a rate more than double the national rate (11%).

As far as death sentences for rape with murder are concerned, the High Courts in Maharashtra (68.2% of all prisoners sentenced to death in the state under rape with murder), Karnataka (57.1%), Delhi (53.8%) and Punjab (50%) confirmed such sentences at a rate far higher than the national rate (30.2%).

Similarly, when we look at the confirmation rates for death sentences in kidnapping with murder cases, the High Courts in Maharashtra (47.4% of all prisoners sentenced to death in the state for committing kidnapping with murder) and Punjab (40%) confirmed such death sentences at almost double the national rate (21.5%). Interestingly, none of the death sentences imposed in Bihar (43) and Haryana (11) for committing kidnapping with murder were confirmed by the respective High Courts.

Table 15 State-wise outcomes of death reference cases decided by High Courts in India: 2000–2015

STATE	NO. OF PRISONERS ACQUITTED	% OF PRISONERS ACQUITTED IN THE STATE	NO. OF PRISONERS COMMUTED	% OF PRISONERS COMMUTED IN THE STATE	NO. OF PRISONERS CONFIRMED	% OF PRISONERS CONFIRMED IN THE STATE	TOTAL NO. OF PRISONERS IN THE STATE
ANDHRA PRADESH	5	20.8%	19	79.2%	0	0%	24
ARUNACHAL PRADESH	0	0%	1	100%	0	0%	1
ASSAM	1	3.7%	18	66.7%	8	29.6%	27
BIHAR	128	49.2%	120	46.2%	12	4.6%	260
CHHATTISGARH	5	18.5%	11	40.7%	11	40.7%	27
DELHI	16	22.2%	39	54.2%	17	23.6%	72
GUJARAT	5	9.6%	39	75%	8	15.4%	52
HARYANA	12	22.2%	38	70.4%	4	7.4%	54
HIMACHAL PRADESH	0	0%	1	100%	0	0%	1
JAMMU & KASHMIR	0	0%	0	0%	1	100%	1
JHARKHAND	24	34.3%	36	51.4%	10	14.3%	70
KARNATAKA	21	28.4%	40	54.1%	13	17.6%	74
KERALA	6	11.8%	33	64.7%	12	23.5%	51
MAHARASHTRA	24	19.8%	49	40.5%	48	39.7%	121
ODISHA	10	25%	24	60%	6	15%	40
PUNJAB	5	6.6%	45	59.2%	26	34.2%	76
RAJASTHAN	6	14.3%	30	71.4%	6	14.3%	42
TAMIL NADU	27	40.3%	33	49.3%	7	10.4%	67
TRIPURA	0	0%	0	0%	1	100%	1
UTTAR PRADESH	127	31.8%	248	62.2%	24	6%	399
UTTARAKHAND	6	17.1%	27	77.1%	2	5.7%	35

Table 16 Outcome in first appeal for different nature of crimes across states in India

STATE	NATURE OF CRIME	OUTCOME IN 1ST APPEAL			No. of prisoners sentenced to death by trial courts
		Acquitted	Commutted	Confirmed	
ANDHRA PRADESH	Murder <i>simpliciter</i>	2	12		
		14.3%	85.7%		
ARUNACHAL PRADESH	Rape with murder		2		
			100.0%		
ASSAM	Murder <i>simpliciter</i>		1		
			100.0%		
BIHAR	Murder <i>simpliciter</i>	1	6	4	
		9.1%	54.5%	36.4%	
CHHATISGARH	Kidnapping with murder			2	
				100.0%	
DELHI	Rape with murder		3	2	
			60.0%	40.0%	
JHARKHAND	Murder <i>simpliciter</i>	90	83	9	
		49.5%	45.6%	4.9%	
KARNATAKA	Dacoity with murder	1	12		
		7.7%	92.3%		
MADHYA PRADESH	Kidnapping with murder	25	18		
		58.1%	41.9%		
MANIPUR	Rape with murder	7	6	3	
		43.8%	37.5%	18.8%	
MIZORAM	Terror offences	1	2	4	
		14.3%	28.6%	57.1%	
NAGALAND	Murder <i>simpliciter</i>	5	9	5	
		26.3%	47.4%	26.3%	
PUNJAB	Dacoity with murder			1	
				100.0%	
RJASIKHAR	Kidnapping with murder			1	
				100.0%	
SARAKHAN	Rape with murder		1	4	
			20.0%	80.0%	
SIKKIM	Murder <i>simpliciter</i>	13	30	5	
		27.1%	62.5%	10.4%	
TAMIL NADU	Kidnapping with murder	2	2	2	
		33.3%	33.3%	33.3%	
TOMORO	Rape with murder		6	7	
			46.2%	53.8%	

Table 16 Outcome in first appeal for different nature of crimes across states in India

STATE	NATURE OF CRIME	OUTCOME IN 1ST APPEAL			No. of prisoners sentenced to death by trial courts
		Acquitted	Commutted	Confirmed	
DELHI	Terror offences	1	3	4	
		12.5%	37.5%	50.0%	
	Drug offences		1		
			100.0%		
GUJARAT	Murder <i>simpliciter</i>	2	23	2	
		7.4%	85.2%	7.4%	
	Dacoity with murder		2		
			100.0%		
HARYANA	Kidnapping with murder	1	2		
		33.3%	66.7%		
	Rape with murder	2	6	3	
		18.2%	54.5%	27.3%	
HIMACHAL PRADESH	Terror offences		5	3	
			62.5%	37.5%	
	Drug offences		1		
			100.0%		
JAMMU & KASHMIR	Murder <i>simpliciter</i>	3	21	3	
		11.1%	77.8%	11.1%	
	Kidnapping with murder	5	6		
		45.5%	54.5%		
JHARKHAND	Rape with murder	4	7	1	
		33.3%	58.3%	8.3%	
	Murder <i>simpliciter</i>		1		
			100.0%		
KARNATAKA	Murder <i>simpliciter</i>			1	
				100.0%	
	Murder <i>simpliciter</i>	19	29	8	
		33.9%	51.8%	14.3%	
KARNATAKA	Kidnapping with murder	3	4	1	
		37.5%	50.0%	12.5%	
	Rape with murder	2	3	1	
		33.3%	50.0%	16.7%	
KARNATAKA	Murder <i>simpliciter</i>	9	24	5	
		23.7%	63.2%	13.2%	
	Dacoity with murder	6			
		100.0%			

Table 16 Outcome in first appeal for different nature of crimes across states in India

STATE	NATURE OF CRIME	OUTCOME IN 1ST APPEAL			No. of prisoners sentenced to death by trial courts
		Acquitted	Commutted	Confirmed	
KARNATAKA	Kidnapping with murder	2	5	3	
		20.0%	50.0%	30.0%	
	Rape with murder	1	2	4	
		14.3%	28.6%	57.1%	
	Terror offences	3	9		
		25.0%	75.0%		
KERALA	Murder <i>simpliciter</i>	3	20	9	
		9.4%	62.5%	28.1%	
	Rape with murder			2	
				100.0%	
MAHARASHTRA	Drug offences	1	1		
		50.0%	50.0%		
	Murder <i>simpliciter</i>	17	33	15	
		26.2%	50.8%	23.1%	
	Dacoity with murder		3	3	
			50.0%	50.0%	
	Kidnapping with murder	2	8	9	
		10.5%	42.1%	47.4%	
	Rape with murder	3	4	15	
		13.6%	18.2%	68.2%	
ODISHA	Terror offences		11	5	
			68.8%	31.3%	
	Murder <i>simpliciter</i>	9	19	1	
		31.0%	65.5%	3.4%	
	Kidnapping with murder			4	
PUNJAB				100.0%	
	Rape with murder	1	5	1	
		14.3%	71.4%	14.3%	
	Drug offences		1		
			100.0%		
	Murder <i>simpliciter</i>	2	34	19	
		3.6%	61.8%	34.5%	
	Kidnapping with murder	3	3	4	
		30.0%	30.0%	40.0%	
	Rape with murder		3	3	
			50.0%	50.0%	

Table 16 Outcome in first appeal for different nature of crimes across states in India

STATE	NATURE OF CRIME	OUTCOME IN 1ST APPEAL			No. of prisoners sentenced to death by trial courts
		Acquitted	Commutted	Confirmed	
RAJASTHAN	Murder <i>simpliciter</i>	3	25	2	
		10.0%	83.3%	6.7%	
	Dacoity with murder	1			
			100.0%		
	Rape with murder	2	4	4	
		20.0%	40.0%	40.0%	
TAMIL NADU	Murder <i>simpliciter</i>	22	20	4	
		47.8%	43.5%	8.7%	
	Dacoity with murder	3			
			100.0%		
	Kidnapping with murder	2		1	
			66.7%	33.3%	
TRIPURA	Rape with murder	5	5	2	
		41.7%	41.7%	16.7%	
	Murder <i>simpliciter</i>			1	
				100.0%	
	Murder <i>simpliciter</i>	91	198	16	
		29.8%	64.9%	5.2%	
UTTAR PRADESH	Dacoity with murder	1.0			
		100.0%			
	Kidnapping with murder	4	7	2	
		30.8%	53.8%	15.4%	
	Rape with murder	16	21	5	
		38.1%	50.0%	11.9%	
UTTARAKHAND	Murder <i>simpliciter</i>	4	16	2	
		18.2%	72.7%	9.1%	
	Kidnapping with murder	1	1		
		50.0%	50.0%		
	Rape with murder	1	10		
		9.1%	90.9%		

For calculating the confirmation rate at the first appellate level, the cases decided by designated courts under TADA have been included.

At the all-India level, 31.4% of all death sentences for terror offences were confirmed in first appeal. However, the appellate courts when dealing with cases from Bihar and Delhi confirmed death sentences for terror offences at a significantly higher rate (57.1% and 50% respectively) than the national average. None of the death sentences imposed by trial courts in Karnataka for terror offences (12 prisoners) were confirmed.

Amongst the eight states where death sentences have been imposed for dacoity with murder by the trial courts, only the Bombay High Court and the Chhattisgarh High Court have confirmed such sentences. In Maharashtra, death sentences imposed on three prisoners out of the six given the death penalty for committing dacoity with murder was confirmed. None of the 13 death sentences in Bihar for dacoity with murder were confirmed. In Karnataka, all six prisoners sentenced to death for dacoity with murder were acquitted by the Karnataka High Court.

Of the five drug offences related death sentences, four were commuted to life

imprisonment while one prisoner was acquitted (Bombay High Court).

We observed certain striking aspects while considering the figures for nature of crime and outcome in first appeal within a state. In many states, there was a significant variation between the overall rate of confirmation in the state and the confirmation rate in cases of rape with murder and terror offences. Confirmation rate for rape with murder was significantly higher than the overall state confirmation rate in Kerala, Maharashtra, Karnataka, Delhi, Rajasthan, Gujarat, Bihar, Tamil Nadu and Uttar Pradesh.²⁰ **Table 17** presents a comparison between the overall confirmation rate in the state vis-a-vis confirmation rate for rape with murder. Similarly, the rate of confirmation for terror cases was substantially higher than the overall confirmation rate in Bihar, Delhi and Gujarat. Please refer to **Table 18** to see the difference in overall confirmation rate in the state and the confirmation rate for terror offences for these three states.

²⁰ Significant variations have been presented only for states for which information on nature of crime and outcome of cases for 30 or more prisoners was available.

Table 17 Overall state confirmation rate v/s state confirmation rate for rape with murder

STATE	OVERALL RATE OF CONFIRMATION	CONFIRMATION RATE FOR RAPE WITH MURDER
KERALA	32.4%	100%
KARNATAKA	16.4%	57.1%
MAHARASHTRA	36.2%	68.2%
DELHI	24%	53.8%
RAJASTHAN	14.6%	40%
BIHAR	6.1%	18.8%
GUJARAT	15.4%	27.3%
TAMIL NADU	10.9%	16.7%
UTTAR PRADESH	6.4%	11.9%

For calculating the confirmation rate at the first appellate level, the cases decided by designated courts under TADA have been included.

Table 18 Overall state confirmation rate v/s state confirmation rate for terror offences

STATE	OVERALL RATE OF CONFIRMATION	CONFIRMATION RATE FOR TERROR OFFENCES
BIHAR	6.1%	57.1%
DELHI	24%	50%
GUJARAT	15.4%	37.5%

For calculating the confirmation rate at the first appellate level, the cases decided by designated courts under TADA have been included.

SIGNIFICANT DEVIATIONS: TRIAL COURT V/S FIRST APPEAL

There are noticeable deviations when the proportion of prisoners sentenced to death for rape with murder and those under terror offences are compared at the trial and first appellate stages. In many states, amongst all cases where death sentence was confirmed, the proportion of prisoners whose sentence was confirmed for rape with murder was significantly higher than the respective proportion of prisoners given the death penalty for this offence at the trial court, as can be seen in **Table 19**. A rare exception was noted in the case of Uttarakhand where no death sentence imposed for rape with murder was confirmed

in first appeal, despite a significant proportion of prisoners (31.4%) being sentenced to death for this offence in the trial courts.

Out of the five states where death sentences were imposed for terror offences at the trial court, Bihar, Delhi and Gujarat had a significantly larger proportion of prisoners whose death sentences were confirmed in first appeal as compared to the proportion of prisoners sentenced to death for terror offences at the trial court (**Table 20**). On the other hand, while Karnataka convicted 16.4% of all prisoners sentenced to death for committing terror offences at the trial court stage, none of these were confirmed in first appeal.

DEATH SENTENCE CASES IN THE SUPREME COURT OF INDIA

Over the past 15 years, 239 prisoners have approached the Supreme Court to appeal against the confirmation of their death sentences. While cases of 212 prisoners were decided by the Supreme Court, cases concerning another 22 prisoners were pending.²¹ While the cases of 189 prisoners had come up for appeal before the Supreme Court from a High Court order of confirmation of death sentence or enhancement to death sentence, the cases of 23 prisoners came as

first appeals against death sentences given by special courts constituted under TADA. An analysis of these outcomes reveals that the Supreme Court commuted 60.9% of the death sentences (129 out of the 212 death sentences that were decided) and acquitted a further 8% (17 prisoners). Therefore, while the Supreme Court cumulatively set aside 68.9% of the death sentences, it confirmed only 31.1% (66 out of 212 death sentences), as can be seen in **Table 21**.

²¹ Apart from these, one case was sent for retrial by the Supreme Court, one was remitted to the High Court and another was abated. Case of one prisoner whose death sentence was confirmed by the High Court could not be traced at the Supreme Court. Yet another case could not be decided as the prisoner was absconding.

Table 19 Proportion of death sentences for rape with murder at trial court v/s proportion of death sentences confirmed for rape with murder amongst all confirmations at first appeal

STATE	PROPORTION OF PRISONERS SENTENCED TO DEATH FOR RAPE WITH MURDER AT TRIAL COURT	PROPORTION OF DEATH SENTENCES CONFIRMED FOR RAPE WITH MURDER AMONGST ALL CONFIRMATIONS AT FIRST APPEAL
RAJASTHAN	22.7%	66.7%
KARNATAKA	10.8%	33.3%
DELHI	18.8%	38.9%
GUJARAT	21.2%	37.5%
MAHARASHTRA	16.7%	31.9%
BIHAR	6.8%	18.8%
KERALA	8.6%	18.2%
UTTAR PRADESH	11.6%	21.7%

Table 20 Proportion of death sentences for terror offences at trial court v/s proportion of death sentences confirmed for terror offences amongst all confirmations at first appeal

STATE	PROPORTION OF PRISONERS SENTENCED TO DEATH FOR TERROR OFFENCES AT TRIAL COURT	PROPORTION OF DEATH SENTENCES CONFIRMED FOR TERROR OFFENCES AMONGST ALL CONFIRMATIONS AT FIRST APPEAL
BIHAR	2.5%	25%
GUJARAT	15.4%	37.5%
DELHI	10%	22.2%

Amongst states with significant number of death sentences confirmed at the High Court, the Supreme Court upheld the largest number of death sentences from Maharashtra (**Table 22**). Amongst the 42 death penalty cases decided by the Supreme Court in appeal against the final order and judgment of the Bombay High Court, 16 death sentences (38.1%) were upheld. The second highest number of confirmations of death sentences at the Supreme Court were from the Allahabad High Court, with the Supreme Court upholding the death sentence of nine out of the 24 prisoners (37.5%) on whom the death penalty was imposed. A significant contrast is Gujarat, where the Supreme Court did not uphold a single death sentence that had been confirmed by the Gujarat High Court. Of the eight death sentences confirmed by the Gujarat High Court, the sentences of four prisoners were commuted, while the Supreme Court acquitted the other four persons. The only case reaching the Supreme Court from the Tripura High Court ended in commutation.

The Supreme Court commuted the maximum number of death sentences from Maharashtra i.e. 26 death sentences from the state were commuted, which comprised 61.9% of the death sentences imposed by the Bombay High Court. While the all-India commutation rate was 59.8%, the Supreme Court commuted 22 death sentences imposed by the Punjab & Haryana High Court, at a rate of 78.6%. Further, the Supreme Court commuted eight out of the 12 (66.7%) death sentences imposed by the Patna High Court.

Of the 16 acquittals in the Supreme Court in appeals against death sentences imposed by High Courts, four prisoners each were acquitted in appeal against the death sentences imposed by the Gujarat High Court and the Kerala High Court.

ENHANCEMENTS BY THE SUPREME COURT

In the past 15 years, the Supreme Court has enhanced the punishment or reversed a judgment of acquittal into a death sentence

Table 21 Outcomes of death sentence cases in the Supreme Court: 2000–2015

OUTCOME IN SUPREME COURT	NO. OF PRISONERS SENTENCED TO DEATH BY HIGH COURTS OR TADA COURTS	% OF PRISONERS SENTENCED TO DEATH BY HIGH COURTS OR TADA COURTS
ACQUITTED	17	8%
COMMUTED	129	60.9%
CONFIRMED	66	31.1%
TOTAL	212	

Table 22 Outcomes of death sentence cases in the Supreme Court in appeal from different High Courts

HIGH COURT	NO. OF PRISONERS ACQUITTED	% OF PRISONERS ACQUITTED	NO. OF PRISONERS COMMUTED
GAUHATI HIGH COURT	1	14.3%	4
PATNA HIGH COURT	0	0%	8
CHHATTISGARH HIGH COURT	0	0%	4
DELHI HIGH COURT	0	0%	7
GUJARAT HIGH COURT	4	50%	4
JHARKHAND HIGH COURT	1	10%	5
KARNATAKA HIGH COURT	0	0%	7
KERALA HIGH COURT	4	40%	5
BOMBAY HIGH COURT	0	0%	26
ORISSA HIGH COURT	3	50%	2
PUNJAB & HARYANA HIGH COURT	2	7.1%	22
RAJASTHAN HIGH COURT	0	0%	2
MADRAS HIGH COURT	0	0%	2
TRIPURA HIGH COURT	0	0%	1
ALLAHABAD HIGH COURT	1	4.2%	14
UTTARAKHAND HIGH COURT	0	0%	0
GRAND TOTAL	16	8.5%	113

% OF PRISONERS COMMUTED	NO. OF PRISONERS CONFIRMED	% OF PRISONERS CONFIRMED	TOTAL NO. OF PRISONERS
57.1%	2	28.6%	7
66.7%	4	33.3%	12
80%	1	20%	5
70%	3	30%	10
50%	0	0%	8
50%	4	40%	10
53.8%	6	46.2%	13
50%	1	10%	10
61.9%	16	38.1%	42
33.3%	1	16.7%	6
78.6%	4	14.3%	28
40%	3	60%	5
33.3%	4	66.7%	6
100%	0	0%	1
58.3%	9	37.5%	24
0%	2	100%	2
59.8%	60	31.7%	189

for 10 prisoners in four cases (**Table 23**). In two cases, the Supreme Court enhanced the punishment from life imprisonment to death penalty for three prisoners from Maharashtra, and for two prisoners from Haryana. Four prisoners from Karnataka, Simon, Gnana Prakasam, Bilavendra and Meesai Madaiah, were convicted and sentenced to life imprisonment under TADA by the designated court in the 1993 Palar landmine blast case. However, in January 2004, the Supreme Court enhanced their punishment to death sentence.²¹ By virtue of being sentenced to death for the first time only in the Supreme Court, they were left with no possibility of appealing against this decision.²² In the case of *State of Uttar Pradesh v. Satish*,²³ the Supreme Court reversed the judgment of acquittal by the Allahabad High Court and sentenced the prisoner to death.

**SENTENCED TO DEATH BY
TWO COURTS BUT ACQUITTED
IN THE SUPREME COURT**

Over the past 15 years, there were 15 individuals who were sentenced to death by the trial court, had their death sentences confirmed by

the High Court, and were eventually acquitted by the Supreme Court. **Table 24** shows the average time spent by these persons on death row before being finally acquitted by the Supreme Court.

These persons, though far less in number than the prisoners whose sentence is commuted by the Supreme Court, represent a vital set. In these cases, the highest appellate level was of the view that the guilt of the concerned prisoners could not be proved, while the two prior stages of legal process had found them guilty and sentenced them to death. These persons spent an average of three and a half years (41.1 months) on death row before being ultimately acquitted of all charges by the Supreme Court. Amongst such cases, individuals from Gujarat spent the maximum average duration on death row before acquittal, wherein four prisoners in two cases spent an astonishing average of six years and seven months (79.3 months) on death row before being acquitted by the Supreme Court. These four individuals include three prisoners (out of the total six in the case) who were acquitted by the Supreme Court in May 2014 in the 2002 Akshardham Temple Attack case.²⁵

²² (2004) 2 SCC 694.

²³ Their death sentences were ultimately commuted by the Supreme Court in *Shatrughan Chauhan & Anr v. Union of India & Ors* (2014) 3 SCC 1 on the ground of inordinate and unexplained delay by the executive in deciding their mercy petitions. It may be noted that their death sentences were commuted in a separate writ petition and not as a review of the Supreme Court decision in January 2004, which enhanced their sentence of life imprisonment.

²⁴ (2005) 3 SCC 114.

²⁵ (2014) 7 SCC 716.

Table 23 Enhancements to death sentence in the Supreme Court: 2000–2015

HIGH COURT	SUPREME COURT CAUSE TITLE	DATE OF SUPREME COURT JUDGMENT	TRIAL COURT JUDGMENT	HIGH COURT JUDGMENT	SUPREME COURT JUDGMENT	NO. OF PRISONERS WHOSE SENTENCES WERE ENHANCED BY SUPREME COURT
- *	<i>Simon & Ors v. State of Karnataka</i>	29 January 2004	Life imprisonment	-*	Death sentence	4
ALLAHABAD HIGH COURT	<i>State of UP v. Satis</i>	8 February 2005	Death sentence	Acquittal	Death sentence	1
PUNJAB & HARYANA HIGH COURT	<i>Ram Singh v. Sonia & Ors</i>	15 February 2007	Death sentence	Life imprisonment	Death sentence	2
BOMBAY HIGH COURT	<i>Ankush Maruti Shinde & Ors v. State of Maharashtra</i>	30 April 2009	Death sentence	Life imprisonment	Death sentence	3

*This case was tried by a designated court under TADA.

Table 24 Average time spent on death row before acquittal at the Supreme Court: 2000–2015

STATE	NO. OF PRISONERS	AVERAGE DURATION OF HIGH COURT PROCEEDINGS (IN MONTHS)	AVERAGE DURATION OF SUPREME COURT PROCEEDINGS (IN MONTHS)	AVERAGE TIME SPENT ON DEATH ROW BEFORE ACQUITTAL (IN MONTHS)
ASSAM	1	16	14	30
GUJARAT	4	39	40.3	79.3
JHARKHAND	1	9	10	19
KERALA	4	18	17	35
ODISHA	3	12	12	24
PUNJAB	2	4	15.5	19.5
GRAND TOTAL	15	19.8	21.3	41.1

Though the overall proportion of confirmations in the Supreme Court is 31.1%, it is observed that cases involving rape with murder are confirmed at a rate of 39.1%.²⁶ While death sentence cases of only four prisoners

sentenced to death for dacoity with murder reached the Supreme Court in the last 15 years, all of them were upheld by the Court (**Table 25**).

OVERALL ANALYSIS—TRIAL COURT TO SUPREME COURT TRACKING

During the period of this study, of the 1,486 death sentences imposed by the trial courts²⁷ for which the outcome across the appellate stages could be traced, only 4.9% (73 prisoners) remained on death row after the appeal in the Supreme Court was decided (**Graphic 3**). Of the total death sentences, 65.3% (970 prisoners) were commuted, and another 29.8% (443 prisoners) of the prisoners sentenced to death at the trial court stage were acquitted by the end of the judicial ladder.²⁸

This clearly puts the spotlight on a very serious crisis in the administration of the death penalty. The above figures show that death sentences imposed on 95.1% of the prisoners were declared unjustified and unwarranted in law. The sheer number of months these prison-

ers spent on death row before being declared innocent makes their tortured existence under the sentence of death unimaginable.

While only 4.9% of death sentences are ultimately confirmed, there are interesting variations in the rate of confirmations when we break it down in terms of certain categories of crimes (**Table 26**). While the confirmation rate for death sentences involving murder *simpliciter* was 3.1%, the proportions are significantly higher for other categories of crime. For example, 21.2% of the death sentences for dacoity with murder are confirmed at the end of the appellate process, while the corresponding figures for terror offences and rape with murder are 17.6% and 9.6% respectively.

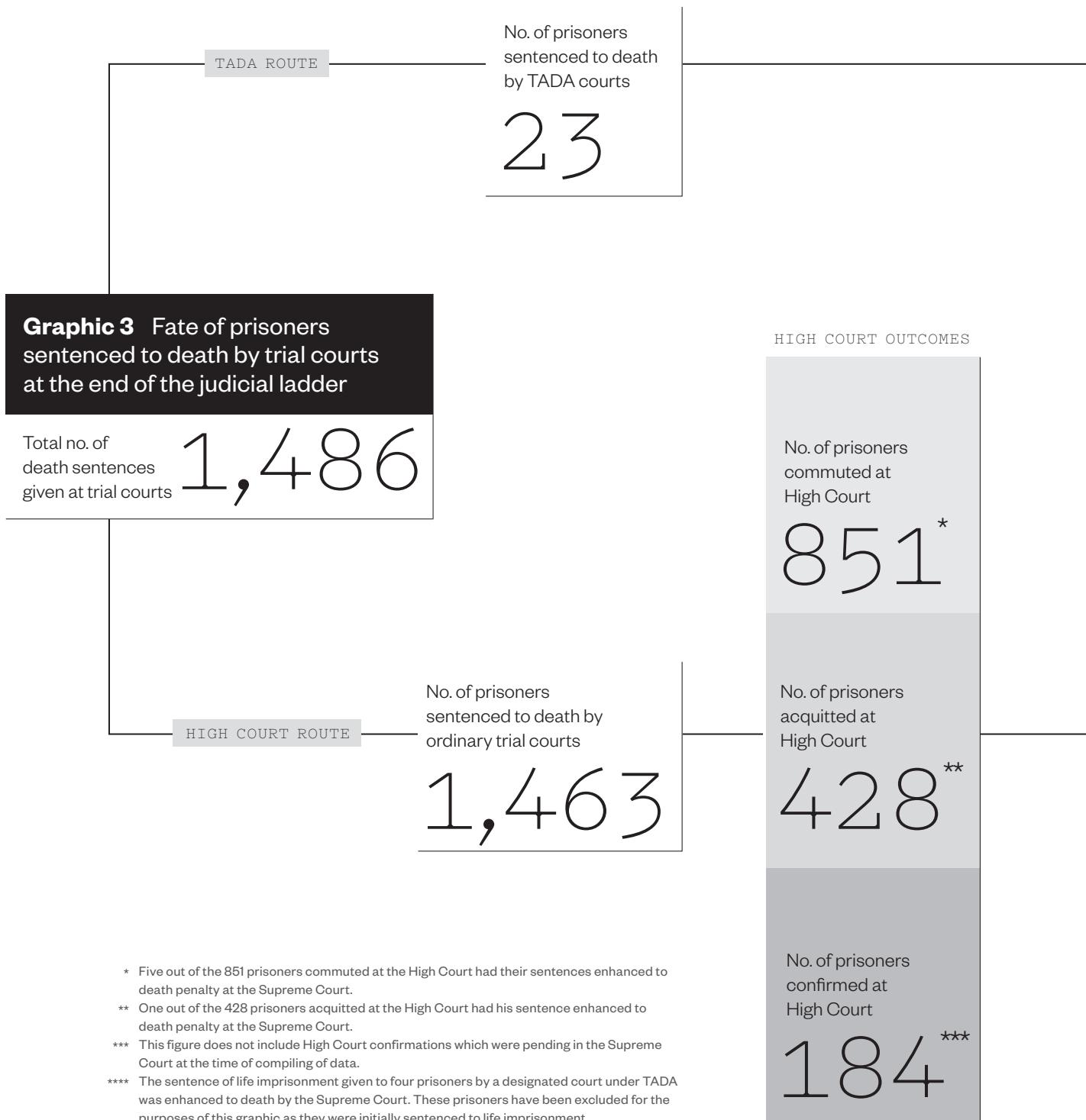
²⁶ Information on the outcome in the Supreme Court and nature of crime could be ascertained for 210 out of the 212 prisoners whose death sentences were confirmed, commuted or their conviction was set aside by the Supreme Court.

²⁷ For the purposes of this section, trial courts include both ordinary trial courts and designated courts established under the Terrorist and Disruptive Activities (Prevention) Act, 1987.

²⁸ The judicial ladder for a prisoner sentenced to death at the trial court and subsequently acquitted or commuted in the High Court has been assumed to be exhausted at the High Court, unless the decision of the High Court was enhanced to death sentence by the Supreme Court. For tracking the outcome of cases from the trial court to the Supreme Court, prisoners whose cases were pending at the High Court or the Supreme Court, or those for whom the outcome could not be traced at either of the two appeal stages, have not been included. Therefore, out of the 1,810 prisoners sentenced to death at the trial court, only 1,486 are considered while tracking the outcome of death sentence cases from the trial court to the Supreme Court, with the following category of cases being filtered out: cases which were pending in either of the two appellate courts, cases decided in High Court for which outcomes could not be ascertained, cases that were sent for retrial or remitted to a lower court, cases that were abated, cases that could not be decided on account of absconson of the accused, and cases where the accused was declared as juvenile in the High Court.

Table 25 Outcomes under each nature of crime for death sentence cases in the Supreme Court

NATURE OF CRIME	NO. OF PRISONERS ACQUITTED	% OF PRISONERS ACQUITTED	NO. OF PRISONERS COMMUTED	% OF PRISONERS COMMUTED	NO. OF PRISONERS CONFIRMED	% OF PRISONERS CONFIRMED	TOTAL NO. OF PRISONERS
MURDER SIMPLIC- ITER	8	7.6%	68	64.8%	29	27.6%	105
DACOITY WITH MURDER	0	0%	0	0%	4	100%	4
KIDNAPPING WITH MURDER	4	16%	15	60%	6	24%	25
RAPE WITH MURDER	1	2.2%	27	58.7%	18	39.1%	46
TERROR OFFENCES	4	13.3%	17	56.7%	9	30%	30



SUPREME COURT OUTCOMES

No. of prisoners
commuted at
Supreme Court

16

No. of prisoners
acquitted at
Supreme Court

1

No. of prisoners
confirmed at
Supreme Court

6 ****

Prisoners on death row at end of appeals process

73 (4.9%)

SUPREME COURT OUTCOMES

No. of prisoners
commuted at
Supreme Court

108

No. of prisoners
acquitted at
Supreme Court

15

No. of prisoners
confirmed/enhanced
at Supreme Court

67

It is also interesting to observe the variations in composition of death sentences at the two opposite ends of the legal spectrum. The crime-wise composition of death sentences at the trial court stage is markedly different when compared to the death sentences at the end of the appeals process (**Table 27**). While death sentences for rape with murder comprised 13.4% of all death sentences at the trial court stage, the corresponding figure at the end of the appeals process is 26%. Similarly, death sentences for terror offences at the trial court stage constituted 3.5% of all death sentences but their share in death sentences after the appeals process was 12.3%. While only 2.2% of all prisoners sentenced to death at the trial court had been given the death penalty for dacoity with murder, this figure rose to 9.6% by the end of the Supreme Court stage.

In Uttar Pradesh and Bihar, the two states where the maximum number of death sentences was imposed by the trial courts, only 2.5% and 3% respectively of prisoners sentenced to death by trial courts remained

on death row at the end of the judicial process (**Table 28**). In Bihar, 48.3% of the 267 prisoners sentenced to death by trial courts were acquitted, and another 48.7% death sentences were commuted. In Uttar Pradesh, 31.7% of the 398 prisoners sentenced to death by trial courts were acquitted, and 65.8% death sentences were commuted.

In Gujarat, for the 52 death sentences where the appeals process has been completed, all death sentences were either commuted or the prisoners were acquitted by the Gujarat High Court and the Supreme Court. In contrast, in Maharashtra, the state where trial courts imposed the third highest number of death sentences in India, 16% of the prisoners sentenced to death by the trial courts remained on death row after the appeal in the Supreme Court was decided. This figure accounts for more than thrice the national percentage of prisoners who remain on death row after the Supreme Court stage (4.9%), and nearly double the rate in any other state.

Table 26 Prisoners on death row by the end of the judicial ladder within each nature of crime category

NATURE OF CRIME	TOTAL NO. OF PRISONERS ON DEATH ROW BY END OF THE JUDICIAL LADDER	TOTAL NO. OF PRISONERS SENTENCED TO DEATH AT TRIAL COURT	% OF PRISONERS ON DEATH ROW WITHIN A PARTICULAR NATURE OF CRIME BY END OF THE JUDICIAL LADDER
MURDER SIMPLICITER	32	1,039	3.1%
DACOITY WITH MURDER	7	33	21.2%
KIDNAPPING WITH MURDER	6	143	4.2%
RAPE WITH MURDER	19	197	9.6%
TERROR OFFENCES	9	51	17.6%
DRUG OFFENCES	0	5	0%
GRAND TOTAL	73	1,468	5%

Table 27 Nature of crime composition of prisoners under death sentence at end of the judicial ladder v/s nature of crime composition of prisoners sentenced to death at trial court

NATURE OF CRIME	TOTAL NO. OF PRISONERS ON DEATH ROW BY END OF THE JUDICIAL LADDER	% OUT OF TOTAL NO. OF PRISONERS UNDER DEATH SENTENCE BY END OF THE JUDICIAL LADDER	TOTAL NO. OF PRISONERS SENTENCED TO DEATH AT TRIAL COURT	% OUT OF TOTAL NO. OF PRISONERS SENTENCED TO DEATH AT TRIAL COURT
MURDER SIMPLICITER	32	43.8%	1,039	70.8%
DACOITY WITH MURDER	7	9.6%	33	2.2%
KIDNAPPING WITH MURDER	6	8.2%	143	9.7%
RAPE WITH MURDER	19	26%	197	13.4%
TERROR OFFENCES	9	12.3%	51	3.5%
DRUG OFFENCES	0	0%	5	0.3%
TOTAL NO. OF PRISONERS	73		1,468	

Table 28 State-wise fate of prisoners sentenced to death by trial courts at the end of the appeals process

STATE	NO. OF PRISONERS	NO. OF PRISONERS CONFIRMED BY END OF THE JUDICIAL LADDER	% OF PRISONERS CONFIRMED BY END OF THE JUDICIAL LADDER
ANDHRA PRADESH	24	0	0%
ARUNACHAL PRADESH	1	0	0%
ASSAM	26	2	7.7%
BIHAR	267	8	3%
CHATTISGARH	21	1	4.8%
DELHI	68	4	5.9%
GUJARAT	52	0	0%
HARYANA	54	2	3.7%
HIMACHAL PRADESH	1	0	0%
JHARKHAND	69	5	7.2%
KARNATAKA	74	6	8.1%
KERALA	49	1	2%
MAHARASHTRA	125	20	16%
ODISHA	40	1	2.5%
PUNJAB	74	4	5.4%
RAJASTHAN	41	3	7.3%
TAMIL NADU	66	4	6.1%
TRIPURA	1	0	0%
UTTAR PRADESH	398	10	2.5%
UTTARAKHAND	35	2	5.7%
GRAND TOTAL	1,486	73	4.9%

NO. OF PRISONERS COMMUTED BY END OF THE JUDICIAL LADDER	% OF PRISONERS COMMUTED BY END OF THE JUDICIAL LADDER	NO. OF PRISONERS ACQUITTED BY END OF THE JUDICIAL LADDER	% OF PRISONERS ACQUITTED BY END OF THE JUDICIAL LADDER
19	79.2%	5	20.8%
1	100%	0	0%
22	84.6%	2	7.7%
130	48.7%	129	48.3%
15	71.4%	5	23.8%
48	70.6%	16	23.5%
43	82.7%	9	17.3%
40	74.1%	12	22.2%
1	100%	0	0%
39	56.5%	25	36.2%
47	63.5%	21	28.4%
38	77.6%	10	20.4%
81	64.8%	24	19.2%
26	65%	13	32.5%
63	85.1%	7	9.5%
32	78%	6	14.6%
35	53%	27	40.9%
1	100%	0	0%
262	65.8%	126	31.7%
27	77.1%	6	17.1%
970	65.3%	443	29.8%

CASES UNDER THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

TADA defined the offence of committing a 'terrorist act',²⁹ and significantly diluted the criminal procedural safeguards available to ordinary accused in cases related to terrorism. For instance, this law permitted police custody for long durations without a chargesheet,³⁰ and permitted confessions made to police officers of a certain rank to be admissible as evidence during trial.³¹ It also provided for the establishment of special courts for trying offences under the Act, and only allowed appeals directly to the Supreme Court.³² In 1994, the Supreme Court upheld the constitutional validity of this Act in *Kartar Singh v. State of Punjab*.³³

Amongst the seven cases decided under TADA from 2000 to 2014, courts sentenced 23 persons to death, across two cases each from Delhi³⁴ (four prisoners), Bihar³⁵ (seven prisoners) and Maharashtra³⁶ (12 prisoners), as can be seen in **Table 29**. In appeal, the Supreme Court commuted the death sentences for 16 prisoners, acquitted one prisoner, and confirmed the death sentences against six prisoners. Additionally, the Supreme Court enhanced the punishment of life imprisonment imposed by the designated court in the 1993 Palar landmine blast³⁷ (Karnataka), and sentenced all four prisoners to death.³⁸

²⁹ Sections 2(h) and 3(1), Terrorist and Disruptive Activities (Prevention) Act, 1987.

³⁰ Section 20(4)(b), Terrorist and Disruptive Activities (Prevention) Act, 1987.

³¹ Section 15(1), Terrorist and Disruptive Activities (Prevention) Act, 1987.

³² Section 19(1) and 19(2), Terrorist and Disruptive Activities (Prevention) Act, 1987.

³³ (1994) 3 SCC 569.

³⁴ *Devender Pal Singh v. State of NCT of Delhi & Anr* (2002) 5 SCC 234; *Nazir Khan & Ors v. State of Delhi* (2003) 8 SCC 461.

³⁵ *Krishna Mochi & Ors v. State of Bihar* (2002) 6 SCC 81; *Vyas Ram @ Vyas Kahar & Ors v. State of Bihar* (2013) 12 SCC 349.

³⁶ *Jayawant Dattatray Suryarao v. State of Maharashtra* (2001) 10 SCC 109; *Yakub Abdul Razak Memon v. State of Maharashtra through CBI* (2013) 13 SCC 1.

³⁷ *Simon & Ors v. State of Karnataka* (2004) 2 SCC 694.

³⁸ For more details on enhancements in the Supreme Court, refer to the section on 'Enhancements by the Supreme Court' in this Chapter.

Table 29 Outcomes of death sentence cases tried by special courts under TADA: 2000–2015

STATE	NO. OF PRISONERS SENTENCED TO DEATH BY SPECIAL COURT	NO. OF PRISONERS CONFIRMED BY THE SUPREME COURT	NO. OF PRISONERS COMMUTED BY THE SUPREME COURT	NO. OF PRISONERS ACQUITTED BY THE SUPREME COURT	NO. OF PRISONERS ENHANCED BY THE SUPREME COURT	TOTAL NO. OF PRISONERS ADJUDICATED UPON BY SPECIAL COURTS UNDER TADA	NO. OF CASES
BIHAR	7	4	2	1	0	7	2
DELHI	4	1	3	0	0	4	2
KARNATAKA	0	0	0	0	4	4	1
MAHARASHTRA	12	1	11	0	0	12	2
GRAND TOTAL	23	6	16	1	4	27	7

Conclusion

The attempt in this Report has been to demonstrate that there is a lot more to understanding the death penalty than just the heinousness of the crime and the number of executions carried out. Through the approach adopted in the Report we have tried to make a case for bringing into focus various processes involved in the administration of the death penalty. These processes often receive very little attention compared to the philosophical discussions on the death penalty as a form of punishment. A whole host of social, economic, legal and administrative factors have a bearing on the determination of crimes that attract the death penalty, the manner in which individuals are sentenced to death, and the treatment of such individuals in Indian prisons. Apart from these issues, the death penalty also raises wider social concerns in terms of its disparate impact on certain groups and the systemic marginalisation it seems to perpetrate.

There undoubtedly exist constitutional, legislative and judicial frameworks to ensure that accused are treated fairly before being convicted and sentenced to death. However, our conversations with prisoners and their families made it extremely clear that there were flagrant violations of even the most basic protections like those against torture and self-incrimination. The systemic inability to provide for competent representation or to undertake effective sentencing procedures in capital cases, along with the widespread dependence on extremely violent investigative methods is symptomatic of the nature and extent of crisis within the criminal justice system. There is widespread alienation from

the legal system amongst prisoners sentenced to death with an intense sentiment of systemic injustice. The alienation that prisoners experience through acute lack of awareness of the proceedings in their cases only increases as the case moves up the appellate system. Not only do the geographical distances grow, prisoners are completely in the dark by virtue of being unable to meet their lawyers (or even know who they are) or by not being informed of the progress in their cases. All these factors significantly contribute to raising serious concerns about the fair trial credentials of judicial proceedings in capital cases.

The extremely grave rule of law and fair trial concerns with death penalty cases in India cannot be explained away by referring to the general state of the criminal justice system. There must necessarily be a higher burden to be met in cases where the death penalty is a possibility because of its unique nature as a punishment. The real question to be answered is whether the nature and intensity of violations documented in this Report are acceptable while condemning individuals to live under the sentence of death. This question must be answered on its own terms and it is not sufficient to state that these concerns might hold true of other criminal justice proceedings as well. The experience and consequences of living under the sentence of death are extremely excruciating and this must certainly be reflected in the standards we find acceptable.

The observations in Chapter 8 on 'Living on Death Row' provide a detailed account of the conditions under which prisons lodge those sentenced to death. Formal prison regula-

tions and informal discriminatory practices adopted by prison administrations ensure that hostile conditions of incarceration are added to the punishment of living under the sentence of death. The treatment of prisoners sentenced to death purely as individuals awaiting execution and the consequential denial of opportunities in terms of education and work is particularly inhumane. It intensifies the uncertainty between life and death as prisoners are then left with very little to do except anticipate their own death. Though not a formal area of research in this Project, psychological consequences of living under such circumstances were evident and must become an institutional priority for further research and remedial measures. The range of factors that determine the experience of living under the sentence of death in an Indian prison provide a very strong case for the position that the extent of suffering under the sentence of death is qualitatively distinct.

It is amply clear that there are multiple burdens that the criminal justice system imposes in terms of the death penalty in India. The practices documented in this Report at every stage of the criminal justice system render it extremely difficult to navigate without sufficient economic, social and political resources. In that context the issue on whom the burden of the death penalty falls is crucial. A discussion on the death penalty that is largely focused on the crime would be masking various dynamics of the criminal justice system. Multiple crisis points bear heavily on the criminal justice system and they in turn impose tremendous burdens on everyone coming in conflict with it. However, as far as the death penalty is

concerned, the socio-economic profile of prisoners documented in this Report begins to demonstrate that these burdens have a disparate impact on vulnerable and marginalised sections of society along the lines of economic status, caste, religion, and levels of educational attainment. While there has always existed an intuition about this in discussions on the death penalty, the socio-economic profile presented in this Report is hopefully the first step towards understanding the precise burdens that such marginalised sections bear in the context of the death penalty. It is imperative that the socio-economic profile is read in conjunction with the various practices adopted in the criminal justice system to understand the full import of the methods adopted by the investigation agencies, the bar, courts, and prisons.

In terms of the credibility of the legal system administering the death penalty, the lack of competent legal representation and the minimalist (bordering on non-existent) sentencing practices are of particular concern. Very often the concern about the quality of legal representation has been couched in terms of inadequacies of the legal aid system. Such an articulation significantly underestimates and misunderstands the problem. As discussed in Chapter 5 on 'Legal Representation', more than 60% of the prisoners sentenced to death had private lawyers in the trial court and High Courts. It must be a cause for extreme concern that prisoners and their families wanted to avoid the legal aid system at all costs and therefore went to great lengths to ensure that they had private legal representation. While this deepened their economic vulnerability, it did not ensure access to competent legal

representation. It is evident that the problem of legal representation in capital cases cannot be meaningfully characterised as one of legal aid against private representation. The concern with competent legal representation in capital cases is much broader and cannot be restricted to just legal aid lawyers. This was perhaps most amplified at the stage of sentencing where the sentencing hearings seem to be conducted merely to meet the technical requirements of the law and very little else. Given the paucity of relevant sentencing information being brought before the courts, it is not surprising that the sentencing parts in judgments tend to focus almost exclusively on the nature of the crime.

The discourse on the death penalty in courts often reduces individuals to just the crime—with no real space for their past or their future. The lack of engagement with issues of reformation presents a very significant challenge to the manner in which the death penalty is administered. There is hardly ever any mention of the manner in which prisoners sentenced to death have spent their time in prison. As cases find their way up the appellate process with considerable number of years in between, questions of reformation cannot be limited to an evaluation of the individual merely as someone who committed a crime. Reformation is a central sentencing consideration according to the terms on which the Supreme Court upheld the constitutionality of the death penalty in *Bachan Singh*. In practice, there is negligible enquiry into the history and personality of the prisoner to evaluate her potential for reformation. Even once inside prison, the

treatment meted out to prisoners sentenced to death does not facilitate any reformative process. As stated above, though the appellate process could take many years, prisons often treat prisoners sentenced to death merely as individuals awaiting execution. They are denied opportunities that are available to the general prison population and this further places obstacles in any credible reformation process. The inability of courts to consider conduct of the prisoner during her incarceration, coupled with the restrictive prison conditions creates a situation where any meaningful discussion of reformation is impossible.

The Report also tries to bring out the fact that there are very serious and real social costs to the experience that prisoners and their families go through. The social and economic consequences along with debilitating forms of ostracisation that families face heightens their vulnerability, driving them deeper into destitution. The faith of the families in the criminal justice system is further eroded as the case moves into the realm of the appellate courts and the mercy jurisdiction. The irony of the legal system is such that the closer a prisoner gets to execution, the administration of justice gets more opaque from the perspective of families. It is difficult for the families of prisoners to get any substantial information about the proceedings in the High Court and that problem only worsens when the case moves to the Supreme Court. There is no real protection against such multiple axes of vulnerability and the tendency to see the suffering of prisoner families as morally acceptable collateral costs must be resisted.

The contemporary public discourse in India on the death penalty has tremendous focus on issues of sexual violence and terrorism. The range of concerns identified in this Report apply with as much force, if not more, to these categories of crimes. The intense social reactions to such crimes only aggravates the systemic concerns identified in this Report. It puts even more pressure on actors within the criminal justice system to produce results and this often translates into more custodial violence, prosecutorial misconduct and fair trial violations. In that context, the recommendation of the Law Commission of India in its 262nd Report (August 2015) to abolish the death penalty for all crimes except terrorism must be treated with scepticism as a strategic compromise rather than a recommendation based on ground realities.

The questions that this Report raises for the criminal justice system are by no means unique to India. In the context of the death penalty, countries have responded to these challenges differently—abolition (complete or partial), moratorium on executions, widespread criminal justice reforms connected to various aspects of the administration of the death penalty are all responses that have been seen in different parts of the world. There is an unmistakeable global trend with more than 150 of the 193 UN Member States abolishing the death penalty (in law or in practice) and even retentionist countries like the United States and China witnessing significantly lesser use of the death penalty. Surely, a discussion in India on the death penalty must give significant weight to its local context, but the systemic

realities of its criminal justice system must also form an essential part of such a context.

As stated in the Introduction, this Report is not meant to consider the case for abolition of the death penalty. While any discussion on the abolition of the death penalty requires a wider consideration of factors that are beyond the scope of this Report, such discussions cannot ignore the nature and extent of the crisis within the criminal justice system documented in this Report. However, a lot more research remains to be done on various aspects of the death penalty in addition to building on the small steps taken by this Report. Issues of mental health amongst prisoners sentenced to death, the relationship between victims' rights and the death penalty, deeper investigations into the nature and meaning of 'public opinion' on the death penalty, in-depth analysis of sentencing practices in trial courts are some of the areas that require urgent attention. Discussions on the death penalty are quick to dive into merits of the death penalty as a form of punishment without comprehending the systemic realities within which it operates. For far too long, discussions on the death penalty in India have been characterised by rather disquieting levels of abstraction. It is rather curious that during these discussions, the realities of the criminal justice system are largely ignored and a misplaced confidence around it is constructed. Meanwhile, those inhabiting worlds locked away from our sights and minds, within high impenetrable walls, have stories to tell that ask damning questions of us.

