THE DISPROPORTIONATE AND UNFAIR USE AND ADMINISTRATION OF THE DEATH PENALTY

Dr. Anup Surendranath, National Law University Delhi
Fieldwork from June 2013 to January 2015
373 prisoners included as part of study (12 women, 361 men)

Conversational interviews with prisoners and their families conducted guided by questionnaires
Who gets the death penalty?

Economic profile

Economically Non-Vulnerable Prisoners: 25.9% (96)
Economically Vulnerable Prisoners: 74.1% (274)
Who gets the death penalty?

Economic profile

- Sole Earner: 73 (34.9%)
- Primary Earner: 59 (28.2%)
- Neither Sole nor Primary Earner: 61 (29.2%)
- Non-Earning Member (Student/Unemployed): 16 (7.7%)
Who gets the death penalty?

Caste & religious profile

- **General**: 88 (24%)
- **Other Backward Classes**: 127 (34.6%)
- **Scheduled Caste/Scheduled Tribes**: 90 (24.5%)
- **Religious Minorities**: 76 (20.7%)
Who gets the death penalty?

State-wise caste & religious profile

Maharashtra (50%), Karnataka (36.4%) and Madhya Pradesh (36%) have a significantly high proportion of prisoners belonging to scheduled castes and scheduled tribes.

Gujarat (79%), Kerala (60%) and Karnataka (31.8%) have a significantly high proportion of prisoners belonging to religious minorities.
Who gets the death penalty?

Educational profile

- NEVER WENT TO SCHOOL: 84 (23%)
- DID NOT COMPLETE SECONDARY: 62 (17%)
- SECONDARY: 40 (11%)
- HIGHER SECONDARY: 3 (0.8%)
- DIPLOMA/VOCATIONAL COURSE: 2 (0.5%)
- UNDERGRADUATE: 2 (0.5%)
- POSTGRADUATE: 4 (1.1%)
- PROFESSIONAL COURSE: 2 (0.5%)
Who gets the death penalty?

108 prisoners (30.2%) were economically vulnerable, had not completed their secondary education and belonged to the religious minorities or SC/STs.
EXPERIENCE
WITH THE CRIMINAL JUSTICE SYSTEM
Custodial Violence

Of the 39 former judges who discussed the prevalence of torture in the criminal justice system, 38 believed it to be rampant.

- Matters of Judgment, 2017

80% prisoners admitted to being tortured in police custody

78.3% prisoners who said that they had confessed in police custody, admitted to making confessions due to torture
Procedural Violations

64.3% prisoners said that they were not produced before a Magistrate within 24 hours of arrest

89.4% prisoners did not have a lawyer at the time of first production before the Magistrate
Legal Assistance

70.6% prisoners at the trial court and 68.7% prisoners at the High Court level had private representation. In the Supreme Court, this figure dramatically fell to 29.9%

Of the prisoners accessing private lawyers in the trial courts and High Courts, 70.6% were economically vulnerable.

14 judges acknowledged that poor legal representation disproportionately impacts the poor.

Despite the existence of the legal aid mechanism, not a single judge found the present day legal aid system to be satisfactory.

- Matters of Judgment, 2017
Wrongful Conviction

Adambhai Suleiman Ajameri, Muslim
Accused in the Akshardham Temple case: 2002
Acquitted: May 2014

Adambhai was on death row for **eleven years**.

Six months after his acquittal, Adambhai was still struggling to piece together his life. His city, Ahmedabad, had changed and old acquaintances had moved on.

The wrongful conviction irrevocably changed Adambhai and his family’s life.

Could the state ever compensate him?

---

43 out of 49 judges acknowledged the existence of wrongful convictions within our criminal justice system.

- *Matters of Judgment, 2017*
JUDICIAL AND POLITICAL TRENDS IN THE DEATH PENALTY DISCOURSE
5% Death Penalty Cases Confirmed by the Supreme Court

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total no. of death sentences given at trial courts</td>
<td>1,486</td>
</tr>
<tr>
<td>TADA courts</td>
<td>23</td>
</tr>
<tr>
<td>Status on death row at end of appeals process</td>
<td>73 (4.9%)</td>
</tr>
<tr>
<td>Prisoners confirmed at Supreme Court</td>
<td>6</td>
</tr>
<tr>
<td>Prisoners commuted at Supreme Court</td>
<td>16</td>
</tr>
<tr>
<td>Prisoners acquitted at Supreme Court</td>
<td>1</td>
</tr>
<tr>
<td>Prisoners confirmed at Supreme Court</td>
<td>6***</td>
</tr>
<tr>
<td>Total no. of prisoners sentenced to death by ordinary trial courts</td>
<td>1,463</td>
</tr>
<tr>
<td>Supreme Court</td>
<td></td>
</tr>
<tr>
<td>No. of prisoners acquitted at High Court</td>
<td>428**</td>
</tr>
<tr>
<td>No. of prisoners commuted at High Court</td>
<td>184***</td>
</tr>
<tr>
<td>No. of prisoners confirmed at High Court</td>
<td>108</td>
</tr>
<tr>
<td>No. of prisoners acquitted at Supreme Court</td>
<td>15</td>
</tr>
<tr>
<td>No. of prisoners confirmed at Supreme Court</td>
<td>67</td>
</tr>
</tbody>
</table>
Death Sentences in 2017 by Sessions Courts

109 death sentences imposed in 2017

149 death sentences imposed in 2016
Nature of Crime Analysis for Death Sentences

- Murder Simpliciter
- Murder Involving Sexual Violence
- Kidnapping and Murder
- Dacoity and Murder
- Terror
- Rioting and Murder
- Drug Offence
- Robbery and Murder
- Unknown

Graph showing the number of death sentences in 2016 and 2017 for various crimes.
## Increase in Legislative Reliance on the Death Penalty

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>Madhya Pradesh passes Bill to amend the IPC introducing death penalty for rape of girls below 12. Uttar Pradesh passes Bill to amend the UP Excise introducing death penalty for manufacture and distribution of illicit liquor resulting in death.</td>
</tr>
<tr>
<td>2018</td>
<td>Arunachal Pradesh, Haryana and Rajasthan pass Bills to amend the IPC introducing death penalty for rape of girls below 12. Delhi passes resolution to introduce similar amendments. Karnataka, J&amp;K and Assam contemplate doing the same. Uttar Pradesh passes UPCOCA Bill providing for the death penalty (on the lines of MCOCA).</td>
</tr>
</tbody>
</table>
India’s International Obligations under ICCPR

As State Party to ICCPR, India has an obligation to restrict and move away from death penalty.

Draft General Comment 36 on the Right to Life states that death penalty should not be available for crimes not resulting directly and intentionally in death.

UN Resolutions on the death penalty have repeatedly called for reducing the number of death eligible crimes.

In 2016 and 2017, India opposed Resolutions at the UNGA and UNHRC respectively on various questions of the death penalty.