



INDIA: DEATH PENALTY STATISTICS

I. OFFENCES WARRANTING DEATH PENALTY

Presently, death penalty is provided under the Indian Penal Code (IPC) for offences under Section 121, Section 132, Section 194, Section 195A, Section 302, Section 305, Section 307(2), Section 364A, Section 396, Section 376E, and Section 376A.

Special or local laws which provide for death penalty are the Army Act, 1950; the Air Force Act, 1950; the Navy Act, 1950; the Indo Tibetan Border Police Act, 1992; the Assam Rifles Act, 2006; the Border Security Force Act, 1968; the Sashastra Seema Bal Act, 2007; the Defence and Internal Security Act, 1971; the Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985 as amended in 1988; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Explosive Substances Act, 1908 as amended in 2001; the Unlawful Activities Prevention Act, 1967, as amended in 2004; the Maharashtra Control of Organised Crime Act, 1999; the Karnataka Control of Organised Crime Act, 2000; the Andhra Pradesh

Control of Organised Crime Act, 2001; and the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.

Although various laws provides for the death penalty, it is mainly given under Section 302 Indian Penal Code.

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II. ANNUAL RATE OF DEATH SENTENCES IN INDIA

As per the National Crime Records Bureau, during 2004-2013, a total of 5,054 convicts or an average of an average of 505 convicts were sentenced to death by the Sessions Courts in India. Out of these, a total of 1,303 convicts or 130 convicts per year were confirmed by the High Courts and the Supreme Courts while death sentences of 3,751 convicts or 375 convicts were commuted to life imprisonment during the same period.¹

III. WOMEN AND DEATH PENALTY

At the end of 2013, there were 10 women death row convicts.² No woman has been hanged in India since 1955, when Rattan Bai Jain, convicted of killing three girls, became the first and only woman to be sent to the gallows.³

IV. CHILDREN AND DEATH PENALTY

As per Juvenile Justice (Care and Protection of Children) Act, 2000, any person under the age of 18 years is considered a minor and is tried under the juvenile law. The maximum sentence stipulated for a juvenile is three years irrespective of brutality or heinousness of the crime.

V. PARLIAMENT AND DEATH PENALTY

In 1956, a private member bill related to the abolition of death penalty was introduced in the Lok Sabha.⁴ A similar one was introduced in the Rajya Sabha in 1958.⁵

FAs per available information, at least 59 questions relating to death penalty raised by the members of parliament in both Lok Sabha (39) and Rajya Sabha (21) during 2004 to March 2014.

In the Lok Sabha, the questions were raised on 20 July 2004 [Starred Question No (SQN). 213]; 20 August 2004 (SQN 362); 3 May 2005 (Unstarred Question No. (USQN) 5660); 29 November 2005 (USQN 905); 21 December 2005 (USQN 4195); 14 March 2006 (USQN 2490); 8 May 2007 (USQN 4386); 27 November 2007 (USQN 1565); 4 March 2008 (USQN 929); 9 July 2009 (SQN 84); 24 November 2009 (USQN 829); 26 November 2009 (USQN 1336); 8 December 2009 (USQN 2916); 17 December 2009 (USQN 4504); 23 February 2010 (USQN 5); 21 April 2010 (USQN 4249); 22 April 2010 (SQN 397); 6 May 2010 (USQN 6662); 3 August 2010 (USQN 1610); 11 November 2010 (USQN 499); 30 November 2010 (SQN 281); 16 August 2011 (USQN 2360); 6 September 2011 (USQN 5414); 15 December 2011 (USQN 3461); 20 December 2011 (USQN 4237); 20 March 2012 (USQN 1054); 22 March 2012 (USQN 1410); 17 May 2012 (SQN 598); 14 August 2012 (USQN 773); 11 December 2012 (USQN 2964); 18 December 2012 (USQN 3929); 5 March 2013 (USQN 1157); 5 March 2013 (USQN 1210); 23 April 2013 (USQN 4745); 30 April 2013 (USQN 5571); 30 April 2013 (USQN 5677); 7 May 2013 (USQN 6531); 17 December 2013 (USQN 1866);

1. NCRB, "Prison Statistics India" report series from 2004 to 2013 available at: <http://ncrb.gov.in/>

2. NCRB, "Prison Statistics India" report series from 2004 to 2013 available at: <http://ncrb.gov.in/>

3. Livemint, 'The case of the sisters on death row', 2 September 2014, <http://www.livemint.com/Politics/Xqy5b3m9sluV1044grKzL/The-case-of-the-sisters-on-death-row.html>

4. "Lethal Lottery: The Death Penalty in India, A Study of Supreme Court Judgments in Death Penalty Cases, 1950-2006" <http://www.amnesty.org/en/library/asset/ASA20/007/2008/en/f8d94e73-16dc-11dd-89e2-354ccbabf7/asa200072008eng.html>

5. See "Rajya Sabha - Its Contribution to Indian Polity" http://rajyasabha.nic.in/rsnew/practice_procedure/polity.pdf

11 February 2014 (USQN 3107); 5 August 2014 (USQN 3647); 11 August 2014 (USQN 4597); and 16 December 2014 (USQN 3909).

In the Rajya Sabha the questions were raised on 18 August 2004 (USQN 1520); 14 December 2005 (USQN 2344); 22 November 2006 (USQN 54); 16 April 2008 (USQN 2565); 28 July 2010 (USQN 372); 4 August 2010 (USQN 1100); 11 August 2010 (USQN 249); 10 November 2010 (USQN 249); 10 August 2011 (USQN 1174); 17 August 2011 (USQN 1775); 7 December 2011 (USQN 1627); 7 December 2011 (USQN 1607); 19 March 2012 (USQN 521); 25 April 2012 (USQN 2266); 6 December 2012 (USQN 1419); 19 December 2012 (USQN 2876); 27 February 2013⁶; 14 August 2013 (USQN 973); 12 February 2014 (USQN 2280) and 19 February 2014 (USQN 2703).

VI. DEATH PENALTY AND LAW COMMISSION OF INDIA

The Law Commission of India conducted its first study on the issue of death penalty contained in the 35th Report (1967) recommended retention of death penalty.⁷ In May 2014, the Law Commission sought public opinion on the reassessment of the need for the death penalty in India pursuant to the direction of the Supreme Court of India.⁸

VII. MERCY PLEA AGAINST DEATH PENALTY

The President of India and Governors of States are empowered to grant pardon, suspend and remit

death sentences and commute the death sentence of convicts on death row under Article 72 and Article 161 of the Constitution of India respectively to the President of India and the Governor of the concerned State following confirmation of the death sentence by the Supreme Court. The death sentence in such cases is not executed till the decision on the petitions has been arrived at.

The Ministry of Home Affairs, Government of India framed certain criteria for deciding the mercy petitions. These includes personality of the accused such as age, sex or mental deficiency or circumstances of the case, conduct of the offender, mental deficiency etc; cases in which the appellate Court expressed doubt as to the reliability of evidence but has nevertheless decided on conviction; cases where it is alleged that fresh evidence is obtainable mainly with a view to see whether fresh enquiry is justified; where the High Court on appeal reversed acquittal or on an appeal enhanced the sentence; any difference of opinion in the Bench of High Court Judges necessitating reference to a larger Bench; consideration of evidence in fixation of responsibility in gang murder case; and long delays in investigation and trial etc.⁹

VIII. NUMBER OF MERCY PLEAS FILED

On 18 March 2013, the Under Secretary (Judicial-II), Ministry of Home Affairs, Government of India informed Asian Centre for Human Rights (ACHR) that out of total 114 mercy petitions considered

6. Rajya Sabha Starred Question No. <http://164.100.47.5/qsearch/QResult.aspx>

7. See "Rajya Sabha - Its Contribution to Indian Polity" http://rajyasabha.nic.in/rsnew/practice_procedure/polity.pdf & "Lethal Lottery: The Death Penalty in India, A Study of Supreme Court Judgments in Death Penalty Cases, 1950-2006" <http://www.amnesty.org/en/library/asset/ASA20/007/2008/en/f8d94e73-16dc-11dd-89e2-354ccbabf7/asa200072008eng.html>

8. Law Commission of India "Consultation Papers - Capital Punishment" <http://lawcommissionofindia.nic.in/archives.htm>

9. Shatrughan Chauhan vs Union Of India, (2014) 3 SCC 1

by the President from 1981 till 15 March 2013 the President rejected 76 mercy petitions, 29 were accepted and sentence of death commuted to life imprisonment, while nine mercy petitions remained pending disposal.¹⁰

IX. NO MERCY ON TERROR?

No mercy petition of condemned prisoners convicted of terrorism-related offences except Ms Nalini Sriharan has been accepted by the President of India or the Governors as of today. Some of them have already been executed namely Kehar Singh and Satwant Singh in the assassination of former Prime Minister Smt. Indira Gandhi¹¹, Sukhdev Singh and Nirmal Singh in the killing of General A S Vaidya¹², Mohammed Amir Ajmal Kasab in the 2012 Mumbai terror attack and Afzal Guru in connection with the attack on the parliament of India.¹³

In April 2013, a two-bench judges of the Supreme Court while hearing the petition of Devinder Singh

Bhullar who was sentenced to death under terror offences ruled that delay in disposing of mercy petitions of persons convicted under anti-terror laws or similar statutes by the President or the Governor “cannot be a ground for commutation of the death sentence”.¹⁴ However, the Supreme Court in the landmark judgment in the case of Shatrughan Chauhan vs Union of India delivered on 21 January 2014 declared the Devinder Singh Bhullar judgment as per incurium.¹⁵

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10. RTI reply F.No.16/01/2013-Judl.Cell dated 28 March 2013 received from Under Secretary (Judicial-II), Ministry of Home Affairs, Government of India by Asian Centre for Human Rights
11. See ‘End of the road’ India Today, 31 January 1989 at: <http://indiatoday.intoday.in/story/indira-gandhiassassination-trial-satwant-singh-and-kehar-singh-hanged/1/323031.html>
12. “The Khalistan episode cuts both ways, requires healing and reconciliation” IBN Live, 12 October 2012, <http://ibnlive.in.com/blogs/brijeshkalappa/2992/63983/the-khalistan-episode-cuts-both-ways-requires-healing-and-reconciliation.html>
13. The Hindu, “Afzal Guru hanged in secrecy, buried in Tihar Jail”, 9 February 2013, <http://www.thehindu.com/news/national/afzal-guru-hanged-in-secrecy-buried-in-tihar-jail/article4396289.ece>
14. The Hindu, “Delay no ground for mercy in terror cases”, 12 April 2013, <http://www.thehindu.com/news/national/delay-no-ground-for-mercy-in-terror-cases/article4609566.ece>
15. Livemint, “Supreme Court’s judgement on death penalty a humane approach”, 21 January 2014, <http://www.livemint.com/Opinion/rSZ5NX-i3SKNCZQM7jtsWeL/Supreme-Courts-judgement-on-death-penalty-a-humane-approach.html>



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