

SUBMISSIONS TO THE SECRETARY-GENERAL'S REPORT ON THE QUESTION OF THE DEATH PENALTY IN INDIA (2020-2022)

FROM PROJECT 39A, NATIONAL LAW UNIVERSITY DELHI

A. Overview of Developments on the Death Penalty in India

Since July 2020, India has continued to impose the death penalty at an alarming rate, with the end of 2021 seeing 488 prisoners on death row, highest number of prisoners since 2004.¹ This appears to be a result of frequent imposition of death sentences by trial courts and fewer appellate decisions in the corresponding period.² In a unique shift, the Supreme Court of India did not confirm a single death sentence in 2021, commuting five death sentences to life imprisonment and acquitting four death row prisoners of all charges.³

India has continued to expand the scope of capital punishment with states introducing the death penalty for sexual offences and for the sale of spurious liquor that is likely to cause grievous hurt or death.⁴ The former in particular is representative of a trend of increasingly harsh responses by the state to incidents of sexual violence, with a disproportionate focus on harsher punishment as a solution instead of addressing the needs of survivors and victims' families.⁵

B. Persons with Mental Illness or Intellectual Disabilities

Project 39A's report, *Deathworthy: A Mental Health Perspective on the Death Penalty (Deathworthy)*, was released in 2021 and is the first of its kind study to document the

¹ Project 39A, National Law University, Delhi, 'Death Penalty in India: Annual Statistics Report 2021' (Project 39A, National Law University, Delhi 2022).

² Sabah Gurmat, 'COVID-19 and the demand for harsh penalty against sexual offences may have led to steep rise in the number of death row prisoners in India' (The Leaflet 2022) , <<https://theleaflet.in/covid-19-and-the-demand-for-harsh-penalty-against-sexual-offences-may-have-led-to-steep-rise-in-the-number-of-death-row-prisoners-in-india/>>, accessed 20 March 2022 05:30 GMT

³ Project 39A, National Law University, Delhi, 'Death Penalty in India: Annual Statistics Report 2021' (Project 39A, National Law University, Delhi 2022).

⁴ Punjab Excise (Amendment) Act, 2021 (07 of 2021), Section 61A; Madhya Pradesh Excise (Amendment) Act, 2021 (28 of 2021), Section 49A; SHAKTI Criminal Laws (Maharashtra Amendment) Bill, 2020 (LI of 2021).

⁵ Project 39A, National Law University, Delhi, 'Death Penalty in India: Annual Statistics Report 2020' (Project 39A, National Law University, Delhi 2021).

psychosocial realities of prisoners on death row in India.⁶ Building on the findings of the Death Penalty India Report (2016)⁷, *Deathworthy* explores psychiatric concerns, intellectual disability among prisoners sentenced to death, and the psychological consequences of being on the death row. The report adopts a longitudinal view and spans the life of the prisoners from childhood, documenting the impact of adverse childhood and traumatic experiences, to their life post incarceration and on death row.

Coverage and Methodology

Deathworthy interviewed 88 prisoners (3 female, 85 male) across 5 states (Chhattisgarh, Delhi, Karnataka, Kerala and Madhya Pradesh). These were supplemented with 110 family interviews carried out across 7 states, including Uttar Pradesh and Bihar. In addition to the qualitative interviews conducted with the prisoners and their families, the study used a range of psychometric tools, including DSM-5 Cross-Cutting Symptom Measure-Adult screener, WHO Assist, Mental State Examination, WAIS-IV; to assess and diagnose mental illnesses, substance use and dependence, cognitive impairment and intellectual disability.⁸

I. Mental Illness

An overwhelming majority of death row prisoners interviewed (62.2%) had at least one mental illness. 29.5% of the prisoners were diagnosed with at least two mental illnesses while 9.1% had been diagnosed with three illnesses.⁹ A majority of the prisoners were diagnosed with Major Depressive Disorder, General Anxiety Disorder and Substance Use Disorder.¹⁰

Deathworthy highlighted the stark difference in the prevalence of mental illnesses among prisoners sentenced to death and the general population. The proportion of prisoners with

⁶ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021) .

⁷ National Law University, Delhi, 'Death Penalty India Report' (NLU Delhi Press 2016).

⁸ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter I.

⁹ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter IV.

¹⁰ The types of mental illnesses among prisoners sentenced to death include – major depressive disorder (35.3%), depressive disorder (19.8%), generalised anxiety disorder (22.6%), phobic anxiety disorder (1.2%), psychotic disorders such as schizophrenia (6.8%), suicidal ideation (13.8%), substance use disorder (20.5%), comorbid mental disorders (31.7%) and cognitive impairment (19.3%); Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter IV.

Major Depressive Disorder is approximately 11 times higher than that in the community population, respectively.¹¹ The numbers are also higher in the case of General Anxiety Disorder and schizophrenia and other psychotic disorders, at almost 3 times and 6 times higher than that in the community population, respectively.¹²

Adverse Childhood Experiences and Traumatic Events

Adverse childhood experiences are inter-related negative experiences coupled with a lack of positive factors in a child's family, community and social environment.¹³ Exposure to adversities is linked to disturbances in psychological, cognitive, emotional and behavioural development, including later in life. Deathworthy revealed that 82% of the prisoners interviewed experienced three or more adverse childhood experiences.¹⁴ Of the 88, 73 grew up in a disturbed family environment and 64 experienced childhood neglect.¹⁵ 18% of the prisoners interviewed had not received any education and 20% of the prisoners had only attained primary education.¹⁶

Traumatic events include experiencing or witnessing events such as natural disasters, accidents, exposure to toxic substances, assault, life-threatening illness/injury, severe human suffering. 90% of the prisoners had been exposed to a traumatic event in their life, with over 60% having experienced three or more traumatic life events and close to 35% exposed to five or more traumatic events.¹⁷

Suicidal Ideation

¹¹ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter IV.

¹² Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter IV.

¹³ For instance, childhood abuse, neglect, disturbed family environment, early behavioural problems, low education attainment, onset of substance use, poverty and peer pressure are examples of Adverse Childhood Experiences.

¹⁴ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter III.

¹⁵ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Conclusion.

¹⁶ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter I.

¹⁷ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter III.

Unable to cope with the stresses accompanying the uncertainty associated with the death penalty, prisoners resort to substance use leading to mental illnesses, including depression and suicidal ideation. The rate of suicidal ideation among prisoners sentenced to death was 13.8%, and eight prisoners had attempted suicide in prison.¹⁸ These numbers and their proportion are alarmingly high when compared to the general prison population (approximately, 4-6%)¹⁹ and in the community (0.9%).²⁰

II. Intellectual Disabilities

Intellectual disability is a disorder with onset during the developmental period, which includes intellectual and adaptive functioning deficits in conceptual, social and practical domains.²¹

Deathworthy found that more than 75% prisoners had low intellectual functioning, with 11% of prisoners being diagnosed with intellectual disability.²² This mental disability was not assessed or raised in court at any stage of the trial. According to a study conducted by National Institute of Mental Health and Neuro-Sciences (NIMHANS) in collaboration with the Government of India, the prevalence of intellectual disability in the community population was observed to be 0.6%.²³ This is striking, in as much as the prevalence of intellectual disability is 10 times higher in death row prisoners than that in the general population.

In international law jurisprudence, there is a bar against imposition of the death penalty in cases when a person suffers from intellectual disability, whether at the time of commission of

¹⁸ Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter III.

¹⁹ Suresh Bada Math and others, 'Minds Imprisoned: Mental Health Care in Prisons' (National Institute of Mental Health Neuro Sciences Bangalore 2011); A. Ayirolimeethal and others, 'Psychiatric Morbidity Among Prisoners' (2014) 56(2) Indian Journal of Psychiatry 150.

²⁰ Gururaj G and others, 'National Mental Health Survey of India, 2015-16: Prevalence, Patterns and Outcomes' (National Institute of Mental Health and Neuro Sciences Bangalore, NIMHANS Publication No. 129, 2016).

²¹ Robert L Schalock, 'The Evolving Understanding of the Construct of Intellectual Disability' (2011) 36(4) Journal of Intellectual and Development Disability 223; Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter VI.

²² Project 39A, National Law University, Delhi, 'Deathworthy: A mental health perspective on the death penalty, 2021' (Project 39A, National Law University, Delhi 2021), Chapter VI.

²³ Gururaj G and others, 'National Mental Health Survey of India, 2015-16: Prevalence, Patterns and Outcomes' (National Institute of Mental Health and Neuro Sciences Bangalore, NIMHANS Publication No. 129, 2016).

offence or at the time of execution.²⁴ While India recognized “mental defect” as a mitigating factor 40 years ago,²⁵ Indian jurisprudence has failed to keep up with the legal and scientific discourse that has evolved on the subject. In fact, between 2012 and 2014, three prisoners diagnosed with intellectual disability had their mercy petitions rejected by the President without their intellectual disability being brought to light.²⁶

Executing persons with intellectual disability fulfils neither the retributive nor the deterrent purpose of the death penalty.²⁷ It is important to recognize and acknowledge the disadvantages that persons with intellectual disabilities face in the criminal justice system, particularly with the possibility of giving false confessions, inability to provide meaningful assistance to their counsel, their conduct being conflated with lack of remorse, and ultimately the special risk of wrongful execution.²⁸

III. Pains of Death Row

While the Supreme Court has on a number of occasions reiterated that the right to life and dignity continues behind prison walls,²⁹ prisoners on death row are subject to conditions and experiences that are an attack on their self-worth and dignity. The death sentence is accompanied by systematic vilification, mental and emotional trauma, loss of autonomy and a sense of powerlessness.³⁰ The constant psychological and physical assault through the deprivations inflicted by punishment, without any positive reinforcements or coping mechanisms, exacerbates the dehumanisation within the prison system.³¹

Deathworthy found connections between conditions of death row incarceration and poor mental health and mental illness. There was a positive correlation between time spent on

²⁴ Hall v. Florida 572 U.S. 701 (2014); Moore v. Texas 586 U.S. ____ (2019); Moore v. Texas 581 U.S. ____ (2017); Project 39A, National Law University, Delhi, ‘Deathworthy: A mental health perspective on the death penalty, 2021’ (Project 39A, National Law University, Delhi 2021), Chapter VI.

²⁵ Bachan Singh v. State of Punjab (1980) 2 SCC 684.

²⁶ National Law University, Delhi, ‘Death Penalty India Report’ (NLU Delhi Press 2016), Volume II.

²⁷ Atkins v. Virginia, 536 U. S. 304 (2002).

²⁸ Atkins v. Virginia, 536 U. S. 304 (2002).

²⁹ Shatrughan Chauhan v. Union of India (2014) 3 SCC 1; Sunil Batra and Another v. Delhi Administration and Others (1978) 4 SCC 494.

³⁰ Project 39A, National Law University, Delhi, ‘Deathworthy: A mental health perspective on the death penalty, 2021’ (Project 39A, National Law University, Delhi 2021), Chapter VII.

³¹ Project 39A, National Law University, Delhi, ‘Deathworthy: A mental health perspective on the death penalty, 2021’ (Project 39A, National Law University, Delhi 2021), Chapter VII.

death row and substance use, with 20.5% of prisoners suffering from substance use disorder.³² 94.1% of prisoners who were at risk of suicide, also reported death row distress, defined as ‘psychological distress’, and negative reactions due to being on death row.³³ This figure bears relevance as 60% of the prisoners interviewed for Deathworthy have either been acquitted or had their death sentence commuted to life.³⁴ Half of those who were actively contemplating suicide around the time of the interview are not on death row anymore. 68% of the prisoners who are now acquitted were diagnosed with at least one mental illness and 3 had attempted suicide in prison.³⁵

IV. **Indian Jurisprudence on Mental Illness and the Death Penalty**

In commuting death sentences in 2021, the Supreme Court showed an increasing repudiation of failures by courts below to comply with the sentencing procedures and guidelines developed by the Supreme Court over the years.³⁶ One such step was a series of judgements that highlighted the onus on the state to present evidence of the improbability of reform and for the court to consider the mitigating circumstances that may weigh in favour of the criminal.³⁷ In addition, one bench of the Supreme Court passed orders calling for reports from Probation Officers, prison authorities and mental health experts to assess the psychological condition of the accused before the sentence in the matter could be pronounced.³⁸ However, these progressive guidelines continue to fail to permeate to the trial courts of India. In the

³² Project 39A, National Law University, Delhi, ‘Deathworthy: A mental health perspective on the death penalty, 2021’ (Project 39A, National Law University, Delhi 2021), Chapter IV.

³³ Project 39A, National Law University, Delhi, ‘Deathworthy: A mental health perspective on the death penalty, 2021’ (Project 39A, National Law University, Delhi 2021), Chapter IV.

³⁴ Project 39A, National Law University, Delhi, ‘Deathworthy: A mental health perspective on the death penalty, 2021’ (Project 39A, National Law University, Delhi 2021), Chapter IX.

³⁵ Project 39A, National Law University, Delhi, ‘Deathworthy: A mental health perspective on the death penalty, 2021’ (Project 39A, National Law University, Delhi 2021), Chapter IX.

³⁶ *Lochan Shrivastava v. State of Chattisgarh*, Criminal Appeal Nos. 499-500 of 2018 (Supreme Court of India, 14 December 2021); *Bhagchandra v. State of Madhya Pradesh*, Criminal Appeal Nos. 255-256 of 2018 (Supreme Court of India, 09 December 2021).

³⁷ *Manoj & Ors. v. State of Madhya Pradesh*, Criminal Appeal Nos. 248-250/2015 (Supreme Court of India, 29 September 2021); *Mohd. Firoz v. State of Madhya Pradesh*, Criminal Appeal No. 612/2019 (Supreme Court of India, 25 November 2021).

³⁸ *Manoj & Ors. v. State of Madhya Pradesh*, Criminal Appeal Nos. 248-250/2015 (Supreme Court of India, 29 September 2021); *Mohd. Firoz v. State of Madhya Pradesh*, Criminal Appeal No. 612/2019 (Supreme Court of India, 25 November 2021).

year 2022 alone, 57 people were sentenced to death.³⁹ 38 persons were sentenced to death in a single case indicative of a failure to comply with recognised sentencing procedure.

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Project 39A is a litigation and research centre that is formally a part of National Law University, Delhi. Project 39A represents prisoners sentenced to death before appellate courts in India and undertakes empirical research on various issues concerning the criminal justice system including legal aid, torture, forensics, mental health and criminal justice, and the death penalty.

³⁹ The Leaflet, '2008 Ahmedabad Serial Blasts: Special court sentences 38 convicts to death, 11 to life imprisonment' (The Leaflet 2022), <<https://theleaflet.in/2008-ahmedabad-serial-blasts-special-court-sentences-38-convicts-to-death-11-to-life-imprisonment>>, accessed Saturday 19 March 2022, 05:18 GMT.