



## Better Custodial Care Needed for Death Row Prisoners

**P**rison administration is an alienable part of our justice delivery system which, many feel, calls for urgent relook and attention. The prison administration in India has existed almost unchanged since its inception though a nomenclatural change has been effected in the meanwhile. Our prisons are no longer called 'jails' and have been christened as correctional homes today in keeping with the changed ethos.

Even though the prison infrastructures have improved drastically over the years, we still have a long way to go as far as our treatment of the inmates inside these correctional homes are concerned. The researchers at Delhi's National Law University (NLU) in this first ever comprehensive study of the socio-economic profile of prisoners serving death sentence in our jails have found most of them to be from economically vulnerable sections, backward communities and religious minority groups.

This is important because a prisoner's economic status and level of education directly affects his or her ability to effectively participate in the criminal justice system to secure a fair trial. As it appears from the report, Indians belonging to the economically backward and vulnerable sections have found it difficult to bear the burdens imposed by our criminal justice system while handing out death sentences. As a result, it has been noticed that the death penalty often disproportionately affects those who have the least capabilities to negotiate our criminal justice system.

Talking about the right to be present at one's own trial to defend oneself properly, only a few attend all their hearings. Some prisoners are merely taken to the court premises by the police and then confined to a court lock-up without ever being produced in the courtroom. While some prisoners don't not have a lawyer, yet others are simply taken away to 'sign papers' and are never allowed to go home again.

Besides, many prisoners are not produced before a Magistrate within 24 hours of the arrest as is mandatory. The interim period is often spent in torture. Many of the prisoners are made

to depose under torture. Death row prisoners are often kept locked while the trial proceed, and are often so far removed from the stand that they follow nothing of their own trial.

Even when prisoners are present in court, the very architecture of several trial courts often prevents any real chance of the accused participating in their own trial. The accused are often confined at the back of the courtroom while proceedings between the judge and the lawyers take place in the front. It is notable that everyone charged with a crime has the right to an interpreter if s/he does not understand the language used in court, and to translated documents. But this requirement is seldom met. A good number of prisoners don't understand the proceedings at all—either because of the obstructive court architecture or the language used (often English).

Part of an accused's right to a fair hearing is the right to challenge evidence produced against them. In India, trial courts can question the accused directly at any stage, and the Supreme Court has ruled that accused persons must be questioned separately about every material circumstance to be used against them, in a form they can understand. But these provisions are routinely dishonoured. Most of the prisoners are only asked to give yes/no responses during their trials, with no meaningful opportunity to explain themselves.

Most of the prisoners' lawyers don't not discuss case details with them. Many never get to meet their lawyers outside court, and the interaction inside the court was perfunctory. Many of the prisoners prefer to engage private lawyers notwithstanding their economic vulnerability because of the putative incompetence of the underpaid legal aid lawyers. Higher the courts, lesser the information prisoners have about their cases, often finding out about trial developments through prison authorities or media reports though it is not just death row prisoners who face these violations. Surprisingly, there is no reliable database of the total number of death row prisoners in India nor is there any official record or details with any agency of the total number of prisoners executed since independence.

As per another interesting finding, there is still no exhaustive list of offences punishable by death. 59 sections in 18 central laws, including 12 sections under the Indian Penal Code, including both homicide and non-homicide offences, carry the death penalty. Provisions under provincial legislations are separate, and have not yet been put together in a list. The constitutionality of death sentence was last upheld in May 1980 by the Supreme Court. In the said judgement, the apex court ruled that the death penalty did not infringe the right to life as guaranteed by Article 21 of the Indian Constitution. However, the same should be imposed only in the 'rarest of the rare' cases. Surprisingly, only five per cent of those sentenced to death by Indian trial courts have actually been executed. In most of the cases, their death sentences were commuted by the higher courts following appeals.

Many studies also suggest that the state authorities don't intentionally discriminate against poor or less educated prisoners. But the system is so loaded that there is a degree of indirect discrimination at work which worsens the chances of fair trial for prisoners from disadvantaged backgrounds. Yet issues pertaining to fair trial rights and treatment of prisoners on death row by the criminal justice system are almost never discussed with the required gravitas. Indirect discrimination happens against such prisoners when a seemingly

impartial and innocuous practice impacts particular groups negatively, even if it is not purposely directed at the groups.

But given the irreversible nature of the death penalty, it is particularly important that fair trial rights are scrupulously safeguarded in such cases. International human rights discourse agrees that every death sentence imposed following an unfair trial violates the right to life. Hence, it is suggested that the only way to end this injustice is to impose an immediate moratorium on the use of the death penalty as a first step towards abolition of the same. The Law Commission of India, in a report last year, recommended the abolition of the death penalty in phases, beginning with ending it for all offences except those related to terrorism.

Indian criminal justice is said to follow several practices which hurt the poor and the marginalised much more than others. What needs investigation is whether these practices are the outcomes of entrenched social and economic inequalities or whether they have become a form of institutionalised indirect discrimination? The Law Commission said in a recent report on the death penalty, "The vagaries of the system also operate disproportionately against the socially and economically marginalised who may lack the resources to effectively advocate their rights within an adversarial criminal justice system."

Principles of custodial care remain theoretical for our prisoners, although it is obligatory for the police to take care of their well-being and health. One just hopes our prison administrators and policy makers would soon make meaningful interventions to ensure the rights of the undertrials to have a well-oiled justice delivery system in the country.

### **Salient Points**

- Our prisons are no longer called 'jails' and have been christened as correctional homes.
- Death penalty often disproportionately affects those who have the least capabilities to negotiate our criminal justice system.
- Some prisoners don't have a lawyer others don't understand the proceedings at all.
- Only 5% of those sentenced to death by Indian trial courts have actually been executed. In most of the cases, their death sentences were commuted by the higher courts.
- Issues pertaining to fair trial rights and treatment of prisoners on death row by the criminal justice system are rarely discussed.
- Being irreversible in nature, every death sentence imposed following an unfair trial violates the right to life.
- The Law Commission of India has recommended the abolition of the death penalty for all offences except for terrorism.

### **Glossary**

**Perfunctory:** hasty and superficial

**Putative:** Reputed

**Gravitas:** seriousness

**Innocuous:** harmless