

Death Penalty: A Paradox in a Democracy

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Death penalty has produced endless discourse not only in the context of prisons, prisoners and punishment but also in the legal arena - about the validity of death penalty: right to life, torture, so on and so forth. This paper aims to examine death penalty within the Indian context and locate it within the larger frame of its impact on democratic process. It relies on the study with death row prisoners which concludes that death penalty is a constructed account by the state machinery. Further the paper also leans in favour of the abolitionist perspective that death penalty contradicts basic democratic principles such as human rights and rule of law. For an effective contribution to the debate on the paradox of death penalty in a democracy, the paper discusses death penalty in the realm of democratic and legal context where it discusses the processes leading to death row and finally bringing in the relation between rule of law and death penalty.

Key words: Death penalty, Capital punishment, Democracy, India, Prisoners, Death Row,

The death penalty has produced endless discourse not only in the context of prisons, prisoners and punishment but also in the legal arena – about the validity of death penalty: right to life, torture, and so on and so forth. One of the most significant movements around the world is the one seeking to end death penalty. It is increasingly recognised that death penalty violates human rights and every civilised society should ban it. It is in view of this that, Garland noted, “what was once an unproblematic institution, universally embraced, is fast becoming a violation of human rights, universally prohibited” (Garland, 2011, p. 61).

India’s unique and complex democracy is the world’s largest and it retains the death penalty and continues to hand out death sentences. However, there is a notable decrease in the number of prisoners sentenced to death each year. In 2007, 186 prisoners were sentenced to death; in 2011 it came down to 117 prisoners; in 2013 it was 125 and in 2014, it was 95 prisoners but went up to 101 in the year 2015 (National Crime Records Bureau, 2016; George 2015).

The purpose of this paper is to contribute to the existing debate that death penalty is a paradox in a democracy. This paper will firstly situate death penalty in the realm of democratic context in India. Secondly it will locate death penalty in the legal context in India. Thirdly this paper will examine the processes leading to death row including the brief description of demographic profile of prisoners on death row in India. Finally, this paper will deliberate on the paradox of death penalty with reference to one of the principles of democracy i.e. the rule of law.

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Death penalty in the realm of democratic context

One of the key principles of democracy is the rule of law. In 2004, the international community agreed on the following working definition of rule of law:

A principle of governance, in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (United Nations Security Council Secretary-General, 2004).

In India, there was a general lull on matters related to death penalty after the execution of Dhanojoy Chatterjee (*Dhananjay Chatterjee Alias Dhana v. State Of West Bengal*, 2004). Also known as Dhana, he was convicted in 2004 and executed for the rape and murder of an 18 year-old woman. Dhana maintained until his death that he was innocent. While many newspaper reports indicated that the victim was a 13–14 year-old schoolgirl the judgment stated the victim was an 18 year old woman. India saw an execution-free period of seven years between 2004 and 2012.

However, in the recent past, death penalty has generated immense public debate. At the end of May 2011, the ex-President Pratibha Patil rejected the mercy petitions of Devinder Pal Singh Bhullar (*State of Punjab v. Devinder Pal Singh Bhullar & Ors.*, 2011) and Mahendra Nath Das (*Mahendra Nath Das v. The Union of India and Ors.*, 2013). A mercy petition is sent to the Governor or the President seeking pardon or mercy after all the appeals have exhausted. Bhullar was sentenced to death in 2001 for plotting the terrorist attacks that killed nine people in Delhi in 1993; Das has been on death row since 1997 for committing a murder in Guwahati, Assam, in 1996. The President also rejected in August 2011 three mercy petitions of Murugan, Santhan and Arivu alias Perarivalan, assassins of former Prime Minister Rajiv Gandhi (*Union Of India v Sriharan @,Murugan & Ors.*, 2014). A Special Anti-Terrorist Court sentenced them to death in January 1998; the Supreme Court of India confirmed it in May 1999. The common factor for all of the above cases was that their mercy petition was with the President for a considerable period of time. Even though the President rejected the mercy petitions of the above prisoners the courts suspended executions for these prisoners. This was to allow consideration of separate legal challenges on the delay in the decision of the mercy petitions and the constitutionality of their prolonged stay on death row.

With the rejection of mercy petitions, the debate on the death penalty started gaining momentum in India. The next wave of public opinion on the death penalty accelerated after the 'secret' execution of Ajmal Kasab on 21st November 2012. The news of Ajmal Kasab's execution appeared in media broadcasts (print and electronic) only after his death. Kasab was the lone surviving 'gun-man' of the Mumbai Terror Attacks in 2008.

After his execution, people celebrated it as one would celebrate festivals in India – with drumbeats, crackers and colours. At the same time there was a group of individuals criticising the barbaric and secretive execution of Kasab. Added to the debate was the ‘secret’ execution of Afzal Guru on 9th February 2013. His family was not informed in time about his execution. This deprived them of an opportunity to meet him for one last time and he did not have a chance to tell them goodbye. His body was not returned to the family for last rites and burial, in violation of international standards. Afzal Guru was convicted for the attack on the Indian Parliament in 2001 (Roy, 2013). To avoid what happened to Afzal Guru and Ajmal Kasab in terms of not being able to inform their families, a recent judgment stated that the families should be informed and prisoners should know about their execution 14 days in advance (*Shatrughan Chauhan & Another v. Union of India & Ors.*, 2014). Afzal Guru was also denied the opportunity to seek a judicial review of the decision to reject his mercy petition (Amnesty International, 2012). Finally, the gang rape and eventual death of ‘Nirbhaya’ (Delhi rape and murder victim) acted as a stimulus to the ‘popular upsurge’ in the demand for chemical castration and death penalty for rapists (Press Trust of India, 2012). The more recent instance is that of Yakub Memon who was accused of taking part in sponsoring the 13 blasts that rocked Mumbai in 1993. He was executed on July 30, 2015; sparking off considerable debates on the role of death penalty. Those who argued against death penalty maintained that, state death is never a deterrent; it merely exacts retribution. However, as things stand today death penalty is permitted within the legal framework.

Death penalty in the legal context

The provisions relating to capital punishment are embodied in the Indian Penal Code, 1860 and the Criminal Procedure Code, 1973. It provides capital punishment for eight categories of offences namely:

- waging war against the Government of India;
- abetting mutiny by a member of the armed force;
- fabricating false evidence with the intent to procure conviction of a capital offence, with the death penalty applicable only if an innocent person is in fact executed as a result;
- murder;
- murder committed by a life convict;
- abetting the commission of suicide of a child or insane person;
- attempted murder actually causing hurt, when committed by a person already under sentence of life imprisonment;
- kidnapping and dacoity with murder (Indian Penal Code, 1860 (Section 121, 132, 194, 302, 303, 305, 307, 364 (a) and 396).

In handing over death sentence, the Supreme Court evolved with the doctrine of 'rarest of rare crimes' in *Bachan Singh v. State of Punjab* in 1980. Though what constitutes the 'rarest of the rare crimes' was not defined explicitly some principles were laid down. It said that the extreme penalty of death should be given only in the gravest cases of extreme culpability; the circumstances of the 'offender' should be taken into consideration along with the circumstances of the 'crime'; life imprisonment is the rule and death sentence an exception; and that a balance sheet of aggravating and mitigating circumstances should be drawn up along with its mitigating circumstances. It further said that the crime had to disturb the 'collective conscience' of the society (*Machhi Singh and Ors. v. State Of Punjab*, 1983).

Processes leading to death penalty

The legal framework provides an understanding of the crimes and circumstances under which death sentence is handed over in India. However, it is also crucial to understand from the experiences and perception of prisoners of death row themselves the processes in the criminal justice system that leads to death penalty. This section will examine the study that captured the voices of prisoners on death row in India. The objective of this study was to enquire if the dignity and rights of the prisoners were upheld while confronting the criminal justice system and while surviving in the death row. A total of 111 prisoners on death row and their families were interviewed from 16 prisons in six states in India (George, 2015, p. 35). This study was underpinned in the phenomenological approach to understand the meaning of events and interactions to ordinary people in particular situations (Bogdan & Biklen, 1998). At the same time, a perspective was required for viewing the dialectic between the prisoner and the social structure of the organization in this case the prison. Symbolic interactionism appeared to provide such a perspective (Blumer, 1986). The age group of prisoners ranged from 18 – 60 years upwards with 44 per cent in the 30 – 40 years age group. Most of them (99 per cent) were men. Around 53 per cent worked as daily wage workers or casual labourers, 13 per cent carried out own business, 5 per cent were professionals like engineers, chartered accountants or computer professional, 15 per cent were unemployed and 14 per cent refused to disclose their occupation. Among these 111 prisoners, 17 per cent were illiterate and have never been to a school or even registered as a child in a school, a relatively small proportion of 12 per cent completed their bachelors, masters, professional degree or vocational training and 15 per cent of the prisoners refused to disclose their educational level. Majority of prisoners were Hindus (67 per cent) followed by Islam (14 per cent); Christians (six per cent); Sikhs (five per cent); and Buddhist (two per cent). Around four per cent refused to disclose their religious identity and two prisoners insisted on putting down their religion as Marxist and Atheist respectively. Nearly 37 per cent of the prisoners on death row belonged to scheduled castes or scheduled tribes or other backward castes, 44 per cent of prisoners refused to identify their caste, 19 per cent of prisoners belonged to upper castes. There were prisoners speaking 14 languages.

The process of death penalty has emerged from the narration of the prisoners about their experiences and perceptions from their arrest till they were sentenced to death.

The data revealed seven processes, namely, their arrest, being in the lock-up, appearance before the magistrate for the first time, either sent back to lock-up or sent to judicial custody (prison), being in judicial custody, trial and being sentenced to death. The first process is that of an arrest. An arrest is defined as depriving a person of liberty by legal authority; in the technical criminal law sense, to seize an alleged or suspected offender to answer for a crime (Gifis, 2010). The research highlighted three characteristics of the first process, namely 'class and/or caste', 'coerced' and 'charged'. Of these prisoners 37 per cent of the prisoners belonged to lower caste or ethnic or religious minority. Prisoners were 'coerced' into being arrested where they were taken to a police station with an assurance that they would be sent home immediately. However, in reality, they were never let out even on bail and finally were awarded the death sentence. Some of the prisoners were initially charged with theft or petty crimes but later 'charged' for the offences that fetched death penalty.

In the second process, a prisoner is in the lock-up, which is typically in a police station. The prisoners described their physical, sexual, mental and emotional torture while in police lock-up. The torture methods included electrocuting them, inserting objects or chilly powder in their genitals, placing snakes in their cells to scare them, pouring petrol in their anus, making them eat faeces and drink urine. The third process is of appearing before the magistrate for the first time. This process included tutoring them to say that they were arrested within 24 hours and threatening them with further torture in case they did not parrot what was tutored. The fourth process is either sending them to a judicial custody or sending them back to the lock-up. Most of them are sent to the judicial custody. In the fifth process is being in the judicial custody; a health ticket is issued and this implies prison officers are not responsible for the death of a prisoner in case s/he was tortured in lock-up. Another process that takes place in judicial custody is an 'identification parade' where the officers coerce eyewitnesses. Many reported that prison officers beat them when they came to judicial custody. There was one positive account of judicial custody from a prisoner who said that judicial custody was not as intimidating as the police lock-up.

The sixth process leading to death penalty is 'trial'. A charge-sheet must be filed within 90 days of arrest (The Code of Criminal Procedure, 1973 (Section 167 (2) (a) (ii)). Once the charge-sheet is filed, the case is committed to a sessions court or lower court or district court and the trial begins. A court date typically occurs after every 14 days. The longest trial went on for 12 years while the shortest was for one year and two months; the average number of years a person spent as an under trial was six years. Further, citing security reasons they were not taken to the court hearings regularly. The law in India prohibits the handcuffing of prisoners and, if handcuffed, only with a court order (*Citizens For Democracy v. State Of Assam And Ors.*, 1995). Yet, they were all handcuffed and sometimes tied with ropes to other prisoners to prevent them from escaping. The prosecutors called them devil, blood-thirsty wolf, savage and ruthless person— and argued that the prisoner should not be acquitted or given life imprisonment or he might kill many more. Sometimes their own defence lawyers, who were mainly legal aid lawyers, demanded, despite being paid by the state, money from their families. Sometimes the defence lawyers advised them to 'demand' death sentence

on their own, as it would be easier to acquit them from a death sentence than from life imprisonment in the High Court. The legal aid lawyers often missed important hearings or managed to lose crucial documents. The prisoners also alleged that the judges who presided over the case were often transferred due to pressures from political parties. The seventh process is being sentenced to death where prisoners were called wild beasts that could not be reformed. According to the prisoners, they received the death penalty because of political pressure, or due to their class or religion or caste or low or no educational background. Very rarely some accepted that they committed the crime.

The 'death row phenomenon' or 'death row syndrome' is the result of the mental trauma, harsh conditions experienced on death row, the length of time that they have experienced and the anxiety of awaiting one's own execution (Hudson, 2000, p. 833). Classic studies document the nature and problems of being on death row. Although varied in their approaches, each of these classical works offers a glimpse of the wider social structures within which death row prisoners were positioned (Camus, 1960; Foucault, 1977; Bentham, 1996). Apart from these classical studies numerous scholars have documented the severe mental trauma due to stress associated with death sentences (Schabas, 1994; Radelet, 1990; Mello, 1987; Strafer, 1983; Holland, 1985; Johnson, 1979; Hussain & Seymour, 1978; West, 1975; Gallemore, Panton & Kaufman, 1972; Bluestone & McGahee, 1962). In India, commenting on a prisoner who had been on death row for many years, a judge noted that the person would be more of a vegetable than a person and hanging a vegetable is not death penalty (*Rajendra Prasad Etc. v. State Of Uttar Pradesh*, 1979). The length of the time experience has been well expounded in various literatures including many court judgments both in international law and national law (*Soering v. United Kingdom*, 1989; *Smt. Triveniben & Ors. v. State Of Gujarat & Ors.*, 1989). The 111 prisoners interviewed in this study have been waiting from 5 – 17 years on death row. However they have been incarcerated for longer – the longest for over 22 years. Prisoners mentioned that they feel like being killed every second; the wait for their appeals makes them anxious and nervous. Describing the anxiety of waiting for one's own execution, one prisoner narrated of 'ghosts' haunting him in the prison, or feeling of heaviness on the chest while sleeping, or having a sword hanging over the head constantly, nightmares and insomnia. Prisoners also described the loss of agency as being part of the death row for such a long time. Some discussed how they do not know how to talk to a woman; others suggested that they felt like a dummy. Some said that they were not afraid of death and that they just wanted to have their honour back. However, each of them voiced that living on the death row is a daily struggle, tortuous, oppressive and that they were afraid of the impending death sentence.

Death penalty: A constructed account by the state machinery

Among other findings, the above study highlighted that death penalty is a constructed account by the state machinery. Death sentence in India is handed only to the 'rarest of the rare crimes'. The prisoners narrated that stories were extracted through torture and stories were constructed during their period of torture. These stories are recorded in their charge sheets and these were used to establish how 'gruesome' the crime

was. Further, the arguments in the court are then based on this charge sheet. Most of the prisoners on death row did not have competent lawyers who could contest these charges or cross-examine the witnesses. In the end, they ended on death row. The contentious reasons for handing over death penalty is that it shakes the conscience of the nation; or when higher courts dictates to the lower court what crimes come under 'rarest of rare' (for example, honour killing); and lack of adequate reasons or analysis. Legal researches analysing jurisprudences reveal that the principle of awarding the death penalty in the 'rarest of rare' cases has outlived its utility (Deva, 2013, p. 252). Further it also reveals that the application of the 'rarest of rare' guidelines of *Bachan Singh* is applied inconsistently and in an arbitrary fashion (*Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*, 2009).

Similarly, other studies reveal that where the crime is similar, some are awarded death sentence, calling it a "lethal-lottery" or "shifting sands" of 'rarest of rare' (Amnesty International India & People's Union for Civil Liberties, 2008; Bindal & Kumar, 2013). Capital punishment was used extensively in colonial India by the British Empire to control its colonial subjects and reinforce its sovereignty. This punishment was more often given to those belonging to lower castes and class (George, 2015).

A culture of capital punishment exists in India where, as in the example of *Machhi Singh And Others v State Of Punjab*, 1983 judgment, it is contended that any sentence less than death would 'denigrate' the seriousness of the offense (Johnson, 2013). This judgement in other words states that the 'rarest of rare' requirement is satisfied when the 'collective conscience' of the community has been 'shocked' and when the balance sheet of aggravating and mitigating circumstances indicates that a sentence of life imprisonment would be 'inadequate' because it would denigrate the seriousness of the crime. This phrase of 'collective conscience' was introduced by Durkheim as a label for 'the totality of beliefs and sentiments common to the average members of a society' (Durkheim, 1933). Punishment is a raw exercise of power. Yet at other points, and for other people punishment is also an expression of moral community and collective sensibilities, in which penal sanctions are authorised response to shared values individually violated (Garland, 1991, pp. 156-157). Demands that governments should 'crack down' on offenders are reproduced in the 'tough on crimes' discourse and translated into harsher penalties, comprehensive and punitive community reporting, and stringent release plans (Pratt, 1977). This has led to what Garland claims as a kind of retaliatory law making, acting out the punitive urges and controlling anxieties of expressive justice. Its chief aims are to assuage popular outrage, reassure the public, and restore the credibility of the system, all of which are political rather than penological concerns (Garland, 2001).

However, collective conscience has no uniformity when demanding justice for the individual or group that is violated. People who demanded justice for Nirbhaya forgot to demand the same for Suzette Jordan (Singh, 2015) or the mother and daughter from a Dalit family in Khairlanji, Maharashtra in 2006. The mother and the daughter were stripped, paraded naked, beaten black and blue with bicycle chains, axes and bullock cart pokers in public. They were publicly gang raped until they died. Some raped them even after that and finally, sticks and rods were shoved into their genitals. The two sons

of the same Dalit family were beaten up, their genitals mutilated, faces disfigured and their bodies tossed in the air, before they lay dead on the ground. (Vij, 2006). No one seems to ask for the death penalty here, nobody's conscience seem to be disturbed. Similarly, no one has any pangs of conscience when it came to Soni Sori. Sori was in police custody when Ankit Garg, the Police Superintendent in Chhattisgarh, allegedly, verbally abused Soni and directed police personnel to torture her. Sori contended that Garg watched as junior police personnel stripped her naked, administered electric shocks and assaulted her. According to her lawyers, a medical examination found two stones in Soni's genital tract and another in her rectum. No action was taken against the police personnel; Ankit Garg was awarded the Police Medal for Gallantry in 2012 for his raid on Maoist supporters (Sethi, 2012).

Perhaps President (of the Court of South Africa) Arthur Chaskalson foresaw this when he penned down the judgement abolishing death penalty in South Africa. Chaskalson wrote that:

Public opinion may have some relevance to the enquiry but, in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive, there would be no need for constitutional adjudication ... The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process (*State v. Makwanyane and Another*, 1995, para 88).

Similarly, France abolished capital punishment in October 1981 at a time when 60 - 65 per cent of the French people favoured capital punishment. (International Commission against the Death Penalty, 2013). Public opinion played no role in abolishing capital punishment in these countries.

Research on attitudes toward capital punishment abounds in the United States. In India, a recently collected data revealed variance in levels of support for the death penalty among Indian college students. Almost 44 per cent express some degree of opposition, 13 per cent are uncertain, and 43 per cent express some degree of support. Some of the statistically significant reasons for supporting death penalty included retribution, instrumentalist goals, and incapacitation; while significant reasons for opposition included morality and the belief that deterrence could be achieved by imposing sentences of life without parole (Lambert, Pasupuleti, Jiang, Jaishankar, & Bhimarasetty, 2008).

Further, studies also reveal that the family members of death row prisoners are perceived as being as culpable as the offender and most of them are left to their own device to survive the entire process, including the execution and the aftermath (Kandelia & Hodgkinson, 2013; Arditti, Lambert-Shute, & Joest, 2004). This is very true, for instance nobody cared for Dhanajoy's, Afzal Guru's or Yakub Memon's families after their execution.

Rule of law and death penalty

Death penalty has no place in a civilised democratic society. (Balagopal, 1998, p. 2438). It also violates Article 6 of the International Covenant on Civil and Political Rights, on the right to life (Schabas, 2002). In a democratic country, the judiciary has the role of interpreting and applying laws and adjudicating upon controversies between citizens and between citizens and the State. The functioning State and judiciary uphold the Rule of Law. In a country with a written constitution, the judiciary also assures that the government runs according to law. It has an additional function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and by keeping all authorities within the constitutional framework. The judiciary in all the States in India has practically the same structure with variations in designations (Jois, 1984). A commonly held view in the West regarding the prevalence of death penalty policy and practice in China is a lack of democracy as the main factor (Yunhai, 2008, p. 141). With regard to India, this view is nullified, as we are the largest democracy in the world. If we agree to the above view then India's death penalty policy and practice highlights that there is lack of democracy or these policies and practices undermines democratic processes and the rule of law.

In a democracy, the functioning judiciary maintains the rule of law. Justice Bhagwati in his powerful dissenting judgment against death penalty in the *Bachan Singh* case quite categorically mentioned that the death penalty is unconstitutional as it violates Article 14, 19 and 21 of the Constitution of India.¹ He further said that, "Death sentence has certain class complexion or class bias in as much as it is largely the poor and downtrodden who become victims of this extreme penalty. We would hardly find a rich or affluent person going to the gallows" (As cited in Ali, 2013).

Death penalty has given rise to more disturbances in society and it undermines the democratic process. I tend to agree with Garland that "the death penalty is not an isolated practice standing alone. It functions as an element in a larger system of sanctions, and its place in this system needs to be considered a part of its meaning" (Garland, 2002, p. 474). Thus it is a daunting task to preserve and respect basic human rights in a functioning democracy. There has to be a shift towards a more humane form of governance and punishment (Hobson, 2013). In a country like India, which upholds the rule of law and has a functioning democracy, awarding death penalty to satisfy the collective conscience of the society is a paradox.

References

Agency: IANS. (2013, November 22). Tehelka Founder and Editor-in-chief Tarun Tejpal Charged with Rape, Says He Will Aid Probe. *DNA*. Retrieved November 1, 2016, from <http://www.dnaindia.com/>

¹Article 14 states: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.; Article 19 states: Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. ; Article 21 states: No person shall be deprived of his life or personal liberty except according to procedure established by law.

india/report-tehelka-founder-and-editor-in-chief-tarun-tejpal-charged-with-rape-says-he-will-aid-probe-1923326

- Ali, M. (2013, February 20). Provision of death penalty discriminatory against the poor, says Justice Shah. *The Hindu*. Retrieved November 1, 2016, from <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/provision-of-death-penalty-of-the-discriminatory-against-the-poor-says-justice-shah/article4433707.ece>
- Amnesty International India and People's Union for Civil Liberties (Tamil Nadu and Puducherry). (2008, May 2). Lethal Lottery: The Death Penalty in India – A study of Supreme Court Judgments in Death Penalty Cases 1950–2006. Retrieved November 1, 2016, from <https://www.amnesty.org/en/documents/ASA20/007/2008/en/>
- Amnesty International Report. (2012). Death Sentences and Executions 2011. Retrieved November 1, 2016, from <https://www.amnesty.org/download/Documents/8000/act500012013en.pdf>
- Arditti, J. A., Lambert-Shute, J., & Joest, K. (2004). Saturday morning at the jail: Implications of incarceration for families and children. *Family Relations*, 52(3), 195–204. doi: 10.1111/j.1741-3729.2003.00195.x
- Balagopal, K. (1998). Of Capital and Other Punishments. *Economic and Political Weekly*, 33(38), 2438–2447. Retrieved from <http://www.jstor.org/stable/4407181>
- Bentham, J. (1996). *An Introduction to the Principles of Morals and Legislation* (Collected Works of Jeremy Bentham). Oxford: Clarendon Press.
- Bindal, A., & Kumar, R. C. (2013). Abolition of the death penalty in India: Legal, constitutional and human rights dimension. In R. Hood & S. Deva (Eds.), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public* (pp. 123-140). Oxford: Oxford University Press.
- Bluestone, H., & McGahee, L. C. (1962). Reaction to extreme stress: Impending death by execution. *The American Journal of Psychiatry*, 119(5), 393-396. <http://dx.doi.org/10.1176/ajp.119.5.393>
- Blumer, H. (1986). *Symbolic Interactionism: Perspective and Method*. Berkeley, CA: University of California Press.
- Bogdan, R. C., & Biklen, S. K. (1998). *Qualitative Research in Education. An Introduction to Theory and Methods*. Boston, MA: Allyn & Bacon.
- Camus, A. (1960). *Reflections on the Guillotine*. Michigan City, IN: Fridtjof-Karla Publications.
- Deva, S. (2013). 'Death penalty in the 'rarest of rare' cases: A critique of judicial choice-making. In R. Hood & S. Deva (Eds.), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public* (pp. 238-286). Oxford: Oxford University Press.
- Durkheim, E. (1933). *The Division of Labor in Society*. New York, NY: Macmillan.
- Foucault, M. (1977). *Discipline and Punish: The Birth of the Prison*. New York, NY: Vintage.
- Gallemore, J. L., & Panton, H. J. (1972). Inmate Responses to Lengthy Death Row Confinement. *The American Journal of Psychiatry*, 129(2), 167-72. <http://dx.doi.org/10.1176/ajp.129.2.167>
- Garland, D. (1991). Sociological Perspectives on Punishment. *Crime and Justice*, 14, 115-65. Retrieved from <http://www.jstor.org/stable/1147460>
- Garland, D. (2001). *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago, IL: University of Chicago Press.
- Garland, D. (2002). *The cultural uses of capital punishment*. *Punishment and Society*, 4(4), 459-48. doi:10.1177/1462474502004004050
- Garland, D. (2011). Modes of Capital Punishment: The Death Penalty in Historical Perspective. In D. Garland, R. McGowen & M. Meranze (Eds.), *America's Death Penalty: Between Past and Present* (pp. 30-71). New York, NY: New York University Press.

- George, R. M. (2015). *Prisoner Voices from Death Row: Indian Experiences*. London: Ashgate.
- Gifis, S. H. (2010). *Barron's Law Dictionary*. Hauppauge, New York, NY: Barron's Educational Series, Inc.
- Hobson, C. (2013). *Democracy, Democratization and the Death Penalty*. In M. Futamura & N. Bernaz (Eds.), *The Politics of the Death Penalty in Countries in Transition* (pp. 29-46). Abingdon, OX: Taylor and Francis.
- Holland, N. (1985). Death Row Conditions: Progression Toward Constitutional Protections. *Akron Law Review*, 19(2), 293-310.
- Hudson, P. (2000). Does the death row phenomenon violate a prisoner's human rights under international law?. *European Journal of International Law*, 11(4), 833-856.
- Hussain, A. H., & Seymour, T. (1978). Psychiatry on death row. *Journal of Clinical Psychiatry*, 39(3), 183-188.
- International Commission against Death Penalty. (2013) *How States abolish the death penalty*. Retrieved November 1, 2016, from <http://www.icomdp.org/cms/wp-content/uploads/2013/04/Report-How-States-abolition-the-death-penalty.pdf>
- Johnson, D. T. (2013). The Death Penalty in India. In N. P. Unnithan (Ed.), *Crime and Justice in India* (pp. 365-389). New Delhi: Sage Publications India, 2013.
- Johnson, R. (1979). Under Sentence of Death: The Psychology of Death Row Confinement. *Law & Psychology Review*, 5, 141-192.
- Jois, M. R. (1984). *Legal and Constitutional History of India: Ancient Legal, Judicial, and Constitutional System* (Vol. 1). New Delhi: Universal Law Publishing Co.
- Kandelia, S., & Hodgkinson, P. (2013). The Greater Stigma? Family Visits to the Condemned. In P. Hodgkinson (Ed.), *Capital Punishment: New Perspectives* (pp. 127-144). Farnham and Burlington: Ashgate Publishing.
- Lambert, E. G., Pasupuleti, S., Jiang, S., Jaishankar, K., & Bhimarasetty, J. V. (2008). Views on the death penalty among college students in India. *Punishment & Society*, 10(2), 207-218. doi: 10.1177/1462474507087199
- Mello, M. (1987). Facing death alone: The post-conviction attorney crisis on death row. *American University Law Review*, 37(3), 513-607.
- National Crime Records Bureau. (2016). *Prison Statistics India 2015*. Retrieved November 1, 2016, from <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf>
- Pratt, J. (1997). *Governing the Dangerous: Dangerousness, Law and Social Change*. Sydney: Federation Press.
- Press Trust of India. (2012, December 30). *Congress draft anti-rape law proposes chemical castration*. Retrieved November 1, 2016, from <http://indiatoday.intoday.in/story/congress-draft-anti-rape-law-proposes-chemical-castration/1/240107.html>
- Radelet, M. (1990). *Facing the Death Penalty: Essays on a Cruel and Unusual Punishment*. Philadelphia, PA: Temple University Press.
- Roy, A. (2013, February 10). A perfect day for democracy. *The Hindu*. Retrieved November 1, 2016, from <http://www.thehindu.com/opinion/lead/a-perfect-day-for-democracy/article4397705.ece>
- Schabas, W. (1994). Developments in Criminal Law and Criminal Justice: Execution Delayed, Execution Denied. *Criminal Law Forum*, 5(1), 180-188. doi: 10.1007/BF01785853
- Schabas, W. (2002). *The Abolition of the Death Penalty in International Law*. Cambridge: Cambridge University Press.

- Sethi, A. (2012, February 14). Activists shocked at gallantry award for Chhattisgarh cop. *The Hindu*. Retrieved November 1, 2016, from <http://www.thehindu.com/news/national/activists-shocked-at-gallantry-award-for-chhattisgarh-cop/article2834675.ece>
- Singh, S. S. (2015, March 14). Park Street rape survivor Suzette Jordan dies. *The Hindu*. Retrieved November 1, 2016, from <http://www.thehindu.com/news/national/park-street-rape-victim-dies/article6989762.ece>
- Strafer, G. R. (1983). Volunteering for Execution: Competency, Voluntariness and the Propriety of Third Party Intervention. *Journal of Criminal Law and Criminology*, 74(3), 860–912. doi: 10.2307/1143137
- United Nations Security Council Secretary-General. (2004). The rule of law and transitional justice in conflict and post-conflict societies. S/2004/616. Retrieved November 1, 2016, from <https://www.un.org/ruleoflaw/files/2004%20report.pdf>
- Vij, S. (2006, November 4). Dalits, like flies to feudal lords. *Tehelka*. Retrieved November 1, 2016, from https://archive.tehelka.com/story_main22.asp?filename=Ne111106Dalits_like.asp 2enp
- West, L. J. (1975). Psychiatric Reflections on the Death Penalty. *American Journal of Orthopsychiatry*, 45(4), 689–700. doi: 10.1111/j.1939-0025.1975.tb01195.x
- Yunhai, W. (2008). The death penalty and society in contemporary China. *Punishment & Society*, 10(2), 137–151. doi: 10.1177/1462474507087196

Case Law citations

- Bachan Singh v. State of Punjab, 2 SCJ 474 (1980); AIR 1980 SC 898; AIR 1982 SC 1325; 1 SCR 145 (1983).
- Bariyar v. State of Maharashtra, 6 S.C.C. 498 (2009).
- Citizen For Democracy v. State Of Assam And Others, AIR 1996 SC 2193, 1996 CriLJ 3247, (1996) 1 GLR 682.
- Dhananjay Chatterjee Alias Dhana v. State Of West Bengal, 2004 All MR (Cri) 2185 (SC); AIR 2004 SC 3435; 2004 Cr LJ 2827; 2004 AIR SCW 3051.
- Machhi Singh and Others v. State Of Punjab, 1983 AIR 957, 1983 SCR (3) 413.
- Mahendra Nath Das v. The Union of India and Others, (Cri) No. 35/2011.
- Rajendra Prasad v. State of Uttar Pradesh, 1979 AIR 916, 1979 SCR (3) 78.
- Shatrughan Chauhan & Another v. Union of India & Others, Judgment, Writ Petition No. 55 of 2013, Supreme Court of India, Jan. 21, 2014.
- Soering v. United Kingdom, 161 Eur.Ct. H.R. (Ser.A) 34, (1989) 11 EHRR 439;
- State v. Makwanyane, (1995) (3) SA 391, para. 88.
- State of Punjab v. Devinder Pal Singh Bhullar & Ors. etc., AIR 2012 SC 364.
- Triveniben v. State of Gujrat, (1988) 4 AScC 574; (1989) 1 SCC, 678.
- Union Of India v. Sriharan @, Murugan & Ors Writ Petition (Cri) No. 48 OF 2014.