



00296

India

Foreign Nationals and the Death Penalty

Death Penalty Overview

The death penalty in India stems from the colonial Indian Penal Code of 1860, which lists capital offences as including murder, aggravated rape, sexual offences against children, drug trafficking and crimes against the state, such as espionage and terrorism. The only permissible method of execution is by hanging.

Project 39A, a research and litigation unit at the National Law University, Delhi's Death Penalty India Report (2016), the first major empirical work on capital punishment in India, mapped the socio-economic profile of prisoners sentenced to death and found that nearly 75% of prisoners on death row belong to marginalised and vulnerable backgrounds, who are often unable to navigate the legal system and do not have the resources to access quality legal representation.

The debate around the death penalty in India, particularly in the context of sexual offences and terror offences, has intensified in the recent past. In 2015, the Law

Commission of India, after undertaking a thorough analysis of capital sentencing jurisprudence since the *Bachan Singh* case (1980), recommended the abolition of the death penalty except for terror offences, which was considered politically expedient. However, despite this call for abolition, since 2015, the scope of the death penalty in India has widened.

In March 2019, four men convicted of the internationally condemned gang rape and murder of a young woman in Delhi in 2012, were executed. This marked the first hanging for a sexual offence in India since 1996. Since the Delhi rape case, India has introduced tougher laws to deal with sexual violence against women and children. Across the political spectrum, political leaders have expressed support for the death penalty for sexual violence, in a bid to 'protect' women.

The increasing use of death sentences for sexual offences has been documented by Project 39A, who found that between 2016 and 2020, the proportion of capital cases

involving sexual offences has increased from 18% in 2016 to 63% in 2020.

Public outrage to violent rapes and murders of women and children in India lend support to the idea that the death penalty finds considerable endorsement in public opinion, although these populist demands have not been supported by some feminist activists, particularly those associated with the Indian Women's Movement. In their submissions to the expert committee constituted in the aftermath of the Delhi gang rape case, they refused to endorse the death penalty for sexual offences, citing its disparate impact on marginalised communities.

Another study conducted by the P39A (2017) with former judges of the Supreme Court found that a vast majority of the judges supported the idea of retaining the death penalty as a permissible punishment, although there was significant disparity among the judges as to what amounted to the 'rarest of rare' circumstances for the imposition of the death penalty.

Foreign Nationals

The death penalty in India for foreign nationals applies mainly in the context of terror offences. For example, in 2012, Ajmal Kasab, a Pakistani national was hanged for his role in the 2008 Mumbai terrorist attacks.

Research by the Death Penalty Research Unit at the University of Oxford found that there were at least two further foreign nationals sentenced to death between 2016-2021, both of whom were Pakistani men convicted of taking part in terrorist attacks in the Red Fort in 2000 and in Hyderabad in 2013, resulting in multiple deaths. Reportedly, they did not receive sufficient legal or consular assistance from their embassies in their arguing their cases.

Using the death penalty against foreign nationals, particularly Pakistanis, in relation to terrorist attacks carries with it a political aspect, which should not be forgotten when considering the impact of the death penalty on foreign nationals in India.

Acknowledgements

With special thanks to the following organisations and individuals who lent their considerable assistance and expertise towards this research in India: Project 39A, Preeti Dash, Rushil Batra, among others.



Death Penalty Research Unit (DPRU)

Centre for Criminology, University of Oxford

<https://www.law.ox.ac.uk/death-penalty-research-unit>