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# DISSERTATION

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„Voices of prisoners surviving the death row in  
India“

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**I dedicate this study  
to  
all prisoners on death row in  
India.**





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## ABSTRACT

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. Death penalty is embodied in the Indian Law. However, there is very little known about the people who are on the death row except for the media reports on them. The main objective of the study is to enquire if the dignity of the prisoners is upheld while confronting the criminal justice system and while surviving the death row. The more specific objectives are the following: firstly, to find the profiles of prisoners on death row, secondly to understand the stages that the prisoners experience before being sentenced to death and thirdly to explore how the prisoners perceive and experience their conditions on the death row. In order to explore the way the prisoners on death row experience and perceive their lives and make meaning of that world, the study is underpinned in theories of phenomenology and symbolic interactionism.

The data for this study was collected from 16 prisons located in six different states in India. 111 prisoners on death row were interviewed. The data analysis, first and foremost led to an understanding of the prisoners who are on death row with reference to their demographic profile and the impact of death sentence on the families of these prisoners. Secondly, it revealed the process leading to death penalty which begins with their arrest until the time they are on death row. Thirdly it reveals the '*double jeopardy*' of prisoners being incarcerated as prisoners on death row and experiencing the death row phenomenon. However, three salient features emerged from the analysis. It revealed that poverty, social exclusion and marginalization become an antecedent to death penalty. It highlighted the fact that death penalty is a constructed account by the state machinery. Lastly it brought to sharp focus the notion that prisoners on the death row situate dignity higher in the juxtaposition of death and dignity.

## ZUSAMMENFASSUNG

Das Thema "Todesstrafe" hat einen vielschichtigen Diskurs hervor gebracht, der sich nicht nur im Kontext von Gefängnissen, Häftlingen und Bestrafung abspielt, sondern auch das juristische Feld durchdringt und sich generell um die Frage der "Richtigkeit" der Todesstrafe dreht, insbesondere bezogen auf das Recht auf Leben, Folter, usw. Die Todesstrafe ist in der indischen Rechtsordnung verankert. Nichtsdestotrotz ist sehr wenig über die Menschen im Todestrakt bekannt, abgesehen von (lokalen) Medienberichten. Das Hauptanliegen der vorliegenden Studie ist es zu untersuchen, ob die jedem Menschen angeborene Würde der Inhaftierten geachtet wird, während der Zeit im Todestrakt und insbesondere durch das Strafjustizsystem, dem der Gefängnisinsasse ebenso ausgesetzt ist. Darüber hinaus sind die folgenden spezifischen Zielsetzungen für diese Arbeit entscheidend: (1) Profile von Häftlingen in der Todeszelle zu erstellen, (2) die unterschiedlichen Stufen von Erfahrungen der Gefängnisinsassen zu verstehen, die sie während ihrer Zeit im Todestrakt durchlaufen, und (3) zu untersuchen, wie die Häftlinge die Bedingungen ihrer Haft im Todestrakt wahrnehmen und erfahren. Um ergründen zu können, wie die Häftlinge in der Todeszelle ihr Leben wahrnehmen und erfahren und welche Bedeutungen sie der (Außen) Welt im Gefängnis zuschreiben, beruht die Studie auf den theoretischen Zugängen der Phänomenologie und des symbolischen Interaktionismus.

Die empirischen Daten für diese Studie wurden in 16 Gefängnissen in sechs unterschiedlichen Bundesländern in Indien gesammelt. Insgesamt wurden 111 Häftlinge interviewt, die auf die Vollstreckung der Todesstrafe warten. Aufgrund der Datenanalyse konnte ein Verständnis für die Häftlinge im Zusammenhang mit ihrem demographischen Profil und für die Auswirkungen des Todesurteils auf ihre Familien entwickelt werden. Auf der Basis der Datenanalyse konnte darüber hinaus der Weg nachgezeichnet werden, der zur Todesstrafe führt, und dessen zentrale Bestandteile die Inhaftierung und die Zeit im Todestrakt darstellen. Die Arbeit verdeutlicht die 'doppelte Gefahr', der die Insassen ausgesetzt sind, indem sie als Gefangene in der Todeszelle eingekerkert sind und das Phänomen des Todestraktes erfahren. Aus der



Analyse konnten drei Aspekte des "Phänomens Todestrakt" als besonders zentral herausgearbeitet werden: Armut, soziale Ausgrenzung und Marginalisierung, die sich als Vorläufer der Todesstrafe herauskristallisieren. Diese Arbeit verdeutlicht, dass das Konstrukt einer Todesstrafe eine von der staatlichen Maschinerie konstruierte Forderung darstellt. Letztlich legt sie offen, dass Gefangene im Todestrakt das Konzept von menschlicher, universaler, Würde in einer Gegenüberstellung von Würde und Tod höher einstufen.

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## **CHAPTER ONE: SETTING THE ‘TEMPO’ OF THE STUDY**

### **1.1. INTRODUCTION**

*“Though I was empowered to give death sentence, I was not qualified to impose the same. How could I be an instrument of the State to take away somebody’s life, when I do not know the wo/man, at all, excepting the crime that s/he has been charged with?”<sup>1</sup> - Justice Hosbet Suresh<sup>2</sup>*

Central to the study is the view that the prisoner is unknown to the world except for the crime that s/he is alleged to have committed. At the onset it is imperative that one should set a ‘tempo’ on this mammoth issue of death penalty which has caused numerous debates and deep discourse. Reports about the death row prisoners are in news much before they are awarded the death sentence. We know ‘stories’ about prisoners from the media or ‘facts about the crime’ from court documents. However we do not know the person behind these ‘stories’ or ‘facts’ of crime. The issue of death penalty was lying low in India after the execution of Dhanojoy Chatterjee<sup>3</sup> also known as Dhana in 2004. Dhana was executed for rape and murder of a 13 year old school girl however Dhana maintained till his death that he was innocent. In the recent past, death penalty has generated immense public opinion. With the rejection of the mercy petitions of Mahendranath Das, Devinder Pal Singh Bhullar, and Arivu (Perarivalan) and others from the Rajiv Gandhi assassination case, the debate on death penalty started gaining momentum. The next wave of public opinion on death penalty accelerated before the execution of Ajmal Kasab’s the lone surviving gun-man of the Mumbai Terror Attacks in 2008. The discussion reached its peak with the secret execution of Ajmal. On the one hand there

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<sup>1</sup> Ghormode, Vijay *Death sentence: A struggle for abolition* Hind Law Publications, Pune 2008

<sup>2</sup> Note: Honarable Justice. Hosbet Suresh, retired Bombay High Court Judge. available at <http://bombayhighcourt.nic.in/libweb/judges/Hosbet%20Suresh.html> [accessed on 27<sup>th</sup> September 2011]

<sup>3</sup> Dhananjoy Chatterjee Alias Dhana vs. State Of West Bengal on 11 January, 1994. 1994 (1) ALT Cri 388, 1994 (2) BLJR 1231 [Dhana was executed on 14<sup>th</sup> August 2004 for rape and murder of a 14 year old girl]

were crowds celebrating his execution as one celebrates festivals in India – with drum beats, crackers and colours, on the other hand, there was a group of individuals criticising the barbaric and secretive execution of Ajmal. Also to add to the debate was the execution of Afzal Guru on 9<sup>th</sup> February 2013, the convict who supposedly was the mastermind behind the Parliament of India attack in 2001.<sup>4</sup> Finally, to add impetus to the public opinion on death penalty, the recent gang-rape of the Delhi girl named ‘*Damini*’ (lightning) and ‘*Nirbhya*’ (fearless) by some sections of the media, sparked debates for and against death penalty in India. The public even demanded chemical castration for the rapists before their execution.

I was interested in the topic of death penalty because I came across a quote often attributed to Mahatma Gandhi, the Father of the Indian Nation, in the context of death penalty. He said ‘an eye for an eye makes the whole world blind’ and I found it ironic that Mahatma Gandhi’s assassins were hanged to death. Breaking out of the shell of opinion produced by media reports or facts of the cases, this study seeks to capture the voices of the prisoners on death row. Nevertheless this attempt relies on Justice Suresh’s opinion that we do not know anything about the prisoner. It is for this reason that this study consists of three parts: understanding the profile of the prisoners on death row; the process which nails them to death sentence and finally the experiences and perceptions of being incarcerated on the death row. These three parts juxtapose sociological analysis, the ethnographic description and the embedding of the study in theories that have been described in the later chapters. In short, this study aims to render voices to death row prisoners about their experiences and perceptions while confronting the criminal justice system and while surviving the death row.

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<sup>4</sup> Roy, Arundhati. *A perfect day for democracy* The Hindu, 10<sup>th</sup> February 2013 available at <http://www.thehindu.com/opinion/lead/a-perfect-day-for-democracy/article4397705.ece?homepage=true> [accessed on 10<sup>th</sup> February 2013]

## **1.2. BACKGROUND AND STATEMENT OF THE PROBLEM**

Death penalty has existed since antiquity. Anthropologists even claim that the drawings at Valladolid by prehistoric cave-dwellers show an execution. Death penalty could have had its origins in human sacrifices. In positive law, capital punishment can be traced back as early as 1750 BC, in the *lex talionis* of the Code of Hammurabi. The Bible set death as the punishment for such crimes as magic, violation of the Sabbath, blasphemy, adultery, homosexuality, relations with animals, incest and rape.<sup>5</sup> As far as India is concerned, the provisions relating to capital punishment are embodied in Indian Penal Code (IPC), 1860 and Criminal Procedure Code (CrPC), 1973. The IPC is the substantive law, which suggests the offences, which are punishable with death sentence. The CrPC is the procedural law, which explains the procedure to be followed in death penalty cases. The IPC provides capital punishment for eight categories of offences namely, waging war against the Government of India (Section 121), abetting mutiny by a member of the armed force (Section 132), 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 (Section 194), murder (Section 302), murder committed by a life convict (Section 303), abetting the commission of suicide of a child or insane person (Section 305), attempted murder actually causing hurt, when committed by a person already under sentence of life imprisonment (Section 307) and dacoity with murder (Section 396).<sup>6</sup> There are also state laws within India which can be used to provide death sentence.

The approach of the Indian courts is summarized well in “*A Guide to Sentencing in Capital Cases*”<sup>7</sup>. The Indian Supreme Court upholds the constitutionality of Section 302 of the IPC which provides for the death penalty as an alternative sentence to life imprisonment for certain kinds of murder. But

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<sup>5</sup> Schabas, William A. *The abolition of the death penalty in international law*. Cambridge University Press, 2002.

<sup>6</sup> Areti, Krishna Kumari. "Capital Punishment and Statutory Frame Work in India." (2007).

<sup>7</sup> Fitzgerald, QC Edward & Starmer, QC Keir. “*A Guide to Sentencing in Capital Cases*”. The Death Penalty Project Ltd, London. 2007



it did so on the express basis that the “death sentence is constitutional if it is prescribed as an alternative sentence for the offence of murder and if the normal sentence prescribed by law for murder is imprisonment for life”.<sup>8</sup> In other words, life imprisonment is, as a normal rule, the appropriate sentence for murder and the death penalty can only be justified in the “rarest of rare” cases where, for special reasons in the individual case, the court is compelled to take the exceptional course of imposing the death penalty rather than the life sentence. The majority concluded that Section 302 of the IPC is valid for three reasons: Firstly, that the death sentence provided for by Section 302 is an alternative to life imprisonment; secondly, that special reasons have to be stated if the normal rule is departed from and the death sentence has to be imposed; and thirdly, because the accused is entitled to be heard on the question of sentence. The last of these three reasons becomes relevant only because of the first of these reasons. In other words, it is because the court has an option to impose either of the two sentences, subject to the rule that the normal punishment for murder is life imprisonment, that it is important to hear the accused on the question of sentence.”<sup>9</sup>

David Garland quotes a Philadelphia journalist from 1812 who said, “So much has been written and said on the subject of capital punishments that it seems almost like presumptive vanity to pursue the topic any further.” Further Garland says that yet after two and a half centuries of moral debate and four decades of constitutional argument, the one thing that seems indisputable is that the death penalty produces an endless stream of discourse. <sup>10</sup> Death penalty has produced endless discourse in the context of prisons, prisoners and punishment. Further it has also created a vast amount of debate and discussion in the legal arena about the validity of death penalty, right to life, torture and so on and so forth. Numerous theorists have described and analysed prisons as a society; however the study limits itself to three theorists namely Goffman, Foucault and Sykes. Goffman is one of those theorists who have articulated the

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<sup>8</sup> *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684: AIR 1980 SC 898.

<sup>9</sup> *Mithu v. State of Punjab* (1983) AIR 473, 1983 SCR (2) 690

<sup>10</sup> Quoted in *Orlando News*, October 25, 2006 cited in Garland, David. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Harvard University Press, 2010.

concept of prison while articulating the concept of 'total institution'.<sup>11</sup> Foucault has written extensively about prisons and I take the principles of prisons from Foucault where he describes prison as a 'complete and austere institution'.<sup>12</sup> Sykes is a sociologist who has written about prisoners and staff in a maximum security prison.<sup>13</sup>

Punishment has been awarded in various forms – torture, solitary confinement, capital punishment and imprisonment. Garland writes extensively about the sociology of punishment. He writes that it is a known fact through the work of Foucault and Marx that punishment is a raw exercise of power. Nevertheless, Garland argues that punishment is not just an exercise of power rather it is an expression of moral community and collective sensibilities, in which penal sanctions are authorised response to shared values individually violated.<sup>14</sup> Torture and solitary confinement has been expounded in historic, academic and legal documents and literature. Sykes describes the pains of imprisonment and there are many researchers who have studied the effects of imprisonment.

Moreover, the social and economic groupings in society are not evenly represented in the prison populations. In most countries one can discover the marginalised groups of society by analyzing the prison population. Invariably a disproportionate number of prisoners come from the minority groups. In Australia they are the Aborigines; in New Zealand the Maori; in Central Europe, Romas or known otherwise as Gypsies.<sup>15</sup> This focus grew with the development of theories that deal with the changing socio-economic, political and historical conditions that have led to incarceration of marginalised groups. The concerns about large number of prisoners behind bars drives one to move

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<sup>11</sup> Hacking, Ian. "Between Michel Foucault and Erving Goffman: between discourse in the abstract and face-to-face interaction." *Economy and Society* 33, no. 3 (2004): 277-302.

<sup>12</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

<sup>13</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>14</sup> Garland, D. "Sociological Perspectives on Punishment (From Crime and Justice: A Review of Research, Volume 14, P 115-165, 1991, Michael Tonry, ed.--See NCJ-130417)." (1991): 51.

<sup>15</sup> Coyle, Andrew. *Understanding prisons*. Open University Press, 2005.

the analysis beyond death row prisoners themselves and observing other factors that incarcerate the marginalised. In doing so, it highlights the dark underbelly of the prison regime which imprisons the socially marginalised.

Furthermore, the concept of 'dignity' is an omnipresent component of debates about capital punishment. It is a 'vague but powerful idea'<sup>16</sup> that influences and defines the direction of the death penalty dialogue, in no small part because its vagueness and power enable it to be invoked in support of myriad different views. The most commonly accepted understanding of dignity is the one that depicts it as an inalienable element of humanity, without which a person ceases to have any worth – physical, psychological, or moral. A person is nothing without her/his dignity. Dignity is 'a kind of intrinsic worth that belongs equally to all human beings'.<sup>17</sup>

At a basic level, any kind of punishment is morally problematic because it involves applying punitive measures to certain individuals (those that have been determined to have engaged in proscribed activities), measures which society deems immoral if applied to anyone else. There is something about the argument that dignity is an inalienable element of humanity that intensifies this problem. If every human being is a dignity equal – in so far as they automatically possess dignity by virtue of being human – then surely an individual's dignity is threatened by differential treatment. Differential treatment that is punitive – and, as such, is undesirable to the recipient – enhances the threat to dignity. In this respect, there can be no greater punitive act of indignity than an execution. Alan Gewirth<sup>18</sup> suggests that: 'humans have such dignity regardless of how they are treated; certain modes of treatment may

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<sup>16</sup> Dworkin, Ronald. *Taking rights seriously*. Harvard University Press, 1978. cited in Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

<sup>17</sup> Gewirth, Alan. "Human dignity as the basis of rights." *The constitution of rights: Human dignity and American values* (1992): 10-46. cited in Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

<sup>18</sup> Gewirth, Alan. "Human dignity as the basis of rights." *The constitution of rights: Human dignity and American values* (1992): 10-46. cited in Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

violate but not remove their dignity'. Gewirth suggests that it is indeed true, but ends when the 'treatment' in question is capital punishment.<sup>19</sup>

Why is a study which captures the voices of prisoners on death row important? Would it change public opinion or the opinion of the policy makers to change the legislations regarding death penalty? I would rely on the statement of Justice Suresh that the state does not know the wo/man, at all, excepting the crime that s/he has been charged with. This study thus explores the lives of the prisoners on death row and attempts to bring out their voices so that we gain an insight into their lives without their crimes that are reported or the 'facts' pertaining to them from legal documents. Literature surrounding prisoners often implies that prisoners in general are socially-excluded and marginalised. These factors not only affect the prisoners on death row but also their families, the state which houses them and the society at large which pays taxes to run these institutions. The issue of the prisoners on death row becomes complicated from the time the individuals confront the state machinery which is the criminal justice system namely the police, prison and court.

These problems commence with their arrest and continue till they are on death row. It is important to understand more about prisoners on death row as it might aid to change perceptions of prisoners on death row where one might go beyond the barbaric relic of eye for an eye and a tooth for a tooth to a view that death penalty might not be a solution to stopping crimes. The renewed perception about the prisoners might enable one to view them with humane lenses and find out the person behind the reported crimes or alleged stories or convicted crimes. This study is also important because the demographic background of the prisoners will be explicated and thus one can observe the class, caste, religious, educational, occupational and gender background of the prisoners on death row. Also this study captures the experiences of prisoners while they are on the death row which buffers a major gap in the existing literature. Additionally, the life on death row is a mystery to the one who is not

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<sup>19</sup> Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

on death row. There have been studies examining the lives on death row but one of the gaps in the literature is that none has tried to understand the concept of dignity through the perceptions or experiences of prisoners themselves. This study also attempts to identify the gaps and also explore the unexplored.

With the above background, the problem of the statement of this study is that prisoners on death row are socially marginalised and an excluded class who undergo the pains of imprisonment in a ‘total’, ‘complete’ and ‘austere’ institution; entangled in the interlace of state machinery while being wedged in the predicament of death and dignity. Subsequently, this leads me to look at the lives of these prisoners on death row with lenses that would expose if the dignity of these prisoners has been upheld while confronting the criminal justice system and while surviving the death row. According to the latest government statistics there are 477 prisoners on death row currently in India.<sup>20</sup>

In the light of the recent public opinion on death penalty and the number of people waiting for execution in India, the study “Voices of prisoners surviving the death row in India” is crucial. The guiding central research question embodied within the above context is “Is the dignity of the prisoners upheld while confronting the criminal justice system and while surviving the death row?” The more specific contextual questions are: What are the perceptions and experiences of the social life of prisoners on death row? What are the stages that the prisoners experience before being sentenced to death? How do the prisoners perceive and experience the treatment received by the criminal justice system during these stages? How do the prisoners perceive and experience their conditions on the death row? How do the prisoners survive each day on the death row? There are several ways to find answers to the above questions; nevertheless, I have adopted the following methodology in this study.

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<sup>20</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

### **1.3. METHODOLOGY**

In order to explore the way the prisoners on death row experience and perceive their lives and make meaning of that world, a design which encapsulates their lives was implemented.<sup>21</sup> This approach allowed access to the contents that were not anticipated a priori and enabled exploration of the research topic from the standpoint of the research population.<sup>22</sup> Qualitative methodology and the phenomenological semi-structured interview were used to collect and analyse information from the participants. This study employed a qualitative approach using the theories of symbolic interactionism and phenomenology. The data from the prisoners was collected by visiting the prisoners on death row. The prisoners who wanted to talk more than once were allowed to talk to me, since I went to each prison at least more than once. The interviews were open-ended and sought to map the processes leading to death; their perception and experience on social and legal stages as prisoners on death row and the treatment they received on death row.

#### **1.3.1. SAMPLING AND DATA COLLECTION**

The data was collected over a period of five months (February 2011 to July 2011) from sixteen prisons based in six different states in India. The participants in the study consisted of 111 purposively selected Indian prisoners of which one was a woman. There were also three women prisoners in Maharashtra during my data collection phase however; citing 'security' reasons I was not allowed to interview them by the state. The permission to interview the prisoners was sought from the Inspector General Prisons or Home Affairs of the particular State Government. Once the permissions were received, the prison departments were contacted and a time was fixed to interview prisoners. Based on general guidelines to ensure that all those being interviewed are subject to similar stimuli and, thereby, allowing for common base for data

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<sup>21</sup> Briggs, Charles L. *Learning how to ask: A sociolinguistic appraisal of the role of the interview in social science research*. No. 1. Cambridge University Press, 1986.

<sup>22</sup> Silverman, David. *Interpreting qualitative data: Strategies for analyzing talk, text and interaction* London Sage Publications Limited, 1993.

analysis, the semi-structured interview was found to be the most appropriate research tool to achieve the main objectives of the study.<sup>23</sup> In an effort to ensure consistency across the interview, I facilitated each conversation. The design of the interview was tentative and modified in accordance with new findings – resulting from the flexible way of questioning.<sup>24</sup> This flexibility contributes to the quality and credibility of the interview.<sup>25</sup> I made notes during the interviews with the consent of the participants as no tape-recorder was allowed inside the prison. The interviews were held in various parts of the prison – some on the death row, some in the superintendent's office and some in work sheds and a few in prisons classrooms. Each interview lasted for an average of 25 minutes. Prisoners were encouraged to share their experiences and perceptions than describing their case details. These were conducted in a setting conducive to a sense of interpersonal involvement. The table (Table 1) below describes the number of prisons for which permission was received and the actual number of prisons visited. There is a deliberate omission of information on prisoners on death row in each prison as this could lead to identify them. However the highest number of prisoners was in Karnataka followed by Maharashtra, Tamil Nadu, Kerala, Punjab and Assam.

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<sup>23</sup> Lofland, John. *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*. Belmont, CA: Wadsworth, 1971.

<sup>24</sup> Rubin, Herbert J., and Rubin, Irene S. *Qualitative interviewing: The art of learning data*. Thousand Oaks, CA Sage Publications, 1995.

<sup>25</sup> Suchman, Lucy, and Brigitte Jordan. "Interactional troubles in face-to-face survey interviews." *Journal of the American Statistical Association* 85, no. 409 (1990): 232-241.

**Table 1: Permission received and actual prisons visited**

Sr. No.	Region	State	Permissions received for the number of prisons	Actual prisons visited
1	Western	Maharashtra	2	2
2	Northern	Punjab	3	2
3	Southern	Kerala	2	2
		Karnataka	2	2
		Tamil Nadu	7	5
5	North Eastern	Assam	3	3
Total			19	16

**1.3.2. DATA ANALYSIS**

Due to the essentially qualitative nature of the data, the data was subjected to content analysis.<sup>26</sup> I adapted Tesch's<sup>27</sup> proposed steps in data analysis with the data divided into main themes such as socio-demographic profile, arrest, police custody, court room experiences, judicial custody (prison), media, death row, lawyers, family, death sentence, death row phenomenon, dignity and other information emerging from interviews. The main themes were identified and abbreviated as codes. The codes were then written next to the appropriate segment of the text and then the organisation of the data was observed to check if new categories or codes emerged.

I found the most descriptive wording for the topics and covered them into categories. The analysis is therefore essentially thematic and based on the categorization of content areas. The system serves to pinpoint the most prominent experience and perception of prisoners that characterize the research

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<sup>26</sup> Strauss, Anselm, and Juliet Corbin. *Basics of qualitative research: Techniques and procedures for developing grounded theory*. Sage Publications, Incorporated, 2007.

<sup>27</sup> Tesch, Renata. *Qualitative research: Analysis types and software tools*. Routledge, 1990.



population.<sup>28</sup> There are a number of limitations related to the methodology and me as a researcher. The sampling process changed during the course of the research, and it has been described in the methodology chapter. Also there are a set of ethical concerns due to the sensitive nature of the study which have been elaborated in the fourth chapter.

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<sup>28</sup> Maykut, Pamela and Morehouse, Richard. *Beginning qualitative research: a philosophic and practical approach*. The Falmer Press, London. 1994.

#### **1.4. CLARIFICATION OF TERMS**

There are various terms used in the study which need clarification for a consistent understanding of the topic. The following are a list of terms used throughout this study.

##### **1.4.1. DEATH PENALTY/CAPITAL PUNISHMENT**

Death penalty the ultimate punishment imposed for murder or other capital offenses.<sup>29</sup> In India, capital punishment is embodied in Indian Penal Code, 1860 and Criminal Procedure Code, 1973 and one is executed by hanging.<sup>30</sup> The term death penalty and capital punishment are used interchangeably in this study.

##### **1.4.2. HUMAN DIGNITY**

Human dignity is the essential feature which distinguishes human beings from other creatures. Human dignity and the uniqueness of the human being are grounded in human free will, in the capacity for moral choice and individual autonomy. Inherent in all human beings, human dignity is the moral and philosophical justification for equality and other universal human rights.<sup>31</sup>

##### **1.4.3. DEATH ROW PHENOMENON/SYNDROME**

The “death row phenomenon” or “death row syndrome” is a combination of circumstances found on death row that produces severe mental trauma and physical deterioration in prisoners under those sentences. This phenomenon or syndrome is a result of the harsh conditions experienced on death row, the length of time that they have experienced, and the anxiety of awaiting one’s own execution.<sup>32</sup> Other associated factors that contribute to the mental trauma

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<sup>29</sup> Gifis, Steven H. *Barron's Law Dictionary*. Barron's Educational Series, 2010.

<sup>30</sup> Areti, Krishna Kumari. "Capital Punishment and Statutory Frame Work in India." (2007).

<sup>31</sup> Nowak, Manfred. *Protecting Dignity: Agenda for Human Rights: Progress report of the Eminent Persons Panel*, 36 (2009).

<sup>32</sup> Hudson, Patrick. "Does the death row phenomenon violate a prisoner's human rights under international law?." *European Journal of International Law* 11, no. 4 (2000): 833-856.

include a cramped environment of deprivation, arbitrary rules, harassment, and isolation from others.<sup>33</sup>

#### **1.4.4. DEATH ROW**

Death row is the cell or block of cells in which prisoners condemned to death are held while awaiting execution. There may be within this death row one or more “death cells”, special units in which the condemned person is kept for a period of hours or a few days immediately prior to imposition of the sentence. Death row is a prison within a prison, physically and socially isolated from the prison community and the outside world.<sup>34</sup>

#### **1.4.5. DEATH ROW PRISONER**

Death row prisoner is a prisoner sentenced to death and is normally segregated from other convicts serving fixed terms of imprisonment. The reason for this is somewhat obscure. There may be a suggestion that the individual is already a “dead man” and thus no longer belongs with the living. Another explanation may be the security of other prisoner and prison guards, for whom exposure to a desperate individual with literally nothing to lose may be dangerous.<sup>35</sup>

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<sup>33</sup> Cunningham, Mark D., and Mark P. Vigen. "Death row inmate characteristics, adjustment, and confinement: A critical review of the literature." *Behavioural sciences & the law* 20, no. 1-2 (2002): 191-210.

<sup>34</sup> Schabas, William. *The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World's Courts*. Boston: Northeastern University Press, 1996.

<sup>35</sup> Schabas, William. *The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World's Courts*. Boston: Northeastern University Press, 1996.

### **1.5. SPECIFIC OBJECTIVES AND THE SIGNIFICANCE OF THE STUDY**

The main objective of the study is to enquire if the dignity of the prisoners is upheld while confronting the criminal justice system and while surviving the death row. Along with these the more specific objectives are: Firstly, to find the profiles of prisoners on death row. Secondly, to understand the stages that the prisoners experience before being sentenced to death. Thirdly, to explore how the prisoners perceive and experience their conditions on the death row.

The study is therefore, significant because I envisage that this study on the voices of the prisoners on death row will contribute towards the further development of the concept of dignity, specifically in the field of sociology and law; social exclusion and marginalization, prisons and punishment. In my view, the findings of this research are relevant in India specifically to Indian judiciary, prison management, non-governmental organizations and research institutions working in the area of criminal and social justice.

It is particularly important to bring forth the voices of prisoners on death row as a human rights issue that urgently needs research and policy attention. By bringing out the voices of prisoners on death row especially in the context of the dignity in India, I hope that in the future, better strategies and social programs will be developed to tackle the various gaps in the prison system with respect to prisoners while they become ‘guests in custody’. In addition to that, the findings of this research could also serve as a starting point to further explore the aspect of dignity of prisoners in general and bring about policy changes.

The study is also significant because there has been a strong feeling in India, expressed by the Supreme Court in terms of death penalty, that western experiences and arguments based on western statistical studies are not necessarily relevant to the social condition and educational level of India. Hence data used in western studies cannot be compared to the Indian situation

especially in the case of abolishing death penalty.<sup>36</sup> Hence this study becomes important in terms of contributing to the existing literature on death penalty in India.

My position as a researcher conducting an ‘academic’ research is also one of the highlights of the study. In criminology, the emotional nature of research is hidden, as is the responsibility of the researcher for the effect of her/his study on those who participate in it. However Liebling<sup>37</sup> for example noted that prison research is “emotionally turbulent” and draining. She says that criminologists like to pretend that this discipline is unsullied by the emotional nature of the research and that they also are rarely trained to consider the hopes and expectations of their participants and the implications these feelings may have on people’s response to the research experience. In addition to that, she says they tend to present their analysis of the prison in the form of inhuman data.

As a result, prison studies have become cold, calculated, surgical, and like polished steel. These days, most criminologists make precision cuts—no blood—no humanity. They keep it statistical, inhuman and no compassion. Liebling argues that this tendency to downplay the emotional components of research projects goes hand in hand with a more general failure to discuss the way that most prisoners conceal a tumult of unplumbed anger, frustration, fear, and outrage at their imprisonment. Without acknowledging one’s own emotions as a researcher and the feelings of the participants, criminologists too may disguise the waste of existence most prisoners experience year after year. This may, in turn, weaken the analysis and the ability to critique the penal system. To address some of these problems, academics should work as a bridge between the prison and the government. Working *with* prisoners directly, rather

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<sup>36</sup> FBA, Roger Hood CBE QC Hon DCL, and Carolyn Hoyle. *The death penalty: A worldwide perspective*. Oxford University Press, USA, 2008.

<sup>37</sup> Liebling, Alison. "Doing research in prison: breaking the silence?." *Theoretical Criminology* 3, no. 2 (1999): 147-173 cited in Bosworth, Mary, Debi Campbell, Bonita Demby, Seth M. Ferranti, and Michael Santos. "Doing prison research: Views from inside." *Qualitative inquiry* 11, no. 2 (2005): 249-264.

than writing *about* them<sup>38</sup>, narrows the distance between awareness of the participants' fate and the capacity, we as researchers may have to influence their situation.

Liebling says that first we need to recall that individual connections are meaningful for those who have been symbolically and literally removed from the world through incarceration. Writing letters, listening, sharing, can make a difference to individuals. More broadly, educators and professors can, through an intellectual and personal exchange with prisoners, become advocates for prisoners and give them voice in a way that they may not be able to attain on their own.<sup>39</sup> Being conscious and acknowledging emotions in a prison research and embedding this aspect in the findings and interpretation of data is one of the significance of this study. By all means, I identify this study as being humane and accomplished with compassion.

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<sup>38</sup> Bauman, Zygmunt. "In the Lowly Nowherewilles of Liquid Modernity Comments on and Around Agier." *Ethnography* 3, no. 3 (2002): 343-349. cited in Bosworth, Mary, Debi Campbell, Bonita Demby, Seth M. Ferranti, and Michael Santos. "Doing prison research: Views from inside." *Qualitative inquiry* 11, no. 2 (2005): 249-264.

<sup>39</sup> Bosworth, Mary, Debi Campbell, Bonita Demby, Seth M. Ferranti, and Michael Santos. "Doing prison research: Views from inside." *Qualitative inquiry* 11, no. 2 (2005): 249-264.

## **1.6. SCOPE AND LIMITATIONS OF THE STUDY**

There are several scopes and limitations of the study. One of the scopes of this study is that it is limited to prisoners on death row. It did not include prisoners whose sentences have been commuted from death to life sentence. The main justification for this scope was time constraints. In addition to these experiences and perceptions of prisoners who are not currently under the sentence of death vary from prisoners who are presently on the death row. Some of the prisoners in a previous study that I conducted on death row prisoners<sup>40</sup> have received a commutation of their death sentence to life imprisonment. The death sentence commuted to life imprisonment prisoners have different concerns such as finishing the sentence soon, going on parole or furlough whereas the same prisoners were afraid of death and could not talk about 'normal' life while they were on death row.

The study is called "Voices of death row prisoners surviving the death row in India." Nevertheless there is no claim that the issues and findings discussed in the study pertain to the whole of India. Though there were 21 states<sup>41</sup> housing death row prisoners when I began fieldwork from February 2011 to July 2011, I visited only six of these states. This was because of time restrictions and because my entry into these prisons relied on the permissions I received from these states. It should also be noted that India is not a homogenous country; it has 28 states with over 28 languages and over 100 dialects. Additionally, this study could not include two regions - Eastern and Central India. The Eastern Region has the highest number of death row prisoners<sup>42</sup> and the Central Region has one of the highest numbers of tribal population (ethnic minority) in India.<sup>43</sup>

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<sup>40</sup> George, Reena Mary *Death penalty: A Human Rights Perspective* University of Mumbai, September 2009

<sup>41</sup> National Crime Records Bureau. Prison Statistics India 2007 available <http://ncrb.nic.in/PSI2007/prison2007.htm> accessed on 2nd February 2013

<sup>42</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

<sup>43</sup> General, Registrar. "Census Commissioner, India." *Census of India* 2000 (2001).

Concurrently, the study focused on death row prisoners. The data would have been richer in case there was an explicit method to interview prison officials who are the custodians of prisoners. However in my previous research experience<sup>44</sup>, prison officials had refused to participate in the study. Therefore all my interactions with the prison officials are recorded only as memos which are used in presenting the findings of the data and hence conducting expert interviews with them had to be excluded from the study.

One of the poignant limitations of this study was not being able to interview women prisoners on death row in the states where I received permission to conduct interviews. Women prisoners throughout history have been researched less than their male counterparts. Even though there are very few women prisoners on death row<sup>45</sup>, a research about the women prisoners would have given new insights about women and their incarceration. One of the reasons for not being able to interview women prisoners was because of a barricade put by the state. For instance, the State of Maharashtra in one city allowed me to interview prisoners who are on death row convicted for the murder of their family members. The rationale that the state used was that mine was a 'sociological' study and according to the state, sociology only meant 'family problems'. Hence women prisoners and other male prisoners who were convicted for other crimes than 'family murder' were not allowed to be interviewed. Hence women prisoners on death row in this State who were convicted of other crimes were not allowed to be interviewed.

One of the other limitations of the study was the inaccessibility of data and materials in India. Up to date information on the death penalty in India is not published, which is exacerbated by the fact that there is absence of accurate criminal statistics in India. Access even through the Right to Information (RTI) Act, 2000 is denied giving tenuous reason. Under the provisions of this Act, any citizen may request information from a "public authority" (a body of

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<sup>44</sup> George, Reena Mary *Death penalty: A Human Rights Perspective* University of Mumbai, September 2009

<sup>45</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013



Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. Upon seeking information of death row prisoners, one of the replies under the RTI Act, 2000 dated 12<sup>th</sup> May, 2005 the state refused to provide information on the grounds that, "some of the persons who have been executed had been convicted for various offences having prejudicial effect on the sovereignty and integrity of India and security of National Capital Territory of Delhi and international relations and could lead to incitement of an offence." The reply also claims that the information "would not serve any public interest". This is the first instance where any government authority has stated, in writing, that information related to the death penalty is effectively a state secret. It is interesting that the government is going as far as using defenses of national sovereignty and international relations to deny information relating to judicial executions that have been carried out. By doing so the Indian state also completely disregards the clear international obligation to make public all information relating to the death penalty.<sup>46</sup>

Like most of the research studies, time frame was a factor which was a limitation of the study. It also has to be noted that there were changes in the situation of death row prisoners who were interviewed during the study. Some were released for being juveniles, some acquitted from their cases in a higher court, and many of the prisoners had their sentences commuted to life sentences during the course of the study. Parts of the data could be outdated or there could be a change in the status of death penalty in India if death penalty is abolished from certain states or whole of India. Hence this work should be seen as a work in progress that can be updated by other studies in future. In addition to this scope and limitation, there are several methodological and ethical concerns which have been discussed in detail in further chapters.

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<sup>46</sup> Batra, Bikram Jeet. "Information on Death Penalty: India Flouting International Obligations." *Economic and Political Weekly* (2005): 4506-4508.

## **1.7. CHAPTER OUTLINE**

The study will comprise of six chapters. Chapter one is the introductory chapter which sets out the background of the study including the research questions and the objectives of the study. It further states the research problem and the context of the study. Additionally, it briefs the methodology of the study and provides the chapter outline. It also clarifies terms used in the study and further specifies the scope and limitations of the study.

Chapter two is a review of theories, context and evidence. The review of literature reflects a peculiarity by touching upon sociological theories and legal framework. The first section begins by exploring various theories and concepts of sociology that relate to prison, prisoners, punishment and to the concepts of phenomenology and symbolic interactionism. The second section of this chapter discusses the legal framework related to death penalty which begins with an overview of death penalty in international law and in India. Thirdly, the chapter discusses the various the concepts of dignity with reference to prisoners and death penalty and finally it summarizes and identifies the gaps in literature. Finally this chapter also discusses death penalty in the light of the numerous studies that have been carried out.

Chapter three states the methodology employed in the study. It begins with the discussion of the research phase which includes the time-line and the details within each phase to orient about the time frame of the study. It further discusses the methodological strategy which includes the description of the research paradigm used, the conceptualisation of research design and the sampling procedure. In addition to this, the chapter gives a description of the permission received and how it affected the initial sampling. It also describes the instrument used in the study and the testing of these instruments before going to the field. Furthermore, it describes the data collection procedure in detail which comprises of the interview setting, training of translators, entry into the prison and handling of data after the interview. This chapter also describes the methodological interpretation and framework of the study and how the theories used in the study are deeply embedded within the

methodological strategies. Finally, it discusses the limitations of the methodology and me as a researcher.

Chapter four states the ethical concerns faced in the study. This chapter attempts to reflect and articulate the discourse and debates on various ethical issues generated during the field work. It also tries to assess the appropriateness and applicability of the strategies in the field; to review if things went ‘wrong’ with regard to the ethical aspects and to examine if there is any need to take corrective measures. Finally, this chapter documents the ethical practices and problems faced while doing so for the benefit of future prison researchers and for my own learning.

Chapter five has three parts which firstly describes the prisoners on death row in this study particularly their demographic profile and the impact of their incarceration on their families. Secondly, it elaborates the processes leading to death penalty. It begins with their arrest till the date of their interview while they are on death row. Thirdly it presents the ‘*double jeopardy*’ of prisoners being incarcerated as prisoners on death row.

Chapter six synthesizes the empirical findings to answer the study’s main research question: Is dignity of the prisoners upheld while confronting the criminal justice system and while surviving the death row? The chapter interprets the findings based on the profile of prisoners, processes leading to death penalty and the ‘double jeopardy’ of being incarcerated on the death row. This leads to the discussion on the three salient features that emerge from the interpretation of the findings. This chapter also looks at the concept of dignity through the voices of prisoners. Further, it discusses the impact of the study and future researches that could be done in this field. Finally, it attempts to summarize the knowledge produced in this research.

## **1.8. SUMMARY**

This chapter sets a '*tempo*' to the background of the problem thus setting the research in context. It identifies the gaps based on the background and states the problem of the study. This chapter also describes the methodology in brief, spelling out the research design, sampling and data collection procedure. It also clarifies the terms used in this study and progresses to explain their significance. It further discusses my position as a researcher and how it contributes to the significance of the study. In addition to that, it describes the scope and limitations of the study. Finally, it outlines the contents of the further chapters.

## **CHAPTER TWO: ‘PITCH’ OF (SOCIAL) THEORIES, (LEGAL) CONTEXTS AND (RESEARCH) EVIDENCES**

### **2.1. INTRODUCTION**

After having understood the ‘*tempo*’ of the study, it seems unavoidable to secure a ‘*pitch*’ of the social theories, legal contexts and researches as evidences on the issue of death penalty. This study on death row prisoners has had the status of being interdisciplinary because it falls in the purview of both sociology and law. The review of literature reflects this peculiarity by including sociological theories and the legal framework. The first section discusses the theories and concepts of sociology that relate to prison, prisoners, punishment and to the concepts of phenomenology and symbolic interactionism. It explores the concepts of prison as an institution – ‘total institutions’ and ‘complete and austere institutions’ which highlights the symbolic structure of the prison. Secondly, it discusses prisoners as a social category which is highlighted by underscoring the concepts - ‘marginalised’ and ‘ghettoised’. Thirdly, it engages in understanding the sociology of the punishment by exploring the concepts such as: isolation, torture, solitary confinement and capital punishment.

Finally, it culminates to elaborate upon how the perceptions or experiences with these ‘marginalised’ and ‘ghettoised’ prisoners on death row take place in a ‘total’ and ‘complete’ and austere’ institution. While there are many theories which could be used to understand the narratives of the prisoners, Goffman’s theory of symbolic interactionism and Schütz’s theory of phenomenology provides the theoretical base and the conceptual mechanisms I use in exploring the lives of the prisoners on death row. This base is both theoretically and methodologically useful in explaining the perceptions and experiences of prisoners on death row in India. Additionally, this particular theoretical discussion contextualises the present study as an attempt to demonstrate the perceptions and experiences of the prisoners on death row. These form the major theoretical framework: prisons as ‘total’, ‘complete’ and ‘austere’ institutions, prisoners as a social category being ‘marginalised’ and

‘ghettoised’ and finally perceptions understood in the framework of symbolic interactionism and phenomenology.

The second section of this chapter discusses the legal framework related to death penalty. Much has been written about death penalty in the field of law primarily relating to legal documents such as judgments and case laws. I do not incline towards analysing these legal documents as it does not serve the purpose of the present study. In this section of the review of literature in the realm of law, firstly I furnish an epigrammatic overview of the legal framework on death penalty in International Law. Secondly, it presents an overview of the criminal justice system of India. It briefs on the laws that govern India and the court systems. Further, it discusses the safeguards during arrest, detention, interrogation and the methods of torture. Besides that it also briefs the relevant laws regarding death penalty, the recent highlights on death penalty in India. There are also guidelines for awarding death penalty which have been briefed along with the possible stages of appeal against this sentence. Further, it mentions the consequences of awarding a death sentence and highlights the fundamental rights of the condemned prisoners.

The third part recounts the concept of dignity in relation to death penalty. It discusses humiliation, vulnerability and self-respect when a prisoner confronts the criminal justice system. This becomes an important section because it sets a context to the main research question i.e. is dignity of the prisoners upheld while confronting the criminal justice system and while surviving the death row.

The fourth part discusses death penalty in the light of the numerous studies that have been carried out. This section gives us the ‘state of the art’ on the topic of death penalty. It discusses four M’s –*modus operandi* of death penalty worldwide; the marginalised and the vulnerable on death row; the multi-faceted arguments and the actors of death penalty; and the moral, ethical and political aspects of death penalty.

## **2.2. DEATH PENALTY IN THE REALM OF SOCIAL THEORIES**

To comprehend how sociology could understand the perceptions of death row prisoners, one must start by taking into account how classical and contemporary social theories grasp the concepts of prisons and prisoners as a social category and punishment as a sociological concept. In doing so, the nature of the prisons is explored by highlighting the concepts of ‘total’, ‘complete and ‘austere’ institutions while the nature of prisoners as a social category is explored by underscoring the concepts of prisoners as ‘marginalised’ and ‘ghettoised’. Additionally, the sociological concepts of punishment especially capital punishment, torture and solitary confinement are explored. This brings into focus the theories which I use as conceptual barometers to reflect and analyse the perception of prisoners on the death row. Concurrently, I largely depend on the experiences of Bruce Jackson to explain the main conceptual understanding which underpins this study. These are the theories of symbolic interactionism and phenomenology. Jackson has researched condemned prisoners in Texas in the 80s.<sup>47</sup>

He was asked, “How can you know when they [death row prisoners] are self-serving and how can you know what the truth is in what they say?” Jackson says that the answer has to do not only with the words of these condemned wo/men in their extreme situation; it has to do with all such words uttered by people to other people who can never know the final truth or falsity of what is being said and that there is truth of utterance itself. The utterance, the statement, is a fact, a social fact, one as valid as any other. The *whys* of these facts are other matters entirely but none of them is simple to be determined. He further says that one may never know why the prisoner presents her/himself this way, but neither may one ever know. Jackson argues that whether the condemned wo/men who speak to us on these pages *believe* their presentations or not is interesting but not finally important; what is important is first, that they feel the need to organise their verbal presentations of themselves so that

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<sup>47</sup> Jackson, Bruce. *Fieldwork*. University of Illinois Press, 1987.

they are rational and second they know how to do it. The truth of the statement has only partly to do with the truth or accuracy of the facts in the statement.<sup>48</sup> Further Jackson argues that there is the fact of the presentation: a version of a self is asserted here. Is it “true”? What does “true” mean in such a context? Did those facts happen exactly that way? Of course they didn’t. He says that the stories most people give of themselves and the explanations they have for themselves are always narrative and always after the fact; life is never narrative and the moment in which things happen is never after the fact. The imposition of narratives requires the luxury of retrospection, a sense of what things seem to have meant, a willingness to discard as unimportant or irrelevant facts not constant with the retrospective sense of meaning. He adds that all reconstructive discourse – a statement by a murderer waiting in a tiny cell in Texas, the autobiography of Henry Kissinger, the letter of a lover to a lover who is presently angry – is craft.<sup>49</sup>

This leads me to the final theories of phenomenology and symbolic interactionism that is used in this study. Stories or narrations are socially constructed where prisoners account them in a particular approach which I have termed as a ‘process or a phenomena’. It has to be understood that their stories, narration, fact apart from being socially constructed, it is also institutionalised and controlled. Furthermore one has to keep in mind the historical and cultural dimension of prisoners of death row in India with relation to the circumstances of social, political and economic conditions. Figure 1 depicts the conceptual map of the theoretical framework of organization of social theories which sets the context of the study. This theoretical framework tries to capture the prison as an institution, and the prisoners as a social category. It discusses the sociology of the punishment and finally describes the synthesis of phenomenology and symbolic interactionism with a concept coined as ‘*experie-ception*’.

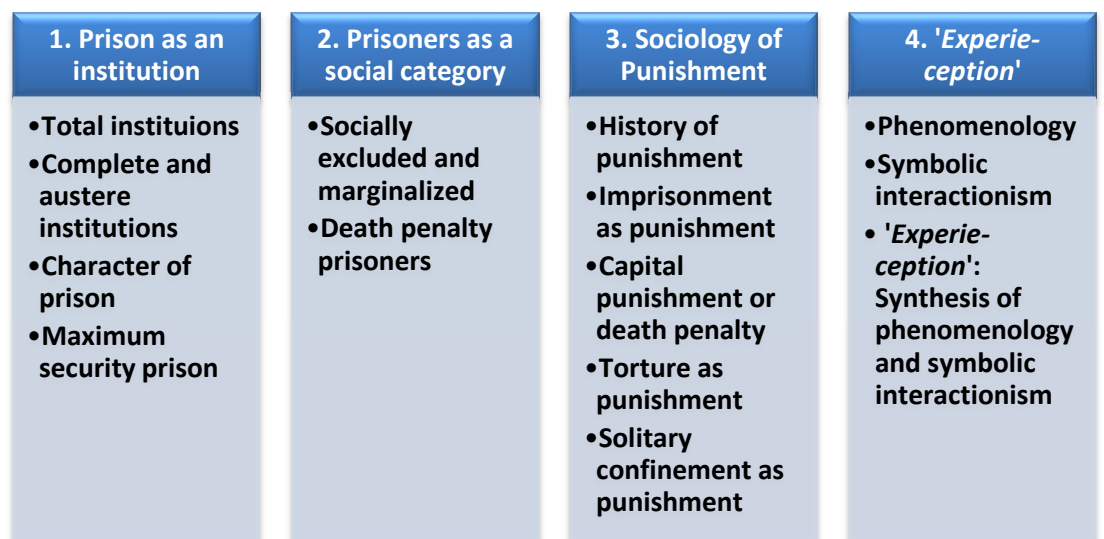
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<sup>48</sup> Jackson, Bruce. *Fieldwork*. University of Illinois Press, 1987.

<sup>49</sup> Jackson, Bruce. *Fieldwork*. University of Illinois Press, 1987.



**Figure 1: Conceptual map of theoretical framework**



### **2.2.1. PRISON AS AN INSTITUTION: 'TOTAL', 'COMPLETE' AND 'AUSTERE'**

In its present form, the prison is a relatively modern invention, having been in existence for less than 300 years.<sup>50</sup> It has its roots in the north-east of the United States and in Western Europe and has subsequently spread around the world, often in the wake of colonial expansion. Prisons as places of detention, where people waited to be tried, until a fine or debt was paid or until another court disposal was implemented have existed for many centuries. But the use of prison as a direct disposal of the court to any significant extent can be dated to a relatively recent period.<sup>51</sup>

Prisons have this virtue: They are visible embodiments of society's decision to punish criminals.<sup>52</sup> In India, prisons which constitute the largest are of penal administration. Imprisonment was not employed as a principle mode of punishment until the eighteenth century in Europe and the nineteenth century in the United States. And European prison systems were instituted in Asia and Africa as an important component of colonial rule. In India, for example, the English prison system was introduced during the second half of the eighteenth century, when jails were established in the regions of Calcutta and Madras.<sup>53</sup> Today there are 1,393 prisons<sup>54</sup> of various types which house over three times the population of offenders. Prisons continue to be located and structured more or less as they were in colonial times, and any change that has been made has been incorporated somewhat clumsily into the old system that basically served the triple colonial aims of order, economy and efficiency. India is a federation; the state's functions are distributed structurally into the central and state subjects. Jails and prisons are essentially state subjects.<sup>55</sup> The system is structured as follows: There are 123 central prisons, 322 district prisons, 836

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<sup>50</sup> Morris, Norval, and David J. Rothman, eds. *The Oxford history of the prison: The practice of punishment in Western society*. Oxford University Press, USA, 1997.

<sup>51</sup> Coyle, Andrew. *Understanding prisons*. Open University Press, 2005.

<sup>52</sup> Travis, Jeremy. "Invisible punishment: An instrument of social exclusion." (2002).

<sup>53</sup> Davis, Angela Y. *Are prisons obsolete?*. Open Media, 2003.

<sup>54</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

<sup>55</sup> Hira Singh, "Prison Administration in India: Contemporary Issues" 2000 in Shankardass, Rani Dhavan. *Punishment and the prison: Indian and international perspectives*. Sage, 2000.

sub-jails, 18 women prisons, 44 open jails, 21 borstal schools, 26 special schools, 3 other jails.<sup>56</sup>

One of the several ways to understand the imprisoned population which in this study are the prisoners on death row is by contextualising the setting they are housed in - the 'prison'. Sykes explains that prisons are apt to present a common social structure. He says that this could be perhaps due to the diffusion of ideas, customs and laws; perhaps it is a matter of similar social structures arising independently from attempts to solve much the same problems. Most probably it is some combination of both. In any case, prisons appear to form a group of social systems different in detail but alike in their fundamental processes, a genus or family of sociological phenomena".<sup>57</sup> He continues that to understand the meaning of imprisonment, we must see prison life as something more than a matter of walls and bars, of cells and locks. We must see the prison as a society within a society.<sup>58</sup>

Within this context of the prison as a society, I have used the analysis of mainly three theorists namely Goffman, Foucault and Sykes. Goffman is one of those theorists who have articulated the concept of prison while articulating the concept of 'total institution'. Foucault has written extensively about prisons and I take the principles of prisons from Foucault where he describes prison as a 'complete and austere institution'. Sykes is a sociologist who has written about prisoners and staff in a maximum security prison. In tandem with the above three sociologists, there is an attempt to compare maximum security prisons to death penalty prisons in India. Though there are official documents<sup>59</sup> in India on how the cells of prisoners on death row should be maintained, there is no discussion on the characteristics of these yards where death row prisoners

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<sup>56</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

<sup>57</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>58</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>59</sup> See for Example Maharashtra Prison Manual 1978, Government of India.

are housed. With this background, I begin with Goffman who describes prisons as 'total institutions'.

#### **2.2.1.1. PRISONS AS 'TOTAL INSTITUTIONS'**

Goffman talks about five types of total institutions. First, there are institutions established to care for persons thought to be both incapable and harmless; these are the homes for the blind, the aged, the orphaned, and the indigent. Second, there are places established to care for persons thought to be at once incapable of looking after themselves and a threat to the community, albeit an unintended one: Tuberculosis sanatoriums, mental hospitals, and leprosoria. Third, another type of total institution is organized to protect the community against what are thought to be intentional dangers to it; here the welfare of the persons thus sequestered is not the immediate issue. Examples are: Jails, penitentiaries, Prisoners of War (POW) camps, and concentration camps. Fourth, institutions purportedly established the better to pursue some technical task and justifying themselves only on these instrumental grounds: Army barracks, ships, boarding schools, work camps, colonial compounds, large mansions from the point of view of those who live in the servants' quarters, and so forth.

Finally, there are those establishments designed as retreats from the world or as training stations for the religious: Abbeys, monasteries, convents, and other cloisters. Among these, the third type of total institution is organised to protect the community against what are thought to be intentional dangers to it; here the welfare of the persons thus sequestered is not the immediate issue. Examples are: Jails, penitentiaries, Prisoners of war camps, and concentration camps.<sup>60</sup> This is based on a model called the *deprivation model* (1950s – 1960s) that merged in the criminological literature to explain control problems. The deprivation model focused on the characteristics of prisons as total institutions and places of deprivation and scarcity<sup>61</sup>, leading to coping mechanisms by

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<sup>60</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

<sup>61</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

prisoners that lie on a continuum between 'individualistic'<sup>62</sup> and the 'collectivistic' approaches.<sup>63</sup> The deprivations of prison life increase the risk of individual opposition or retreatism, self-harm and suicide, but also raise the potential for inmate solidarity and the development of an inmate subculture, riots and – coupled to long-term detention – institutionalism.<sup>64</sup>

This concept of 'total institution' by Goffman is in sync with the narration by prisoners on death row about their lives in prison. This further aids to conceptualise how prisoners on death row narrate what is termed as the 'process of death penalty'. Goffman elaborates about being arrested, searched, prison life and routine; management and supervision by prison staff. A total institution may be defined as a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life. Goffman says that the handling of many human needs by the bureaucratic organization of whole blocks of people – whether or not this is a necessary or effective means of social organization in the circumstances – is the key fact of total institutions. His idea was that almost the entire life of the residents of such institutions – those interned in the asylum, prisoners, sailors, monks, nuns or pupils in boarding schools – is lived in the institution. For long periods of time the institution ordains almost every aspect of their life, washing, praying, eating, outdoor exercise and 'free time'. Activities are organized by a higher authority according to a plan what represents the official aims of the institution.<sup>65</sup>

Goffman says that one of the central features of total institutions is a breakdown of barriers ordinarily separating the basic social arrangement in modern society where one tends to sleep, play and work in different places, in

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<sup>62</sup> Mathiesen, Thomas. *The defences of the weak: a sociological study of a Norwegian correctional institution*. No. 15. Tavistock Publications, 1965. cited Liebling, Alison, and Shadd Maruna. *The effects of imprisonment*. Willan Pub, 2006.

<sup>63</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>64</sup> Liebling, Alison, and Shadd Maruna. *The effects of imprisonment*. Willan Pub, 2006.

<sup>65</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

each case with a different set of co-participants, under a different authority, and without an overall rational plan. First, all aspects of life are conducted in the same place and under the same single authority. Second, each phase of the member's daily activity will be carried out in the immediate company of a large batch of others, all of whom are treated alike and required to do the same thing together. Third, all phases of the day's activities are tightly scheduled, with one activity leading at a prearranged time into the next, the whole circle of activities being imposed from above through a system of explicit formal rulings and a body of officials. Finally, the contents of the various enforced activities are brought together as parts of a single overall rational plan purportedly designed to fulfil the official aims of the institution.<sup>66</sup>

Sociological literature has represented the power of total institutions – in general and prison – in particular, as cruel and harmful.<sup>67</sup> With reference to this, one of the research questions was to understand the process leading to death penalty. While narrating this part, prisoners came up with their own accounts on arrest, judicial custody, being on the death row and so and so forth. Goffman explains that total institutions 'are fateful for inmate's civilian life'. This encompasses the way the person is arrested, housed in lock-ups and further transferred to judicial custody and finally on the death row. Furthermore, he explains how the arrival period involves several processes that mortify the self. The most general form of this process involves role dispossession, where the individual 'finds certain roles are lost to him by virtue of the barrier that separates him from the outside world'.<sup>68</sup> More specifically, the admission procedures are also identified as mortifying. The procedures at reception 'can be characterised as a leaving off and taking on, with the midpoint marked by physical nakedness. Leaving off of course entails a dispossession of property, important because persons invest self-feelings in

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<sup>66</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

<sup>67</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>68</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

their possessions'.<sup>69</sup> The individual suffers 'personal defacement' as he is 'stripped of his usual appearance and of the equipment and services by which s/he maintains it'.<sup>70</sup> The individual entering a total institution also suffers from a loss of safety.<sup>71</sup> Further he observes that within a total institution the 'days activities are tightly scheduled', and managed by 'formal rulings and a body of official, under a plan to 'fulfil the official aims of the institution'.<sup>72</sup> This is highly depicted in the way the lives of death row prisoners are scheduled.

One of the other phenomenon that one observes in the prison, as a total institution is personifying all aspects of a prisoner's life which requires participation in numerous front stage activities. These include arrival, daily parades in the units, requirements for work, family visits, medical appointments, and meeting with all persons in authority, an official visitor or the medical officer. Thus on family visits, prisoners need to be present as clean and tidy, respectful of family members and possessing a good family relationship, as all these improve release prospects. Crucially, front-stage activities also include the interactions with other prisoners where it is important to present an image of toughness, strength and of being 'staunch'.<sup>73</sup> Because of the high level of surveillance within the prison, back stage activities are strictly limited and may not even been entirely entertained within the privacy of a solitary cell. The essence of the total institution has remained unchanged i.e. control over the lives of its inmates.<sup>74</sup> The inmates remain completely

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<sup>69</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

<sup>70</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

<sup>71</sup> Liebling, Alison, and Shadd Maruna. *The effects of imprisonment*. Willan Pub, 2006.

<sup>72</sup> Erving, Goffman. *Asylums: Essays on the social situation of mental patients and other inmates*. Penguin, 1961.

<sup>73</sup> Brian Steels BA, "Declared Guilty, a Never-Ending Story: An analysis of criminal justice system on the self", Murdoch University 2005

<sup>74</sup> Rostaing, Corinne. "Les relations entre surveillantes et détenues." *Faugeron C., Chauvenet A., Combessie Ph.(Eds.), Approches de la prison, De Boeck Université, Bruxelles* (1996): 101-125. cited in Liebling, Alison, and Shadd Maruna. *The effects of imprisonment*. Willan Pub, 2006.

dependent and subordinate to the institution<sup>75</sup>, while the aim of the institution is to protect society against its inmates, not to foster their interests.<sup>76</sup>

#### **2.2.1.2. PRISONS AS ‘COMPLETE’ AND ‘AUSTERE’ INSTITUTIONS**

Hacking suggests a middle ground between Foucault – the French philosopher and Goffman – the American sociologist. He says that it does not imply that both of them stand in opposition rather he says that they are complementary. One needs to stand between the two men in order to take advantage of both. There is a clear sense in which Foucault’s research was ‘top-down’, directed at entire ‘systems of thought’ – to refer to the title of the chair he chose for himself at the Collège de France. Goffman’s research was ‘bottom-up’ – always concerned with individuals in specific locations entering into or declining social relations with other people.<sup>77</sup> No chapter about prison as a disciplinary mechanism would be complete without reflection on Foucault’s work. This section discusses Foucault’s work<sup>78</sup> where prisons are referred to as ‘complete and austere institutions’. Foucault quotes Baltard,<sup>79</sup> who first refers to prison as a ‘complete and austere institution’. Moreover, the prison has neither an exterior nor gap; it cannot be interrupted, except when its task is totally completed; its action on the individual must be uninterrupted: an unceasing discipline. Lastly; it gives almost total power over the prisoners; it has its internal mechanisms of repression and punishment: a despotic discipline.<sup>80</sup> This is very similar to how Goffman has described total institutions. Thus again confirming that their work are complimentary to each other. The overall aim of prison was to make the prison a place for the constitution of a body of knowledge that would regulate the exercise of

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<sup>75</sup> Chauvenet, Antoinette. "L'échange et la prison." *Faugeron, Chauvenet, Combessie* (1996): 49. cited in Liebling, Alison, and Shadd Maruna. *The effects of imprisonment*. Willan Pub, 2006.

<sup>76</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

<sup>77</sup> Hacking, Ian. "Between Michel Foucault and Erving Goffman: between discourse in the abstract and face-to-face interaction." *Economy and Society* 33, no. 3 (2004): 277-302.

<sup>78</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

<sup>79</sup> Baltard, L., *Architectonographie des prisons*, 1829. cited in Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

<sup>80</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).



penitentiary practice. Taking this as a point of departure, I begin with Foucault who describes prisons as an exhaustive disciplinary apparatus which assumes responsibility for all aspects of the individual, their physical training, and aptitude to work, everyday conduct, moral attitude and state of mind thus leading to the principles of prisons.

### **2.2.1.3. PRINCIPLES OF PRISON**

Foucault says that the 'self-evident' character of the prison, which one finds so difficult to abandon, is based first of all on the simple form of 'deprivation of liberty'. Its loss has therefore the same value for all; unlike the fine, it is egalitarian punishment. The prison is the clearest, simplest, and most equitable of penalties. Moreover, it makes it possible to quantify the penalty exactly according to the variable of time. There is a wage-form of imprisonment that constitutes, in industrial societies, its economic 'self-evidence' – and enables it to appear as reparation. By levying on the time of the prisoner, the prison seems to express in concrete terms the idea that the offender has injured, beyond the victim, society as a whole. There is economic-moral self-evidence of a penalty that metes out punishment in days, months and years and draws up quantitative equivalences between offences and durations. Hence the expression, so frequently heard, so consistent with the functioning of punishments, though contrary to the strict theory of penal law that one is in prison in order to 'pay one's debt'. The prison is 'natural', just as the use of time to measure exchanges is 'natural in our society'.<sup>81</sup>

But the self-evidence of the prison is also based on its role, supposed or demanded, as an apparatus for transforming individuals. The prison is like a rather disciplined barrack, a strict school, a dark workshop, but not qualitatively different. The double foundation of being juridico-economic on the one hand, technico-disciplinary on the other makes the prison seem the most immediate and civilized form of all penalties. And it is this double functioning that immediately gives it its solidity. One thing is clear: the prison

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<sup>81</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

was not at first a deprivation of liberty to which a technical function of correction was later added; it was from the outset a form of 'legal detention' entrusted with an additional corrective task, or an enterprise for reforming individuals that the deprivation of liberty allowed to function in the legal system. In short, penal imprisonment, from the beginning of the nineteenth century, covered both the deprivation of liberty and the technical transformation of individuals.<sup>82</sup> Further Foucault<sup>83</sup> talks about the three principles of prison. He begins first with the principle of isolation, second - that work alternates meals and finally about it being used as an instrument for the modulation of penalty. The first principle of prison is the isolation of the convict from the external world, from everything that motivated the offence, from the complicities that facilitated it and finally the isolation of the prisoners from one another. He says that the penalty must not only be individual, but it must also be individualising – in two ways. First, the prison must be designed in such a way as to efface of itself the harmful consequences to which it gives rise in gathering together very different convicts in the same place: to stifle plots and revolts, to prevent the formation of future complicities that may give rise to blackmail (when the convicts are once again at liberty), to form an obstacle to the immorality of so many 'mysterious associations'.

In short, the prison should form from the malefactors that it gathers together a homogeneous and interdependent population. In absolute isolation the rehabilitation of the criminal is expected not by the application of a common law, but by the relation of the individual to his own conscience and to what may enlighten him from within. It is not, therefore, an external respect for the law or fear of punishment alone that will act upon the convict but the workings of the conscience itself. A whole series of conflicts stemmed in terms of isolating prisoners which were religious (must conversion be the principle element of correction?), medical reasons (does total isolation drive convicts insane?), economic (which method costs less?), architectural (which form guarantees the best surveillance?). But at the heart of the debate, and making it

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<sup>82</sup> Foucault, Michel. "Discipline and Punish, trans." *Alan Sheridan. New York: Pantheon* 30 (1977).

<sup>83</sup> Foucault, Michel. "Discipline and Punish, trans." *Alan Sheridan. New York: Pantheon* 30 (1977).

possible, was this primary objective of carceral action: coercive individualisation, by the termination of any relation that is not supervised by authority or arranged according to hierarchy.

The second principle of prison is work alternating with meals accompanies the convict to evening prayers; then a new sleep gives her/him an agreeable rest that is not disturbed by the phantoms of an unregulated imagination. Thus the six weekdays pass by. They are followed by a day devoted exclusively to prayer, instruction and salutary meditations. Thus the weeks, the months, the years follow one another; thus the prisoner who, on entering the establishment, was an inconstant wo/man, or one who was single-minded only in her/his irregularity, seeking to destroy her/his existence by the variety of his vices, gradually becomes by dint of a habit that is at first purely external, but is soon transformed into a second nature, so familiar with work and the pleasures that derive from it, that the provided wise instruction has opened up her/his soul to repentance, s/he may be exposed with more confidence to temptations, when s/he finally recovers her/his liberty. Work is defined, with isolation, as an agent of carceral transformation. The use of penal labour according to Foucault was neither for profit nor even the formation of a useful skill; but the constitution of a power relation, an empty economic form, a schema of individual submission and of adjustment to a production apparatus.

The third principle of the prison is that it goes beyond the mere privation of liberty in a more important way. It becomes increasingly an instrument for the modulation of the penalty; an apparatus which, through the execution of the sentence with which it is entrusted, seems to have the right, in part at least, to assume its principles. Of course, the prison institution was not given this 'right' in the nineteenth century or even in the twentieth, except in a fragmentary form (through the oblique way of release on license, semi-release, the organisation of reformatories). He says that it was claimed very early on by those responsible for prison administration, as the very condition of the good functioning of a prison, and of its efficiency in the task of reformation that the law itself had given it. The same goes for the duration of punishment; it makes it possible to quantify the penalties exactly, to graduate them according to

circumstances and to give to legal punishment the more or less explicit form of wages; but it also runs the risk of having no corrective value, if it is fixed once and for all in the sentence.

#### **2.2.1.4. MAXIMUM SECURITY PRISON**

It is worth discussing maximum security prison because it can be compared to death penalty yards in India. In India, though death penalty yards are not called as 'maximum security prisons' or 'super maximum custody' (colloquially known as *supermax* in the United States); death penalty yard are often termed as 'high security yards' and very many times parallels can be drawn between the both. Sykes describes that in the prison the obvious symbols of social status are largely stripped away and one finds new hierarchies with new symbols coming into play. But what he claims to be the most important is the fact that the maximum security prison represents a social system in which an attempt is made to create and maintain total or almost total social control.<sup>84</sup> Inmates in supermax facilities are usually held in single cell lock-down, commonly referred to as solitary confinement. Congregate activities with other prisoners are prohibited; other prisoners cannot even be seen from an inmate's cell; communication with other prisoners is prohibited or difficult (consisting, for example, of shouting from cell to cell); visiting and telephone privileges are limited. <sup>85</sup> Kings spells out some essential elements of supermax prisons. In a supermax custody accommodation is physically separate, or at least separable, from other units or facilities, in which a controlled environment emphasizing safety and security, via separation from staff and other prisoners and restricted movement, is provided for. He says that it is also for prisoners who have been identified through an administrative rather than a disciplinary process as needing such control on grounds of their violent or seriously disruptive behaviour in other high security facilities.<sup>86</sup>

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<sup>84</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>85</sup> A Human Rights Watch Report *Cold Storage: Super-Maximum Security Confinement in Indiana*, (New York: Human Rights Watch, October 1997) 18-19

<sup>86</sup> King, Roy D. "The Rise and Rise of Supermax An American Solution in Search of a Problem?." *Punishment & Society* 1, no. 2 (1999): 163-186.

### **2.2.2. PRISONERS AS A SOCIAL CATEGORY**

If one wishes to understand prisons, one also has to understand something about those for whom they exist i.e. the prisoners. There is a tendency to consider prisoners as a homogeneous group, defined primarily by the fact of their imprisonment. The reality is that they form quite disparate groupings. The criminal justice profile of individual prisoners is also a wide one. A significant proportion is on remand awaiting trial on a broad spectrum of charges. This means that in the eyes of the law they remain innocent and should not be treated as offenders. Of those who have been convicted, some will have committed very serious crimes, such as murder, rape or violence against another person, but this is by no means the whole story.<sup>87</sup>

#### **2.2.2.1. SOCIALLY EXCLUDED AND MARGINALISED**

The social and economic groupings in society are not evenly represented in the prison populations. In most countries one can discover which the marginalised groups of society are by analyzing the prison population. Invariably a disproportionate number of prisoners come from minority groups. In Australia they are Aboriginals; in New Zealand, Maori; in Central Europe, Romas or otherwise known as Gypsies.<sup>88</sup>

Theoretically, this focus grew alongside the development of theories pertaining to theorists documenting the changing socio-economic, political and historical conditions that have led to mass incarceration. The concern about large number of prisoners behind bars centres on the necessity to move the analysis beyond death row prisoners to the state that incarcerates these marginalised and socially excluded groups. In doing so, it highlights the dark underbelly of prison regime which imprisons the socially marginalised. Wacquant compares ghettos and prisons as they both belong to the same class of organizations, namely, *institutions of forced confinement*: the ghetto is a manner of 'social prison' while the prison functions as a 'judicial ghetto'. He says that both are

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<sup>87</sup> Coyle, Andrew. *Understanding prisons*. Open University Press, 2005.

<sup>88</sup> Coyle, Andrew. *Understanding prisons*. Open University Press, 2005.

entrusted with enclosing a stigmatized population so as to neutralize the material and/or symbolic threat that it poses for the broader society from which it has been extruded. And, for that reason, ghetto and prison tend to evolve relational patterns and cultural forms that display striking similarities and intriguing parallels deserving of systematic study in diverse national and historical settings.

He further notes that the structural and functional homologies with the prison conceptualized as a *judicial ghetto*: a jail or penitentiary is in effect a reserved *space* which serves to forcibly confine a legally denigrated *population* and wherein this latter evolves its distinctive *institutions*, culture, and sullied identity. It is thus formed of fundamental constituents of stigma, coercion, physical enclosure and organizational parallelism and insulation that make up a ghetto, and for similar purposes. Much as the ghetto protects the city's residents from the pollution of intercourse with the tainted but necessary bodies of an outcast group in the manner of an 'urban condom,' the prison cleanses the social body from the temporary blemish of those of its members who have committed crimes, that is, following Durkheim, individuals who have violated the socio-moral integrity of the collectivity by infringing on 'definite and strong states of the collective conscience.'<sup>89</sup> Wacquant also quotes Kennedy saying that along with the return of Lombroso-style mythologies about criminal atavism and the wide diffusion of bestial metaphors in the journalistic and political field (where mentions of 'superpredators', 'wolf-packs', 'animals' and the like are commonplace), the massive over-incarceration of blacks has supplied a powerful common-sense warrant for 'using colour as a proxy for dangerousness'.<sup>90</sup>

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<sup>89</sup> Wacquant, Loïc. "The newpeculiar institution': On the prison as surrogate ghetto." *Theoretical criminology* 4, no. 3 (2000): 377-389.

<sup>90</sup> Kennedy, Randall. "Race, law, and suspicion: Using color as a proxy for dangerousness." *Race, crime and the law* (1997): 136-67 cited in Wacquant, Loïc. "The newpeculiar institution': On the prison as surrogate ghetto." *Theoretical criminology* 4, no. 3 (2000): 377-389.

### **2.2.2.2.DEATH SENTENCE PRISONERS**

Frederic John Mouat was the Inspector-General of Prisons, Lower Bengal in the 1860s. After his retirement he wrote about prison discipline and statistics in Lower Bengal using prison statistics of five years (1865-1869). He reports that sentences of death in the five years were carried out in 211 instances: of those executed 20 were women. He writes that he started collecting exact information in 1869 for the first time on this subject, and it exhibited a strange picture of a strange state of society. In this year, 50 men and 4 women were hanged, all for murder. 35 of the cases were reported: of these 19 were Hindus, 15 Mahommedans<sup>91</sup>, and one a Sonthal<sup>92</sup>. Six murdered children to steal their ornaments; four murdered their wives, one in anger caused by omission in the performance of some domestic duty, and three under suspicion of infidelity; two murdered their brothers in fits of jealousy on account of women; one poisoned another for no discoverable reason; one murdered the supposed paramour of his wife; one killed his aunt in a dispute about family property; one killed his mother-in-law for interfering with him in an assault on his wife-cause jealousy; one murdered his cousin with the intention of possessing his wife; one killed another because he prevented his committing a theft. The remainder were not accounted for<sup>93</sup>

The situation or reasons for the crime has not changed much in 2012. Prisons Statistics in India<sup>94</sup> have demonstrated that a vast majority of prisoners behind the bars are the socially marginalised population with no education, no occupation and from utterly poor backgrounds. They also represent the social inequalities in terms of belonging to the lower caste in the dominant caste system of India. According to the Prison Statistics 2011, a total of 1,28,592 convicts were reported under various terms of sentences in the country at the

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<sup>91</sup> Note: Muslims

<sup>92</sup> Note Large tribal community in Eastern India

<sup>93</sup> Mouat, Frederic John. "On prison statistics and discipline in lower Bengal." *Journal of the Statistical Society of London* 25, no. 2 (1862): 175-218.

<sup>94</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

end of 2011.<sup>95</sup> 477 of these were awarded death penalty accounting for 0.4% of the total convicts. Uttar Pradesh (174 prisoners) has reported the highest number of such convicts, accounting for 36.5% of the convicts being given capital punishment in the country followed by Karnataka (61 prisoners), Maharashtra (50 prisoners), Bihar (37 prisoners), Delhi (24 prisoners), Gujarat (20 prisoners), Madhya Pradesh, Tamil Nadu and West Bengal (13) and Kerala (10 prisoners). 117 prisoners were awarded death penalty during 2011 in the country. 47 prisoners were awarded such punishment in Uttar Pradesh followed by Gujarat (14 prisoners), Jammu & Kashmir (9 prisoners), Punjab (8 prisoners) and Delhi (8 prisoners). The death sentence of 42 convicts was commuted to life imprisonment during the year 2011. Out of 42 convicts whose death sentence was commuted to life imprisonment, 13 were reported from West Bengal followed by Bihar, Jharkhand, 4 convicts in Rajasthan and Uttar Pradesh. No convict was executed during the year 2011.<sup>96</sup> There is however no bifurcation of the number of women or men prisoners on death row hence generally one assumes that all prisoners on death row are men whereas there are a small percentage of women on death row. Carroll says that the death penalty is a system of raw power. For political outsiders like women and minorities, it carries with it a ripple effect that expands through their whole experience. They walk a boundary that they have no power to draw, or even to know when it will be drawn. Despite their sparse number, women on death row are powerful prisoners of the state and social expectations of womanhood, and their very existence defines us all.<sup>97</sup>

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<sup>95</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

<sup>96</sup> National Crime Records Bureau. Prison Statistics India 2011 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

<sup>97</sup> Carroll, Jenny E. "Images of Women and Capital Sentencing among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice." *Tex. L. Rev.* 75 (1996): 1413.



### **2.2.3. SOCIOLOGY OF PUNISHMENT**

Moving further from prisons and prisoners, Garland writes extensively about the sociology of punishment. He writes it is a known fact through the work of Foucault and Marx that punishment is a raw exercise of power. Garland additionally argues that punishment is not only an exercise of power, but also an expression of moral community and collective sensibilities, in which penal sanctions are authorised responses to shared values individually violated.<sup>98</sup> Further Garland also talks about punishment as a social institution. In sync with the above, he comes up with a perspective that punishment should be understood as a set of cultural practices which supports a complex pattern of regulatory, expressive and signficatory effects, and any analytical approach should look for the pattern of cultural expression as well as the logic of social control.<sup>99</sup> Secondly, he argues that punishment is symbolically a deep event which has a profound cultural resonance. He says that it not only involves the state but also the wider community in matters of ultimate and common concern which in turn evokes powerful sentiments and rich symbolism.<sup>100</sup>

Long before Garland, Beccaria in 1764 influenced by Voltaire, Rousseau and Montesquieu argued that punishment should never be a private matter; nor should it be arbitrarily violent; rather it should be public, swift, and as lenient as possible. He revealed then a contradiction of what was then a distinctive feature of imprisonment – the fact that it was generally imposed prior to the defendant's guilt or innocence being decided.<sup>101</sup> Garland's notions of punishment highlight that punishment is state-sanctioned and institutionalised and at that it carries far reaching personal consequences. Findlay et al, suggested that the moment of arrest presents the first opportunity 'to impose punishment without trial'<sup>102</sup> and includes summary justice measures,

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<sup>98</sup> Garland, David. "Sociological perspectives on punishment." *Crime & Just.* 14 (1991): 115.

<sup>99</sup> Garland, David. "Frameworks of Inquiry in the Sociology of Punishment." *British Journal of Sociology* (1990): 1-15.

<sup>100</sup> Garland, David. "Frameworks of Inquiry in the Sociology of Punishment." *British Journal of Sociology* (1990): 1-15.

<sup>101</sup> Cessar Beccaria, *On Crimes and Punishment* Cambridge: Cambridge University Press, 1995 cited in Davis, Angela Y. *Are prisons obsolete?*. Open Media, 2003

<sup>102</sup> Findlay, Mark, Stephen Odgers, and Stanley Meng Heong Yeo. *Australian criminal justice*. Oxford University Press, 1999.

infringement notices and cautions. The immediate response for 'resisting arrest' can include being held, pushed, and thrown to the ground prior to being handcuffed. It may also include being sprayed in the face and body with 'mace' or being hit with a baton.

The punishments that occur at this stage also include the humiliation of being searched and arrested in a public place or, conversely, in a family home where it is threatening not only to the subject but also to children and other family members. There is also the matter of being taken away in a 'paddy wagon' in front of friends, family or associates. The court process itself offers a degree of punishment especially to first time offenders through stigmatic shame. In court the individual is named, the nature of their crime stated publicly and they stand before the court accused and, in many instances, ready to be sentenced. The court provides a level of anxiety and apprehension to the accused person and their family and, by inference, attendance at court gives an impression of a 'blemished character.' In the court, at the point of sentence, punishment can take the form of a custodial or non-custodial sentence or a fine, community supervision order or a mix of these. A custodial sentence may be suspended for a set period of time in which the convicted person is required to obey the law and comply with court and community corrections orders.<sup>103</sup>

### **2.2.3.1.HISTORY OF PUNISHMENT**

In the fertile period of criminological inquiry prior to World War II, Rusche & Kirchheimer made a fundamental breakthrough. They noted that trends and means of punishing offenders could be analysed independently of the causes of crime or the identity of offenders. While the anthropologists had begun to indicate the rich variety of ways people might manage human conflict, Rusche & Kirchheimer suggested that the ways offenders were punished (a subclass of the ways we manage conflict) varied not in response to sins but rather as a function of our various means of establishing and maintaining different forms

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<sup>103</sup> Steels, Brian. "Declared guilty, a never-ending story: an analysis of the impact of the criminal justice system upon the self." PhD diss., Murdoch University, 2005.

of political and economic organization. They also claim the history of punishment is simply a history of class relations between the bourgeoisie and proletariat.<sup>104</sup> As industrial labourers became necessary, workhouses became a dominant form of punishment for offenders. When industrial development lagged behind expansion of the available work force, "work" in prison became non-productive punishment, aimed at what Foucault<sup>105</sup> has since called discipline. Thus, independently of the study of the causes and cures of criminality, one might study trends and shifts in the history of punishment.<sup>106</sup>

Garland describes punishment as a 'complex set of interlinked processes and institutions rather than a uniform object or event'<sup>107</sup>. Contrary to this, Emile Durkheim identified punishment as the key to developing moral standards and argues that locking up offenders condemns the offence and reinforces society's values and he also considers punishment as fundamental to society which encapsulates and reinforces its values. Social solidarity is deemed essential for harmony to occur; society can only function if a set of shared values and beliefs are in existence.<sup>108</sup> Michael Ignatieff disputes that prison is merely a response to crime but originated to challenge the social crisis during the eighteenth century.<sup>109</sup> He outlines how prison presented a vision of control and functioned to establish a morality of law and order. Much like Ignatieff, Foucault considers prison as a form of social and political control for wider society and not just an institution which controls crime and criminal behaviour.

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<sup>104</sup> Rusche, Georg, Otto Kirchheimer, and Dario Melossi. *Punishment and social structure*. Transaction Pub, 2003.

<sup>105</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977). cited in Pepinsky, Harold E. "A Social of Justice." *Annual Review of Sociology* (1986): 93-108.

<sup>106</sup> Pepinsky, Harold E. "A Social of Justice." *Annual Review of Sociology* (1986): 93-108.

<sup>107</sup> Garland, David. *Punishment and modern society: A study in social theory*. University of Chicago Press, 1993.

<sup>108</sup> Garland, David. *Punishment and modern society: A study in social theory*. University of Chicago Press, 1993.

<sup>109</sup> Ignatieff, Michael. *A just measure of pain: The penitentiary in the industrial revolution*. London: Macmillan, 1978.

<sup>110</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

In contrast to the idea that punishment is a conscious attempt by society to control crime, many of these theorists agree that there are subtle yet profound factors in society that shape punishment, and that these are not necessarily related to the level of crime. These theorists differ in their understanding of factors which influence punishment. Punishment is influenced by cultural, economic, political, ideological, or psychic factors depending on the theorist under consideration. But the common thread running through each of these theorists' work is that punishment cannot be understood merely as a rational response to crime. The official goals of punishment—deterrence, retribution, rehabilitation, or public protection—do not explain why societies punish or why punishments take the forms they do.<sup>111</sup>

The idea of punishment as the purpose of imprisonment is plain enough – the person who has committed a wrong or hurt must suffer in return. The state, through its agent, the prison is entitled if not morally obligated to hurt the individual who has broken the criminal law, since a crime is by definition a wrong committed against the state. Imprisonment should be punishment, not only be depriving the individual of one's liberty, but also by imposing painful conditions under which one must live within the walls.<sup>112</sup> Imprisonment or incarceration is a legal punishment that may be imposed by the state for the commission of a crime or disobeying its rule. The objective of imprisonment varies in different countries and may be: a) punitive and for incapacitation, b) deterrence, and c) rehabilitative and reformatory<sup>113</sup>. Foucault also adds that although the principle of the penalty was certainly a legal decision, its administration, its quality and its rigours must belong to an autonomous mechanism that produces them.<sup>114</sup>

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<sup>111</sup> Colvin, Mark. *Penitentiaries, Reformatories, and Chain Gangs: Social Theory and the History of Punishment in Nineteenth-Century America*, New York: St. Martin's Press, 1997.

<sup>112</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>113</sup> Scott CL, Gerbasi JB 2005. *Handbook of Correctional Mental Health*. Washington, DC. American Psychiatric Publishing. Cited in Lyons, Lewis. *The history of punishment*. Amber Books, 2003.

<sup>114</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

### **2.2.3.2. IMPRISONMENT AS PUNISHMENT**

Criminal process beginning with arrest, passing through conviction and incarceration and evading in release and readjustment with society may involve a number of pains, losses and consequent deprivation. One of the methods generally used to prevent the offenders from repeating the crime is incapacitation by imprisonment in a prison. The prison tends to deprive the offenders of liberty for years. Duff and Garland suggest that 'the emergence of imprisonment as the characteristic penal sanction in modern society can be explained by the prison's role in a wider network of disciplinary institutions and practices designed to govern individuals for a variety of purposes'.<sup>115</sup> Similarly Mathiesen suggests that the reliance on imprisonment as a sanction stems, in part, from the hidden social functions of the prison. These include its expurgatory, symbolic, diversionary and political functions.<sup>116</sup> Its expurgatory function lies in the capacity of prison to remove unproductive and disruptive people from the community while its symbolic function lies in its capacity to stigmatise criminality, defining and distancing inmates from the rest of the community. In a diversionary sense, the prison keeps a focus on crime and the ordinary criminal whilst diverting the gaze away from the harm being done by more powerful members of society. And, in a political sense, imprisonment provides a level of reassurance to the community that something is being done about crime, notwithstanding 'the very limited penological efficacy of imprisonment'.<sup>117</sup> In essence the 'success' of prisons lies in their ability to ensure that its subjects will return to its walls, thus ensuring its continued existence.<sup>118</sup>

In Garland's view, our culture now stresses 'control, closure, confinement, and condemnation' since the 'continued enjoyment of market-based personal

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<sup>115</sup> Duff, R. Antony, and David Garland, eds. *A reader on punishment*. Oxford University Press, 1995.

<sup>116</sup> Mathiesen, Thomas. "General prevention as communication." *A reader on punishment* (1994): 218-37. Cited in Duff, R. Antony, and David Garland, eds. *A reader on punishment*. Oxford University Press, 1995.

<sup>117</sup> Duff, R. Antony, and David Garland, eds. *A reader on punishment*. Oxford University Press, 1995.

<sup>118</sup> Garland, David. *Punishment and modern society: A study in social theory*. University of Chicago Press, 1993.

freedoms has come to depend upon the close control of excluded groups who cannot be trusted to enjoy these freedoms'.<sup>119</sup> This is in sync with Wacquant's elucidation that the prisons are kindred institutions of forced confinement entrusted with enclosing a stigmatized category so as to neutralize the material and/or symbolic threat it poses for the surrounding society. He further states that a jail or penitentiary is in effect a reserved space which serves to forcibly confine a legally denigrated population and wherein this latter evolves its distinctive institutions, culture, and sullied identity. It is thus formed of fundamental constituent stigma, coercion, physical enclosure and organizational parallelism and insulation that make up a ghetto, and for similar purposes. Finally, he says that the prison and ghetto are both authority structures saddled with inherently dubious or problematic legitimacy whose maintenance is ensured by intermittent recourse to external force.<sup>120</sup>

In addition to this, I would like to add from Sykes who in his sociological study of a maximum security prison in Trenton, United States identified five main 'pains of imprisonment'. They were the loss of liberty (confinement, removal from family and friends, rejection by the community, and loss of citizenship; a civil death, resulting in lost emotional relationship, loneliness and boredom); the deprivation of goods and services (choice, amenities and material possessions); the frustration of sexual desire (prisoners were figuratively castrated by involuntary celibacy); the deprivation of autonomy (regime routine, work, activities, trivial and apparently meaningless restrictions – for example, the delivery of letters, lack of explanations for decisions); and the deprivation of security (enforced association with other unpredictable prisoners, causing fear and anxiety; prisoners had to fight for the safety of their person and possessions).<sup>121</sup>

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<sup>119</sup> Garland, David. *The culture of control: Crime and social order in contemporary society*. Vol. 77. OUP Oxford, 2001.

<sup>120</sup> Wacquant, Loïc. "The new peculiar institution': On the prison as surrogate ghetto." *Theoretical criminology* 4, no. 3 (2000): 377-389.

<sup>121</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

Imprisonment is just one form of punishment. Others forms of punishment include torture, capital punishment and solitary confinement which have been discussed in brief in the following sections.

#### **2.2.3.3. CAPITAL PUNISHMENT OR DEATH PENALTY**

Historically, one of the most strikingly obdurate forms of social control has been capital punishment—taking the life of the accused offender. Its ancient heritage can be traced back through England, Greece, and ancient Babylon to the Code of Hammurabi, which listed 25 different capital crimes. These crimes included disobedience to parents, adultery, blasphemy, violations of the Sabbath, incest, and witchcraft.<sup>122</sup> 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. In an examination of international responses to crime, and the move from more to less tolerance of violent crime, Pratt comments that, 'in a short time, then, we move from risk-free societies where dangerousness was in retreat to those where the risks posed by dangerous offenders are once again central penal issues'.<sup>123</sup> 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.<sup>124</sup>

#### **2.2.3.4. TORTURE AS PUNISHMENT**

Judicially-supervised torture to extract confessions had been introduced or reintroduced in most European countries in the thirteenth century as a

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<sup>122</sup> Loeb, Robert H., and George F. Cole. *Crime and capital punishment*. F. Watts, 1986.cited in Wilcox, Norma, and Tracey Steele. "Just the facts: A descriptive analysis of inmate attitudes toward capital punishment." *The Prison Journal* 83, no. 4 (2003): 464-482.

<sup>123</sup> Pratt, John. *Governing the dangerous: Dangerousness, law and social change*. Federation Press, 1997.

<sup>124</sup> Garland, David. *The culture of control: Crime and social order in contemporary society*. Vol. 77. OUP Oxford, 2001.

consequence of the revival of the Roman Law and the example of Catholic Inquisition. In the sixteenth, seventeenth, and eighteenth centuries, many of Europe's finest legal minds devoted themselves to codifying and regularizing the use of judicial torture in order to prevent abuses of it by overly zealous or sadistic judges. Great Britain had supposedly replaced judicial torture with juries in the sixteenth century, yet torture still took place there in the sixteenth and the seventeenth centuries in cases of sedition and witchcraft.<sup>125</sup>

Brutal forms of punishment upon conviction were ubiquitous in Europe and Americas. Although the British Bill of Rights of 1689 expressly prohibited cruel punishment, judges still sentenced criminals to the whipping post, ducking stool, stocks, pillory, branding and execution by drawing and quartering (dismemberment by horses) or, for women, drawing and quartering and burning at the stake. What constituted "cruel" punishment clearly depended upon cultural expectations. Only in 1790, did the Parliament forbid burning women at the stake. Previously, however, it had dramatically increased the number of capital offenses, which by estimates tripled in the eighteenth century, and in 1752 it acted to make punishment for murder yet more horrible in order to increase their deterrence. It ordered that all murderers' bodies be given to surgeons for dissection – at this time viewed as ignominious – and it gave judges the discretionary authority to order that any male murderers' body be hung in chains after execution. Despite growing discomfort about this gibbeting of the corpses of murders, the practice was not finally abolished until 1834.<sup>126</sup>

Punishment in the colonies not surprisingly followed the patterns established in the imperial centre.<sup>127</sup> India has been a colony of the British till her independence in 1947. Even after independence in 1947, penal laws from the colonial times are still retained in India. The main laws Indian Penal Code, 1860; Code of Criminal Procedure, 1973; The Evidence Act 1872 and so on and so forth; all derives its origin from the colonial era. Some of these laws are

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<sup>125</sup> Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.

<sup>126</sup> Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.

<sup>127</sup> Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.



even termed as ‘draconian or black laws’. India is guided by its constitution, one of the world’s largest constitutions which spell out the Fundamental Rights of its citizens. In any of these acts or in the Constitution of India, torture has not been specifically defined or prohibited in penal laws.

The methods of torture used in detention are various. They range from beatings to the soles of the feet and all body parts, deprivation of food, water and sleep; the application of electric shocks to sensitive body parts; submersion under water; the insertion of needles under the nails; suspension from the ceiling; the rolling of heavy weights across the body; burning with cigarette butts; insertion of chillies, chilli powder and other painful materials into the rectum, and many other forms of mutilation and pain-inducing treatments. Rape and other forms of sexual abuse are common forms of torture. Regular reports appear in the Indian media of the stripping and parading of women as a punishment for crimes. Many individuals have died as a result of injuries sustained during torture, and, aside from the psychological trauma that is sometimes undergone by victims of torture; many individuals suffer permanent physical damage, including renal failure, blindness, paralysis and impaired use of limbs as a result of the treatment they have undergone in detention.<sup>128</sup>

#### **2.2.3.5.SOLITARY CONFINEMENT AS PUNISHMENT**

There are several definitions to solitary confinement. Nowak says it is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.<sup>129</sup> Indian Supreme Court judgments<sup>130</sup> are not so different from the

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<sup>128</sup> Amnesty International USA. *India: torture, rape & deaths in custody*. Amnesty International USA, 1992.

<sup>129</sup> Nowak, Manfred. *Torture and other cruel, inhuman or degrading treatment or punishment: note/ by the Secretary-General*, 28 July 2008, A/63/175, available at: <http://www.unhcr.org/refworld/docid/48db99e82.html> [accessed 30 December 2012] (Transmits interim report of the Special Rapporteur of the Human Rights Council on torture

above definition; however it still advocates this punishment in case of extreme situations. It says that solitary confinement is an isolation of the prisoner from other co-prisoners and complete segregation from society. It is an extreme measure and is to be rarely invoked in exceptional cases, of unparalleled brutality and atrocity.”

Nowak further adds that never more so than in recent years, the world has seen a marked increase in the use of strict and often prolonged solitary confinement across the world - in the context of the ‘war on terror’; as disciplinary punishment; with pre-trial detainees, the mentally ill and former death-row prisoners; and, in the so-called ‘supermax’ prisons.<sup>131</sup> Solitary confinement is one of the oldest and most enduring prison practices. Barring the death penalty, it is also the most extreme penalty which can legally be imposed on prisoners. Solitary confinement was first widely and systematically used on both sides of the Atlantic in the ‘separate’ and ‘silent’ penitentiaries of the 19th century, with the aim of reforming convicts. It was believed that once left alone with their conscience and the Bible, prisoners would engage in inner reflection, see the error of their ways and be reformed into law abiding citizens. It soon transpired, however, that rather than being reformed, many prisoners became mentally ill, and there was little evidence that the newly built, expensive prisons were more successful than their predecessors in reducing offences. Such criticisms, combined with growing prison populations and pressures for additional prison spaces, led to the dismantling of the isolation system in most countries by the late 19th century. By then, however, solitary confinement had become a permanent feature of prison systems world-wide, used mainly as a form of short term punishment for prison offences, for holding political prisoners, for protective custody, and as a technique for ‘softening-up’

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and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 62/148.

<sup>130</sup> *Munuswamy vs Unknown* on 18 March, 1947 (1947) 1 MLJ 336; *Kishore Singh Ravinder Dev v. State of Rajasthan*, AIR 1981 SC 625.

<sup>131</sup> Nowak, Manfred preface in Shalev, Sharon. "A sourcebook on solitary confinement." London School of Economics and Political Science, London, (2008).

detainees, particularly those suspected of crimes against the State, before and between interrogation sessions.<sup>132</sup>

In addition to these 'traditional' uses, towards the end of the 20th century and at the beginning of the 21st, the use of long term, large scale solitary confinement returned in the form of 'supermax' (short for super-maximum security) and 'special security' prisons. These are large, high tech prisons, designed for long term and strict isolation of prisoners classified as high risk and/or difficult to control. This phenomenon is particularly evident in the United States, where the Federal Government and some 44 States operate at least one such prison, but similar units can now also be found in other countries. The use of prolonged solitary confinement has also increased in recent years in the context of the 'war on terror', not least at Guantanamo Bay where detainees have been held in supermax-like facilities for years, for the most part without any charge and without trial, and in secret detention centres where isolation is used as an integral part of interrogation practices. Another form of solitary confinement, favoured in a number of European countries, is 'small group isolation' wherein prisoners who are classified as dangerous or high risk are held in solitary confinement in small high security units, and allowed limited association with one to five others at designated times, typically during the one-hour long outdoor exercise period required under international law. Paradoxically, although prison overcrowding is a major issue in many jurisdictions, the use of various forms of solitary confinement has increased in the last two decades.<sup>133</sup>

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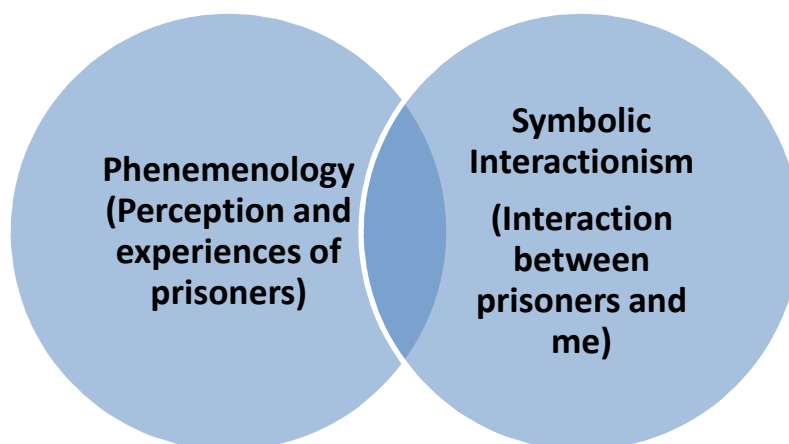
<sup>132</sup> Shalev, Sharon. "A sourcebook on solitary confinement." London School of Economics and Political Science, London, (2008).

<sup>133</sup> Shalev, Sharon. "A sourcebook on solitary confinement." London School of Economics and Political Science, London, (2008).

#### **2.2.4. “EXPERIE-CEPTION”: SYNTHESIS OF PHENOMENOLOGY AND SYMBOLIC INTERACTIONISM**

The main research goal is to explore if the dignity of prisoners are upheld while confronting the criminal justice system and while surviving the death row. It seemed incongruous to delineate the concept of experience and perception to one theory. Initially the study was called “Perception of prisoners on death row” however I realized that it was not only perceptions of prisoners but also their experience. Owing to this reason, the sharing of their life experience is underpinned in the tradition of phenomenology at the same time the interviews or my interaction has been viewed through the lens of symbolic interactionism. In view of the fact that ‘experience’ and ‘perception’ intersects; it seemed imperative that I coin this word ‘*experie-ception*’ which is simply a combination of experience and perception. In this section, I further expound the concurrent nature of phenomenology and symbolic interactionism and while doing so, I further explain the concept of ‘*experie-ception*’. At the onset, I must admit that although both phenomenology and symbolic interactionism have been written in depth by philosophers and theorists, I have discussed the concepts which focus on prisoners on death row. The coinage of the word ‘*experie-ception*’ has significant normative implications, but developing those lie beyond the scope of the present study. Figure 2 explains the concept I have tried to explicate.

Figure 2: “*Experie-ception*”: Synthesis of phenomenology and symbolic interactionism



### 2.2.4.1.PHENOMENOLOGY

Beginning with the concept of phenomenology, Vaitkus says that phenomenologists celebrate the fact that there has never been a satisfactory answer to the question of what phenomenology is. This must render classification difficult.<sup>134</sup> Moreover, in urging scientists to directly explore individual phenomena and to free themselves from presuppositions unjustified by prior examination, phenomenology takes a (laudable) position on philosophical issues, rather than a position on theoretical questions.<sup>135</sup> Phenomenology is an interpretive research methodology that is directed at gaining an in-depth understanding of the nature and meaning of everyday experience. Simply put, "phenomenology describes how one orients to lived experience".<sup>136</sup> Phenomenological studies begins with a question about the meaning of participants' experiences of a phenomenon for which the researcher has a serious interest and commitment<sup>137</sup> and phenomenology can lend a much-needed perspective on the human experience.<sup>138</sup>

Moran writes that though there are a number of themes which characterise phenomenology, in general it never developed a set of dogmas or sedimented into a system. It claims, first and foremost, to be a *radical* way of doing philosophy, a *practice* rather than a system. Phenomenology is best understood as a radical, anti-traditional style of philosophising, which emphasises the attempt to get to the truth of matters, to describe *phenomena*, in the broadest sense as whatever appears in the manner, in which it appears, that is as it manifests itself to consciousness, to the experienter. As such,

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<sup>134</sup> Vaitkus, Steven. "Phenomenology and sociology." *The* (2000). Cited in Turner, Bryan S., ed. *The Blackwell companion to social theory*. Blackwell Publishers, 2000.

<sup>135</sup> Szostak, Rick. "Classifying natural and social scientific theories." *Current Sociology* 51, no. 1 (2003): 27-49.

<sup>136</sup> Van Manen, Max. *Researching lived experience: Human science for an action sensitive pedagogy*. Suny Press, 1990. cited in Gibson, Sharon K., and Lisa A. Hanes. "The contribution of phenomenology to HRD research." *Human Resource Development Review* 2, no. 2 (2003): 181-205.

<sup>137</sup> Van Manen, Max. *Researching lived experience: Human science for an action sensitive pedagogy*. Suny Press, 1990. cited in Gibson, Sharon K., and Lisa A. Hanes. "The contribution of phenomenology to HRD research." *Human Resource Development Review* 2, no. 2 (2003): 181-205.

<sup>138</sup> Gibson, Sharon K., and Lisa A. Hanes. "The contribution of phenomenology to HRD research." *Human Resource Development Review* 2, no. 2 (2003): 181-205.

phenomenology's first step is to seek to avoid all misconstructions and impositions placed on experience in advance, whether these are drawn from religious or cultural traditions, from everyday common sense, or indeed, from science itself. Explanations are not to be imposed before the phenomena have been understood from within.<sup>139</sup> Steeped in the traditions of sociology attributed to Edmund Husserl and the social science of Alfred Schütz, phenomenology emerges as "reflection on the lived experiences and practical actions of everyday life with the intent to increase one's thoughtfulness and practical resourcefulness. From a phenomenological point of view, to do research is always to question the way we experience the world, to want to know the world in which we live as human beings,"<sup>140</sup>

Schütz summarizes and illuminates the philosophical perspective of phenomenology as obtaining organized knowledge of the common-sense thinking of participants living their daily lives. Phenomenology is the explanation of mutual understanding of human beings and identification of experiences by sensory observation to explain the behaviour of the participant who is observed in a small sector of the social world. Phenomenologists attempt to explicate the meaning of the life the participant lives in an everyday existence.<sup>141</sup> Phenomenology is also often considered to be a mode of philosophical inquiry. It was imperative in this study to have this philosophical inquiry because of the nature of the study which mainly wanted to enquire about the dignity of the prisoners on the death row. Central to phenomenology is the practicality of the use of results and the understandability of the data for the layperson.<sup>142</sup>

As mentioned earlier the concept of phenomenology has been written extensively.<sup>143</sup> In this study, I also rely on the concept of empirical

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<sup>139</sup> Moran, Dermot. *Introduction to phenomenology*. Routledge, 2000.

<sup>140</sup> Van Manen, Max. *Researching lived experience: Human science for an action sensitive pedagogy*. Suny Press, 1990.

<sup>141</sup> Schütz, Alfred. *Phenomenology of the social world*. Northwestern University Press, 1967.

<sup>142</sup> Randles, Clint. "Phenomenology A Review of the Literature." *Update: Applications of Research in Music Education* 30, no. 2 (2012): 11-21.

<sup>143</sup> Merleau-Ponty, Maurice. *Phenomenology of perception*. Motilal Banarsidass Published, 1996.; Schütz, Alfred. *Alfred Schütz on phenomenology and social relations*. Vol. 360. University of Chicago Press, 1999.; Sartre, Jean-Pau. *The transcendence of the ego: a sketch*

phenomenology. Empirical phenomenological research returns to experience in order to obtain comprehensive descriptions. These descriptions then provide the basis for a reflective structural analysis to portray the essences of the experience. First the original data is comprised of 'naïve' descriptions obtained through open-ended questions and dialogue. Then the researcher describes the structure of the experience based on reflection and interpretation of the research participant's story. The aim is to determine what the experience means for the people who have had the experience. From there general meanings are derived.<sup>144</sup> Further, Bloor and Wood add that the purpose of the phenomenological method is designed "to describe, understand and interpret the meanings of experiences of human life. It focuses on research questions such as what it is like to experience a particular situation."<sup>145</sup> Thus phenomenological method is used to uncover the "essentiality or 'essence-nature'" of an experience. Husserl's concerns related to the essence of something by writing "every experience has some meaning peculiar to it alone, because its object consists of certain phenomenological properties belonging peculiarly to it".<sup>146</sup> Therefore, as Giorgi explains, using phenomenological methods aims to get at the "totality of lived experiences that belong to a single person".<sup>147</sup> The goal is to seek the development of the essence of the experience, not give an explanation or analysis.<sup>148</sup>

Implicit in the philosophical underpinnings of phenomenology is a group of specific assumptions that guide the framework. First is the construct of intentionality: the act of purposeful attachment to the world under study to question or theorize. The suspension of the current belief system allows the researcher to view the data, the context, and the study with new eyes -

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*for a phenomenological description*. Routledge, 2004.; Husserl, Edmund. *Crisis of European sciences and transcendental phenomenology*. Northwestern University Press, 1970.

<sup>144</sup> Moustakas, Clark. *Phenomenological research methods*. Sage Publications, Incorporated, 1994.

<sup>145</sup> Bloor, Michael, and Fiona Wood. *Keywords in qualitative methods: A vocabulary of research concepts*. Sage Publications Limited, 2006.

<sup>146</sup> Moran, Dermot. *The phenomenology reader*. Routledge, 2002.

<sup>147</sup> Giorgi, Amedeo. "The theory, practice, and evaluation of the phenomenological method as a qualitative research procedure." *Journal of phenomenological psychology* 28, no. 2 (1997): 235-260.

<sup>148</sup> Creswell, John W., and Gary A. Miller. "Research methodologies and the doctoral process." *New Directions for Higher Education* 1997, no. 99 (1997): 33-46.

examination from a variety of vantage points to seek out new vision. Second is identification of research as a caring act, a ministering of thoughtfulness. Further is the specification that phenomenology is a search for the unique, a lifeworld defined by parameters and time frames that make the study essentially irreplaceable. Phenomenology is also characterized by the assumption of always beginning from silence in the lifeworld of the participant and advancing to writing, which is considered an inseparable aspect of the research process.<sup>149</sup>

#### **2.2.4.2.SYMBOLIC INTERACTIONISM**

Moving on from phenomenology, symbolic interaction is a sociological tradition that traces its lineage to the Pragmatists-John Dewey and George Herbert Mead, particularly - and to sociologists of the "Chicago School" - Robert E. Park, Herbert Blumer, Everett C. Hughes, and their students and successors.<sup>150</sup> The most significant precursors of this frame are the Scottish moral philosophers of the 18th century and American pragmatic philosophers of the late 19th and early 20th centuries, especially William James and John Dewey. The psychologist James Mark Baldwin, the sociologists Charles Horton Cooley and William Isaac Thomas also contributed to its evolution.<sup>151</sup> The term *symbolic* in the phrase symbolic interaction refers to the underlying linguistic foundations of human group life, just as the word *interaction* refers to the fact that people do not act toward one another, but interact with each other. By using the term interaction, symbolic interactionists commit themselves to the study and analysis of the developmental course of action that occurs when two or more persons (or agents) with agency (reflexivity) join their individual lines of action together into joint action.<sup>152</sup>

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<sup>149</sup> Van Manen, Max. *Researching lived experience: Human science for an action sensitive pedagogy*. Suny Press, 1990.

<sup>150</sup> Becker, Howard S., and Michal M. McCall, eds. *Symbolic interaction and cultural studies*. University of Chicago press, 1993.

<sup>151</sup> Turner, Jonathan H., ed. *Handbook of sociological theory*. Springer, 2006.

<sup>152</sup> Denzin, Norman K. "Symbolic interactionism." *A companion to qualitative research* (2004): 81-87. cited in Steinke, Ines, Ernst von Kardoff, and Uwe Flick, eds. *A companion to qualitative research*. Sage Publications Limited, 2004.



Symbolic interactionists typically find that meaning is constructed in the process of interaction, and have always insisted that the process is not a neutral medium in which social forces play out their game, but the actual stuff of social organization and social forces. The great strength of the symbolic interactionist approach to meaning is that it is empirical. The ultimate interactionist test of concepts is whether they make sense of particular situations known in great detail through detailed observation. One answer questions by going to see for oneself studying the real world, and evaluating the evidence so gathered.<sup>153</sup> Symbolic interaction takes the concrete, empirical world of lived experience as its problematic and treats theory as something that must be brought into line with that empirical world.<sup>154</sup>

Blumer defines symbolic interactionism by strongly contrasting it to conventional sociology. Symbolic interactionism recognizes the obdurate fact of humans as defining, interpreting, and indicating creatures who have selves through which they construct actions to deal with their worlds. Conventional sociology sees social behaviour as resulting from values, norms, expectations, role -requirements, and so on, a practice inconsistent with these obdurate facts. Social organization has little impact in modern societies, since there are few situations to be dealt with through standardized actions. Even established forms of action have to be continuously renewed through interpretation and designation, and social organization enters only to the extent it shapes situations and provides the symbols used in interpreting situations. From this viewpoint, society is not organization or structure; it is the sum of the actions of persons occurring in situations constructed and reconstructed by those persons through interpreting the situations, identifying and assessing things that have to be taken into account in the situations, and acting on the basis of these assessments.<sup>155</sup>

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<sup>153</sup> Denzin, Norman K. "Symbolic interactionism." *A companion to qualitative research* (2004): 81-87. cited in Steinke, Ines, Ernst von Kardoff, and Uwe Flick, eds. *A companion to qualitative research*. Sage Publications Limited, 2004.

<sup>154</sup> Denzin, Norman K. "Symbolic interactionism." *A companion to qualitative research* (2004): 81-87. cited in Steinke, Ines, Ernst von Kardoff, and Uwe Flick, eds. *A companion to qualitative research*. Sage Publications Limited, 2004.

<sup>155</sup> Blumer, Herbert. *Symbolic interactionism: Perspective and method*. University of California Press, 1986.

George Herbert Mead set sociology at Chicago on its path by trying to understand the way in which individuals become social creatures. He was totally opposed to a static picture in which a subject passively receives or absorbs social norms. When people acquire a first language they also interiorize 'significant gestures' for example when one extends a hand on meeting, the other person automatically puts out a hand to shake. The social roles of 'significant others' are learned, starting with the mother, then the aunts, the father and siblings. He emphasized the symbolic basics of communication and social relationships. However this label 'symbolic interactionism' was invented in 1937 by Herbert Blumer, who stated the following three fundamental principles.<sup>156</sup>

Blumer's three premises address the importance of meaning in human action, the source of meaning, and the role of meaning in interpretation. He says that firstly, human beings act toward things on the basis of the meanings that the things have for them where consciousness is a key element in understanding meaningful action. He says that anything of which a human being is conscious is something which one is indicating to oneself, for instance, the ticking of a clock, a knock at the door, the appearance of a friend, the remark made by a companion or recognition that one has a cold. To indicate something is to extricate it from its setting, to hold it apart, to give it a meaning. In any of one's countless acts, whether minor, like dressing oneself or major ones like organizing oneself for a professional career, the individual is designating different objects to oneself, giving them meaning, judging their suitability to one's action and making decisions on the basis of the judgment which is meant by interpretation or acting on the basis of symbols.<sup>157</sup>

Secondly, the meaning of things arises out of the social interaction one has with one's fellows thus stating that meaning is a social product; it is created, not "inherent in things"; it is not a given. He states that one elaborates it saying that the meaning of a thing for a person grows out of the ways in which other

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<sup>156</sup> Hacking, Ian. "Between Michel Foucault and Erving Goffman: between discourse in the abstract and face-to-face interaction." *Economy and Society* 33, no. 3 (2004): 277-302.

<sup>157</sup> Blumer, Herbert. *Symbolic interactionism: Perspective and method*. University of California Press, 1986.

persons act toward the person with regard to the thing and their actions operate to define the thing for the person.<sup>158</sup> Thirdly, the meanings of things are handled in and modified through an interpretative process used by the person in dealing with things one encounters. Blumer says that a person communicates and handles meanings through a process of “talking to oneself.” One who gives an account of personal worries and anxieties is interpreting what is disturbing to her/him which in the process of “making indications to oneself” arrives at such an account.

Human beings create the worlds of experience in which they live. The meanings of these worlds come from interaction, and they are shaped by the self-reflections persons bring to their situations. Such self-interaction is ‘interwoven with social interaction and influences that social interaction’. Joint acts, their formation, dissolution, conflict and merger constitute what Blumer calls the ‘social life of a human society’. A society consists of the joint or social acts ‘which are formed and carried out by its members’. A complex interpretive process shapes the meanings things have for human beings.<sup>159</sup>

Thus, symbolic interactionism has always been centrally concerned with how interacting individuals create social orders, how individual selves are mediated in and through social interaction, and as Denzin<sup>160</sup> notes, “meanings are acted on collectively, as well, in ‘joint acts’—acts which form, dissolve, conflict, merge, and ultimately constitute reality”.<sup>161</sup> Like every theoretical perspective, symbolic interactionism also has a few limitations. It is not possible to study experience directly, so symbolic interactionists study how narratives connected to systems of discourses such as interviews, stories, rituals or myths represent experience. These representational practices are narrative constructions. The meanings and forms of everyday experience are always given in narrative representations.

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<sup>158</sup> Blumer, Herbert. *Symbolic interactionism: Perspective and method*. University of California Press, 1986.

<sup>159</sup> Rose, Arnold M. "A systematic summary of symbolic interaction theory." *Human behaviour and social processes* (1962): 3-19.

<sup>160</sup> Denzin, Norman K. "Symbolic interactionism and ethnomethodology: A proposed synthesis." *American Sociological Review* (1969): 922-934.

<sup>161</sup> Kamberelis, George, and Greg Dimitriadis. *On qualitative inquiry*. No. 75. Teachers College Pr, 2005.

These representations are texts that are performed, stories told to others. Bruner is explicit on this point: representations must 'be performed to be experienced'. Hence symbolic interactionists study performed texts, rituals, stories told, songs sung, novels read and dramas performed. He says that experience is a performance, and reality is a social construction. The politics of representation is basic to the study of experience.<sup>162</sup> How a thing is represented involves a struggle over power and meaning. While social scientists have traditionally privileged experience itself, it is now understood that no life, no experience can be lived outside of some system of representation.<sup>163</sup> Symbolic interactionists are constantly constructing interpretations about the world.<sup>164</sup>

#### **2.2.4.3. EXPERIENCE: SYNTHESIS OF PHENOMENOLOGY AND SYMBOLIC INTERACTIONISM**

"Objective findings are of limited value. Understanding other humans and their existence can never be complete without the perspective of the subjective experience".<sup>165</sup>

A primary assumption underlying phenomenology is that humans seek meaning from their experiences and from the experiences of others. This meaning is interpreted through language and thus leads to a reality that is socially constructed rather than a reality that exists outside the meanings that humans attribute to it.<sup>166</sup> Phenomenology seeks deep understanding of experience and views knowledge not as existing independently of the knower but as "a matter of agreement within a socially and historically bounded context".<sup>167</sup> The relationship between the researcher and research participant is

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<sup>162</sup> Bruner, Edward M. "Experience and its expressions." *The anthropology of experience* (1986): 3-30.

<sup>163</sup> Hall, Stuart. "What is this 'black' in black popular culture?." *Social Justice* 20, no. 1/2 (51-52) (1993): 104-114.

<sup>164</sup> Steinke, Ines, Ernst von Kardoff, and Uwe Flick, eds. *A companion to qualitative research*. Sage Publications Limited, 2004.

<sup>165</sup> Dahlberg, K., Drew, N., & Nystrom, M. (2001). *Reflective lifeworld research*. Lund, Sweden: Studentlitteratur.

<sup>166</sup> Hultgren, Francine Holm. "Introduction to interpretive inquiry." *Alternative modes of inquiry in home economics research* (1989): 37-59.

<sup>167</sup> Smith, John K. "Quantitative versus qualitative research: An attempt to clarify the issue." *Educational researcher* 12, no. 3 (1983): 6-13.

seen as a subject-subject interaction in which values and facts reside within each individual and cannot be separated.<sup>168</sup>

Phenomenological research methods, therefore, attempt to uncover the underlying essences and meanings of experience to arrive at a deeper, inter-subjective understanding of the phenomenon under study. Van Manen<sup>169</sup> suggested that the distinction made by phenomenology between appearance and essence is what differentiates it from other qualitative research approaches such as ethnography, symbolic interactionism, and ethnomethodology. Phenomenology differs from other approaches due to its emphasis on the participants' experienced meaning rather than just on a description of their observed behaviours or actions.<sup>170</sup>

Informants who live or have lived the reality being investigated are recognized as the only legitimate source of data in phenomenology inquiry.<sup>171</sup> Although all qualitative designs call for the researcher to confront the phenomenon under study as much as possible on its own terms<sup>172</sup>, phenomenology takes this one step further in that the researcher is encouraged to rely on intuition, imagination, and universal structures to obtain a picture of the phenomenon.<sup>173</sup> The complex relationship between phenomenology and sociology has been widely discussed in the past.<sup>174</sup> Luckmann claims that phenomenology serves an important methodological purpose but warns that it should not be taken as a

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<sup>168</sup> Smith, John K. "Quantitative versus qualitative research: An attempt to clarify the issue." *Educational researcher* 12, no. 3 (1983): 6-13.

<sup>169</sup> Van Manen, Max. *Researching lived experience: Human science for an action sensitive pedagogy*. Suny Press, 1990.

<sup>170</sup> Polkinghorne, Donald E. "Phenomenological research methods." (1989). Cited in Valle, Ronald S., and Steen Ed Halling. *Existential-phenomenological perspectives in psychology: Exploring the breadth of human experience*. Plenum Press, 1989.

<sup>171</sup> Baker, Cynthia, Judith Wuest, and Phyllis Noerager Stern. "Method slurring: the grounded theory/phenomenology example." *Journal of advanced nursing* 17, no. 11 (2006): 1355-1360.

<sup>172</sup> Denzin, Norman K. "Interpretive interactionism. Applied Social Research Methods Series (vol. 16)." (1989).

<sup>173</sup> Creswell, John W. "Five qualitative traditions of inquiry." *Qualitative inquiry and research design: Choosing among five traditions* (1998): 47-72.

<sup>174</sup> Luckmann, Thomas. "Philosophy, science and everyday life." *Phenomenology and the social sciences* 1 (1973): 143-186. cited in Natanson, Maurice. *Phenomenology and the social sciences*. Vol. 1. Northwestern University Press, 1973.; Psathas, George. "Ethnomethodology as a phenomenological approach in the social sciences." *RZaner et DIhde (eds.), Interdisciplinary Phenomenology, La Haye, Martinus Nijhoff* (1977): 72-98. cited in Ihde, Don, and Richard M. Zaner, eds. *Interdisciplinary phenomenology*. M. Nijhoff, 1977.

substitute empirical method. He says that phenomenology which is meant to reveal the universal, invariant structures of the life-world, provides a 'matrix' for research but cannot itself be based on data because he claims that all data of the social sciences are historical.<sup>175</sup> In this view, the structures of everyday experience, and basically any phenomenological inquiry, cannot and should not be subjected to empirical investigation, including ethnographic research.

De facto, it is not possible to access *all* aspects of lived experience in interviews because informants refuse to talk about certain topics or cannot talk about them because; no matter how much they may wish to collaborate, they overlook issues that do not figure prominently in their awareness. Sit-down interviews are primarily static encounters in which talking becomes the centre of attention. Any other activity is usually perceived as a distraction and pushed into the background. The structuring and emphasis of the interview situation not only discourages 'natural', that is, context-sensitive reactions of the interviewer and interviewee, they also magnify the dialectical relationship between the participants instead of promoting a shared perspective and a more egalitarian connection.<sup>176</sup>

Phenomenology consists of descriptions and, also assumes that the reality which is discovered is subject to continual revision. It does not mean, as many contemporary sociologists have assumed, that one discovers essences once and for all. It should be clear that the methodology of phenomenology as outlined by Husserl does not provide the mandate for one-shot case studies or single descriptions of single events. Phenomenology is inappropriate for studying human relationships. For it is not sociology's goal to understand the single actor, but the social and historical forces that act on him, and that he in turn shapes and one needs to explain the place, function, and social meaning of the phenomena, and not just the phenomenon itself. At this stage it ought to be clear that there are basic similarities between symbolic interactionism and

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<sup>175</sup> Luckmann, Thomas. "Philosophy, science and everyday life." *Phenomenology and the social sciences* 1 (1973): 143-186. cited in Natanson, Maurice. *Phenomenology and the social sciences*. Vol. 1. Northwestern University Press, 1973.

<sup>176</sup> Kusenbach, Margarethe Street Phenomenology: The Go-Along as Ethnographic Research Tool *Ethnography* 2003 4: 455

phenomenology in terms of their assumptions about the nature of wo/man and society, their methods, and the question of meaning. Denzin, in an excellent synthesis of two of these positions has noted that "If face-to-face interaction is characterized by shifting modalities of interpretation, then a major point of convergence between these two positions is the treatment of the meaning given to social objects".<sup>177</sup> He also notes that both agree on the need to differentiate scientific explanations from those made by one in everyday life.<sup>178</sup>

Symbolic interactionism is used to illustrate an existing concept or to present and illustrate a new concept seen as useful in understanding a situation of interaction under examination. Often, the situation examined is 'exotic'.<sup>179</sup> Such work typically shows little interest in the generalizability of its results, seeing its tasks as giving voice to its research subjects and the description and understanding of the total particularities of the situation under examination.<sup>180</sup> Work in this vein can serve the end of achieving theoretical generalization by suggesting new concepts potentially of wider use, by pointing up lacunae in current theoretical statements, and perhaps as evidence increasing or decreasing the plausibility of ideas presented as theories with general applicability.<sup>181</sup>

In symbolic interactionism it is assumed that self and social organization lack the constancy required being useful beyond the singular instance being considered. This implies that social life is unpredictable and that testing theories of social psychological phenomena is not possible. What is possible in symbolic interactionism is to describe interaction as it occurs and to understand that interaction after it occurs. Actors' definitions and interpretations change

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<sup>177</sup> Denzin, Norman K. "Symbolic interactionism and ethnomethodology: A proposed synthesis." *American Sociological Review* (1969): 922-934. cited in McNall, Scott G., and James CM Johnson. "The new conservatives: ethnomethodologists, phenomenologists, and symbolic interactionists." *Critical Sociology* 5, no. 4 (1975): 49-65.

<sup>178</sup> McNall, Scott G., and James CM Johnson. "The new conservatives: ethnomethodologists, phenomenologists, and symbolic interactionists." *Critical Sociology* 5, no. 4 (1975): 49-65.

<sup>179</sup> Glaser, Barney G., and Anselm L. Strauss. *The discovery of grounded theory: Strategies for qualitative research*. Aldine de Gruyter, 1967.

<sup>180</sup> Harris, Scott R. "What can interactionism contribute to the study of inequality? The case of marriage and beyond." *Symbolic Interaction* 24, no. 4 (2001): 455-480.

<sup>181</sup> Adler, Patricia A., and Peter Adler. *Backboards and blackboards: College athletes and role engulfment*. Columbia University Press, 1991.

continuously in immediate interactive situations. This fluidity extends to social life in general; thus, interaction is reasonably described only as it unfolds. Consequently, the relevance of concepts representing social structure as well as concepts imported from prior analyses of interaction is dubious. Only the perspectives of participants in social interaction are relevant to understanding their interaction thus using the perspectives of sociological observers negates true understanding. Consequently, the voices of observers (here in this case me as a researcher) are to be eliminated in description and analysis. Self emerges from society but becomes free of structural constraints over time, acting as an independent source of social behaviour.<sup>182</sup>

Finally, to add to the argument of symbolic interactionism, it says that human experience is so socially organized that the organization and content of self reflects the person's participation in the society. It continues that the social life is constructed and the forms and contents of social life are not fixed by nature. They are products of collective activities of persons as they develop solutions to problems in their lives. Also it says that human beings are actors. Symbolic interactionists assert that mind and self, the symbolic and reflexive capacities of humans, permit actors to formulate, anticipate outcomes of, select from alternative lines of action, and revise actions as information is returned in the course of the action itself.<sup>183</sup>

The present study tries to explore the lives of prisoners on death row in turn bringing their voices out to society. This includes their experiences and perceptions. Phenomenology seeks meaning from the experience of the prisoners within the context of them encountering the criminal justice system and surviving the death row. It attempts to uncover the underlying essence and meaning of their experience to study the phenomenon they experience. It is valid to take the phenomenological approach because literature states that only

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<sup>182</sup> McCall, George J., and Jerry L. Simmons. "Identities and interactions: An examination of human associations in everyday life (Rev. ed.)." (1978). cited in Schwartz, Seth J., Koen Luyckx, and Vivian L. Vignoles, eds. *Handbook of identity theory and research*. Springer, 2011.

<sup>183</sup> Stryker, Sheldon. "Traditional symbolic interactionism, role theory, and structural symbolic interactionism: The road to identity theory." *Handbook of sociological theory* (2001): 211-231.; Turner, Jonathan H., ed. *Handbook of sociological theory*. Springer, 2006.



the ones who have lived the reality of the criminal justice system could be a legitimate source of data in this kind of enquiry. At the same time, phenomenology only provides a 'matrix' for research but cannot itself be based on data.

Also it is impossible to access every aspect of the prisoners' experience because a prison setting magnifies the dialectical relationship between the participants (the prisoners) and me (a researcher) instead of promoting a shared perspective and a more egalitarian connection. Symbolic interactionism makes an entry here. The situation of the interview setting and the interaction in the field which is the prison cannot be ignored because I also seek to understand the total particularities of the situation. Symbolic interactionism also states that meaning is a social product because it arises out of social interaction. Also meanings are handled and modified while dealing with things one encounters. In such a situation, where I as a woman researcher interact with prisoners on death row who are mainly men; it becomes imperative to capture these meanings which arise out of our interaction and to document these 'handled' and 'modified' meanings. In the light of the above notions, the synthesis of phenomenology and symbolic interactionism tries its best to accomplish the task of bringing the voices of prisoners. This synthesis acts as a medium to explore if the dignity of the prisoners is upheld which also leads to the description and understanding of the total particularities of the situation.

### **2.3. DEATH PENALTY IN THE REALM OF LAW**

This section begins with an overview of death penalty in international law. It states the use of death penalty globally and the methods of execution used in various countries. It further mentions a few international conventions, standards and norms related to death penalty with particular reference to India. The second part of this section orients us with an overview of the legal framework of death penalty in India. This part discusses the laws that govern India and the court systems. Further it discusses the safeguards during the arrest, detention, interrogation and against torture. Besides, it also briefs the relevant laws and recent highlights on death penalty in India. There are also guidelines for awarding death penalty which has been briefed along with the possible stages of appeal against this sentence. Further it mentions what happens when one is sentenced to death and highlights the fundamental rights of the condemned prisoners. Discussing how prisons are created in India or an in-depth analysis of law does not contain the scope of this study.

#### **2.3.1. AN OVERVIEW OF DEATH PENALTY IN INTERNATIONAL LAW**

The development of human rights standards in relation to the death penalty has been on-going since the establishment of the United Nations (UN). Although there is no international law prohibiting the use of capital punishment/death penalty, many international legal standards strictly limit its application.<sup>184</sup> The majority of the countries where people were sentenced to death or executed, the death penalty was imposed after proceedings that did not meet international fair trial standards, often based on “confessions” that were allegedly extracted through torture or other duress. This was particularly the case in Belarus, China, Iran, Iraq, North Korea, and Saudi Arabia. In Iran and Iraq, some of these “confessions” were then broadcast on television before the trial took place, further breaching the defendants’ rights to presumption of innocence. The mandatory death penalty continued to be used in India, Iran, Malaysia, Pakistan, Singapore, Trinidad and Tobago and Zambia. Mandatory death

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<sup>184</sup> Schabas, William A. "Indirect Abolition: Capital Punishment's Role in Extradition Law and Practice." *Loy. LA Int'l & Comp. L. Rev.* 25 (2002): 581.

sentences are inconsistent with human rights protections because they do not allow any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence.<sup>185</sup>

The following methods of executions were used in 2010: beheading (Saudi Arabia), electrocution (USA), hanging (Bangladesh, Botswana, Egypt, India, Iran, Iraq, Japan, Malaysia, North Korea, Singapore, Sudan, Syria), lethal injection (China, USA), shooting (Bahrain, Belarus, China, Equatorial Guinea, North Korea, Palestinian Authority, Somalia, Taiwan, USA, Viet Nam, Yemen). There were no reports of judicial executions carried out by stoning, although new death sentences by stoning were reportedly imposed in Iran, the Bauchi state of Nigeria and Pakistan. At least 10 women and four men remained under sentence of death by stoning in Iran in 2011. Public judicial executions were known to have been carried out in Iran, North Korea and Saudi Arabia.<sup>186</sup>

India is a party to the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, India is not a signatory to many other international conventions or mechanisms like the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Status of Refugees, Optional Protocols to the ICCPR and the Protocol relating to the status of refugees. In the 67<sup>th</sup> General Assembly held on 19<sup>th</sup> November 2012, there was a call for moratorium on execution, with a view to abolishing death penalty. The recorded vote of 110 was in favour to 39 against, with 36 abstaining. The General Assembly called on States to respect international standards that provided safeguards guaranteeing the protection of the rights of persons facing the death penalty, as set out in the

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<sup>185</sup> Amnesty International Report "Death sentences and executions 2011" London accessed at [\[http://www.amnesty.org/en/library/asset/ACT50/001/2012/en/241a8301-05b4-41c0-bfd9-2fe72899cda4/act500012012en.pdf\]](http://www.amnesty.org/en/library/asset/ACT50/001/2012/en/241a8301-05b4-41c0-bfd9-2fe72899cda4/act500012012en.pdf) on 1<sup>st</sup> December 2012

<sup>186</sup> Amnesty International Report "Death sentences and executions 2011" London accessed at [\[http://www.amnesty.org/en/library/asset/ACT50/001/2012/en/241a8301-05b4-41c0-bfd9-2fe72899cda4/act500012012en.pdf\]](http://www.amnesty.org/en/library/asset/ACT50/001/2012/en/241a8301-05b4-41c0-bfd9-2fe72899cda4/act500012012en.pdf) on 1<sup>st</sup> December 2012

annex to Economic and Social Council resolution 1984/50 (1984).<sup>187</sup> India voted for retaining the death penalty in the law.

Article 6 (1) of the ICCPR provides that every human being has the inherent right to life. This right shall be protected by the law. No one shall be arbitrarily deprived of his life. It further states that it should be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. Article 6 (2) of the same covenant provides that, “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime”. Article 6 of ICCPR is non-derogable in its entirety; any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the fair trial guarantees provided in Article 14.<sup>188</sup> In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of Article 14 of the ICCPR have not been respected, constitutes a violation of the right to life.<sup>189</sup> For example, a denial of legal aid by the court reviewing the death sentence of an indigent convicted person constitutes not only a violation of article 14, paragraph 3 (d), but at the same time also of article 14, paragraph 5, as in such cases the denial of legal aid for an appeal effectively precludes an effective review of the conviction and sentence by the higher instance court.<sup>190</sup> The right of appeal is also of particular importance in death penalty cases.

The Second Optional Protocol to the ICCPR (1989) aims at the abolition of the death penalty; one of most important provisions of the Second Optional Protocol is that reservations about abolishing the death penalty are not allowed,

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<sup>187</sup> General Assembly GA/SHC/4058 See at <http://www.un.org/News/Press/docs/2012/gashc4058.doc.htm> [accessed on 1st December 2012]

<sup>188</sup> General comment No. 29 (2001) on article 4: Derogations during a state of emergency, para. 15.

<sup>189</sup> General comment No. 32 (2007) on Article 14 CCPR/C/GC/32: Article 14: Right to equality before courts and tribunals and to a fair trial, para 59.

<sup>190</sup> Human Rights Council (HRC), Communication No. 554/1993, LaVende v. Trinidad and Tobago, para. 5.8.

except for those concerning the death penalty for military crimes committed during wartime. Countries are asked to describe steps they have taken to put this Protocol into effect, in their reports to the Human Rights Committee. The Optional Protocol provides States parties to the Covenant with the option of recognizing the Human Rights Committee as qualified to receive and examine communications from individuals about issues related to the implementation of the Protocol. Currently, there are 73 States parties to the Protocol.<sup>191</sup> India has ratified the ICCPR on 10<sup>th</sup> April 1979 but has not signed the Optional Protocol. Bringing children in the light of death penalty, the Convention on the Rights of the Child (CRC), 1990 is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights.<sup>192</sup>

Article 37 of the CRC provides that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." Currently, there are 193 States parties to the Convention. This implies that the prohibition on the execution of children is universal.<sup>193</sup> India is a party to this convention, at the same time India has a progressive child rights law<sup>194</sup> relating to juveniles in conflict with law and children in need of care and protection. This act also prohibits the state to arrest any child below the age of 18 or try the child in an adult court.

The standards and norms are sets of non-binding rules, principles, and guidelines relating to different aspects of the criminal justice and constituting soft law. Most standards and norms were adopted by a resolution of the General Assembly or the Economic and Social Council. There are several relevant standards and norms on the death penalty but the most relevant one is

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<sup>191</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en) [accessed on 6th January 2012].

<sup>192</sup> Assembly, UN General. "Convention on the Rights of the Child." *United Nations, Treaty Series* 1577 (1989): 3. <http://www.unicef.org/crc/> [accessed on 12<sup>th</sup> December 2011].

<sup>193</sup> [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) [accessed on 5<sup>th</sup> January 2012].

<sup>194</sup> Juvenile Justice (Care and Protection of Children) Act, 2000 see <http://wcd.nic.in/childprot/jjact2000.pdf> [accessed on 4th January 2012]

the “Safeguards guaranteeing protection of the rights of those facing the death penalty”. In 1984 the Economic and Social Council adopted this in its resolution 1984/50 of 25 May 1984.<sup>195</sup> The following are the safeguards:

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

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<sup>195</sup> Note: They were later endorsed by the GA in its resolution A/RES/39/118 on human rights in the administration of justice Available at <http://www.un.org/documents/ga/res/39/a39r118.htm> [accessed on 9th January 2012].

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

There are standards and norms such as the UN Standards Minimum Rules (SMR) on the Treatment of Prisoners<sup>196</sup> which says that the SMR also applies to the prisoners on death row who are awaiting their execution and should have the same rights as other prisoners. Another treaty called the UN Model Treaty on Extradition<sup>197</sup> includes as a ground for refusal of extradition the possibility that the death penalty shall be imposed in the requesting state.<sup>198</sup> In connection to extradition many states apply this ground for refusal. For example, the European Union and individual nations have long opposed the death penalty as a matter of principle, regardless of assurances that it would not be imposed on the person extradited.<sup>199</sup> Further the UN Standard Minimum Rules for the Administration of Juvenile Justice<sup>200</sup> (the Beijing Rules)<sup>201</sup> establishes that

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<sup>196</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> [accessed 1 January 2013] [Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.]

<sup>197</sup> Adopted by the United Nations General Assembly. 68th plenary meeting, December 14, 1990.A/RES/45/116

<sup>198</sup> United Nations Model Treaty on Extradition (A/RES/45/116). Article 4 establishes Grounds for refusal: Article 4(d) reads: "If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested.

<sup>199</sup> Note: *Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights* <http://www.unhchr.ch/tbs/doc.nsf/0/cb752ca5a0c62b61c1256dbb002a67fe?Opendocument> [accessed on 6th January 2012].

<sup>200</sup> Standard Minimum Rules for the Administration of Juvenile Justice Adopted by the General Assembly in resolution A/RES/40/33.

capital punishment shall not be imposed for any crime committed by juveniles. However, Amnesty International report<sup>202</sup> claims that certain states (Yemen, China, Nigeria, Saudi Arabia, Egypt, Abu Dhabi, Iran) continue to execute offenders that were children at the time of the commission of the offence; this was sometimes accompanied by an attempt to hide the real age of the person. In addition to this the Basic Principles on the Role of Lawyers<sup>203</sup> reiterates the importance of legal assistance in capital punishment cases in accordance with article 14 of the ICCPR. The Draft United Nations Principles and Guidelines on Access to Legal Aid in criminal justice systems state that states should ensure that anyone who is arrested, detained or prosecuted for a crime punishable by a term of imprisonment or the death penalty receives legal assistance and that the legal assistance is free of charge, if the person cannot afford it, at all stages of the criminal justice process, including post-trial proceedings.<sup>204</sup>

Though there are several other legal instruments that could be mentioned or analysed in depth, this study limits itself to giving an overview of the international framework with reference to death penalty. Further this chapter briefs the legal framework in India with specific reference to death penalty.

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<sup>201</sup> Beijing Rules: Adopted by the General Assembly in resolution A/RES/40/33. The relevant part reads: “The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.”

<sup>202</sup> Amnesty International Report “Death sentences and executions 2011” London accessed at [<http://www.amnesty.org/en/library/asset/ACT50/001/2012/en/241a8301-05b4-41c0-bfd9-2fe72899cda4/act500012012en.pdf>] on 1<sup>st</sup> December 2012

<sup>203</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 The preamble include the following paragraph: “Whereas the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with Article 14 of the International Covenant on Civil and Political Rights”.

<sup>204</sup> Draft United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems [[http://www.unodc.org/documents/justice-and-prison-reform/Draft\\_principles\\_and\\_Guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Draft_principles_and_Guidelines_on_access_to_legal_aid.pdf)] [accessed on 4th January 2012]



### **2.3.2. AN OVERVIEW OF THE LEGAL FRAMEWORK IN INDIA**

At the time when the British came to India, the criminal law in existence was the Mohammedan law. This law, which had replaced the Hindu law, continued to be the basic law in the Mofussil until the enactment of the Indian Penal Code (Act XLV of 1860), but it had, in the meanwhile, been modified very extensively by the successive Regulations and Acts of the Presidency Court, viz., Calcutta, Madras, and Bombay and the Central Governments. In the beginning, the British engrafted the Muslim system of administration, but were faced with much difficulty. As a result, the Mofussils as well as the Presidency Courts gradually began to turn to the English law for guidance and help. Thus, the criminal law administered in the Presidency towns, came to be in practice, the English criminal law. In Bombay, Portuguese law first replaced the Mohammedan law. Then followed the Company's law of 1670, and from that time the English criminal law was applied, until, under a Charter of 24th September, 1726, the Mayor's Court was set up, and the criminal law of England was authoritatively administered in that presidency.<sup>205</sup>

In Madras and Calcutta, criminal jurisdiction was originally exercised over the Indian inhabitants through the Courts of the East India Company in its capacity as *Zamindar*.<sup>206</sup> Apparently, English Criminal law was applied more and more extensively in these Courts as time went by, though in those towns there was no definite substitution of that law for the Mohammedan criminal law. In 1726, Mayor's Courts were established in Madras and Calcutta under the same Charter as that which set up the similar Court in Bombay. However, in adopting the British system, each of the Presidency courts, namely, Bombay, Calcutta and Madras followed an independent course of its own. The result was a chaotic mass of conflicting and contradictory decisions on similar points. The regulations passed by different Presidencies differed widely in their scope and contained different provisions. For instance, in the Bengal Presidency, serious forgeries were punishable with imprisonment for a term double the term fixed for perjury; whereas in the Bombay Presidency, perjury was punishable with

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<sup>205</sup> Gaur, Krishna Deo. *Textbook on the Indian Penal Code*. Universal Law Publishing, 2009.

<sup>206</sup> Note: Landlords

imprisonment for a term double the term fixed for the most aggravated forgeries.<sup>207</sup> Likewise, in the Madras Presidency, the two offences were exactly on the same footing.<sup>208</sup> There was utter disorder and confusion in the administration of criminal justice.<sup>209</sup>

To streamline the legal system in the then British India the Governor-General of India in Council by virtue of the authority vested in him under section 53 of the Government of India Act, 1833 (3 and 4 Will, 4, c.85) appointed the "the Indian Law Commissioners" in 1834 to inquire into the then existing state of the law and to suggest a comprehensive Penal Code for India. Thus in 1834 the First Law Commission of India was constituted with Lord Macaulay as its President to prepare the Penal Code for India. It received the assent of the Governor-General in Council on October 6, 1860 and the Indian Penal Code (Act XLV of 1860) came into force on January 1, 1862. The genesis of a uniform system of criminal jurisprudence for the whole of India is to be found in the form of Indian Penal Code, 1860 and Criminal Procedure Code, 1973.<sup>210</sup> Since then, the law has undergone many amendments in order to incorporate a lot of changes and judicial clauses for the improvement of justice delivery. The Criminal Procedure Code, 1973 (CrPC)<sup>211</sup> is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April, 1974. It made the death sentence an exceptional punishment and required that judges record 'special reasons' where they did not award life imprisonment.<sup>212</sup> This was a clear statement from the Legislature that the death penalty was now to be an exceptional punishment while life imprisonment would be the obvious punishment for murder.

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<sup>207</sup> Bombay Regulation (14 of 1827), secs. 16-17 cited in Gaur, Krishna Deo. *Textbook on the Indian Penal Code*. Universal Law Publishing, 2009.

<sup>208</sup> Madras Regulation (6 of 1811), sec. 111. cited in Gaur, Krishna Deo. *Textbook on the Indian Penal Code*. Universal Law Publishing, 2009.

<sup>209</sup> Gaur, Hari Singh. "Penal Law of India." *Vol. I* (1972). cited in Gaur, Krishna Deo. *Textbook on the Indian Penal Code*. Universal Law Publishing, 2009.

<sup>210</sup> Gaur, Krishna Deo. *Textbook on the Indian Penal Code*. Universal Law Publishing, 2009.

<sup>211</sup> Criminal Procedure Code, 1973 See at <http://mha.nic.in/pdfs/ccp1973.pdf> [accessed 29th December 2011]

<sup>212</sup> Section 354(3), CrPC 1973.

The fountain source of law in India is “The Constitution of India”<sup>213</sup> which, in turn, gives due recognition to statutes, case law and customary law consistent with its dispensations. Statutes are enacted by Parliament, State Legislatures and Union Territory Legislatures. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities like Municipal Corporations, Municipalities, Gram Panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or State or Union Territory Legislature concerned.

The decisions of the Supreme Court are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions which are not against statute, morality, etc. are to a limited extent also recognized and taken into account by Courts while administering justice in certain spheres.<sup>214</sup> It is one of the world's lengthiest written constitutions with 395 articles and 8 schedules. It contains the good points taken from the constitutions of many countries in the world. It was passed on 26 November 1949 by the 'The Constituent Assembly' and is fully applicable since 26 January 1950. The Constituent Assembly had been elected for undivided India and held its first sitting on 9th December 1946, re-assembled on the 14th August 1947, as The Sovereign Constituent Assembly for the dominion of India. In regard to its composition the members were elected by indirect election by the members of The Provisional Legislative Assemblies (lower house only). At the time of signing 284 out of 299 members of the Assembly were present.

In a written Constitution, there are two kinds: one is a unitary type, where there is only one government to the entire nation (Examples are England, France, etc.). The other one is federal type, where the powers of the nation are divided between the Centre and States (Examples are India, USA, Switzerland, etc.). Regarding legislative relations, there is threefold division of powers in the

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<sup>213</sup> The Constitution of India See at <http://lawmin.nic.in/coi/coiason29july08.pdf> [accessed 29th December 2011]

<sup>214</sup> Supreme Court of India See at <http://supremecourtfindia.nic.in/constitution.htm> [accessed 29th December 2011]

Constitution. We have followed a system in which there are two lists of legislative powers, one for the Centre and the other for the State, known as the Union List and the State List, respectively. An additional list called the Concurrent List has also been added. The Union List which consists of 97 subjects of national interest is the largest of the three lists. Some of the important subjects included in this list are: Defence, Prisons, Railways, Post and Telegraph, Income Tax, Custom Duties, etc. The Parliament has the exclusive power to enact laws on the subjects included in the Union List for the entire country. The State List consists of 66 subjects of local interest. Some of the important subjects included in this List are Trade and Commerce within the State, Police, Jails, Fisheries, Forests, Industries, etc.

The State Legislatures have been empowered to make laws on the subjects included in the State List. The Concurrent List consists of 47 subjects of common interest to both the Union and the States. Some of the subjects included in this list are: Stamp Duties, Drugs and Poison, Electricity, Newspapers etc. Both the Parliament and the State Legislatures can make laws on the subjects included in this list. But in case of a conflict between the Union and the State law relating to the same subject, the Union law prevails over the State law. Power to legislate on all subjects not included in any of the three lists vests with the Parliament. Taking into consideration of unity and security of the nation, the founding fathers (sic) of our Constitution have given more powers to the Centre. The State Governments have very limited powers. Financially the States are dependent on the Centre. Hence our Constitution is more unitary, than federal in its nature. It is rightly termed as quasi-federal by some writers.<sup>215</sup> Further we move on to look at the function of the courts in India.

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<sup>215</sup> Ram, M. Raja. *Indian Constitution*. New Age International (P) Limited, 2009.

### **2.3.3. THE COURT SYSTEM**

During the British rule in India the traditional Indian judicial system was reorganised by the British authorities on the basis of Anglo-Saxon jurisprudence. Mayor's courts in the Presidency towns of Madras, Bombay and Calcutta was established in 1726. The Regulating Act, 1773 established the Supreme Court at Calcutta in 1773. The Indian judicial system during this period consisted of two systems of courts: Supreme Courts in the Presidency Towns of Calcutta, Madras and Bombay and *Sadar* Courts in the provinces. In 1861, three high courts were established. In tune with the changing times, a legal and judicial system developed into a well-organised modern system of law and administration of justice, which India inherited on its becoming independent.<sup>216</sup>

The court structure in India is pyramidal in nature. Unlike the American model of dual court system, federal and state, India has a single monolithic system. Hence, the Supreme Court is the highest Apex Court and its verdicts are final in the constitutional matters, customs and tradition and earlier decisions of the various courts. The judicial system of a country takes up disputes and gives judgment based on the laws. Both the judiciary and the laws play an important role in the society. The court of law performs the important task of protecting the life, property, dignity and the rights of the citizens. They are not controlled by either the Legislature or the Executive. They are expected to function impartially and independently. The judiciary plays the role of interpreting and applying laws and adjudicating upon controversies between one citizen and another citizen / State – to maintain Rule of Law and to assure that the government runs according to law – in a country with a written Constitution. Judiciary has an additional function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and keeps all authorities within the constitutional framework. The judiciary in all the states

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<sup>216</sup> Jois, Mandagadde Rama. *Legal and constitutional History of India*. Vol. 1. Universal Law Publishing Co, 1984.

in India has practically the same structure with variations in designations.<sup>217</sup> The designations of courts are derived principally from the Code of Civil Procedure, 1908 (CPC) and the Code of Criminal Procedure, 1973 (CrPC) further embellished by local statutes. These statutes also provide for their functions and jurisdiction. At the top of the judicial systems is the Supreme Court of India, followed by High Court at the state level. There are about 21 high courts in the country. At the district level, there are subordinate courts.

### **2.3.3.1. THE SUPREME COURT OF INDIA**

The Supreme Court of India is the Apex Court at the national level, which was established on 28 January 1950, under Article 124(1) of the Constitution of India. In this context Article 124(1) reads as “there shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven Judges.” Through the (Amendment) Act of 1986 the number of Judges in the Supreme Court was raised to 25. All proceedings in the Supreme Court are conducted in English.<sup>218</sup> The seat of the Supreme Court is in Delhi<sup>219</sup> and the proceedings are open to the public. Except for the chamber judge who sits as a single judge, benches of two or more judges hear all matters. Five judges hear constitutional matters and, in special cases, larger benches are constituted. In addition to the judicial autonomy, the Supreme Court has freedom from administrative dependence and has the power to punish for contempt of court. India has an independent judiciary to interpret the Constitution and to maintain its sanctity. The Supreme Court of India has the original jurisdiction to settle disputes between the Union and the States. It can declare a law as unconstitutional, if it contravenes any provision of the Constitution.

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<sup>217</sup> Jois, Mandagadde Rama. *Legal and constitutional History of India*. Vol. 1. Universal Law Publishing Co, 1984.

<sup>218</sup> The Constitution of India, Art 348.

<sup>219</sup> The Constitution of India, Art 130.

### **2.3.3.2. HIGH COURT**

The highest court in a state is the High Court, constituted under Article 214 of the Constitution of India<sup>220</sup>, which reads “there shall be a High Court for each State”. There are at present 21 high courts in the country,<sup>221</sup> having jurisdiction over more than one state/union territory. In few states due to large population and geographical area benches have been set up under the High Courts. Each High Court comprises of a Chief Justice and such other judges as the President of India, appoints from time to time.

### **2.3.3.3. SUBORDINATE JUDICIARY/THE JUDICIAL SERVICES OF THE STATE**

The subordinate courts represent the first-tier of the entire judicial structure. It is the focal point on which the goodwill of the entire judiciary rests. Under the Indian Judiciary, there are several Subordinate Courts. The High Court functions under the Supreme Court. The Subordinate Courts, which function under the High Courts, include District and Sessions Judges Courts, City Courts, Taluk-level / Munisiff Courts, Judicial Magistrate, Metropolitan Magistrate, and Nyaya Panchayats. The Subordinate Courts are of two types: (1) Civil Court: It takes up matters such as money transactions, property & contracts, and passes judgment. (2) Criminal Court: It takes up matters such as murder, theft & robbery, and passes judgments. The High Court has the power to admit appeals in civil and criminal cases from the Subordinate Courts. Hence, appeals may be made to the High court against the judgments given by the Lower Courts. Similarly, appeals may be made to the Supreme Court against the judgments given by the High Courts.

The powers and functions of the criminal courts are governed by the Code of Criminal Procedure (CrPC), 1973 and the civil courts by the Code of Civil Procedure, 1908 respectively. The CrPC provides following classes of criminal courts: courts of session, courts of judicial magistrates, courts of executive

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<sup>220</sup> The Constitution of India available at <http://lawmin.nic.in/coi/coiason29july08.pdf> [accessed on 27<sup>th</sup> November 2011]

<sup>221</sup> Note: With the creation of 3 new states viz., Uttaranchal, Chattisgarh and Jharkhand in 2000, three new High Courts have been created in these states, thus raising the number of High Courts from 18 to 21.

magistrate and, courts constituted under the laws other than the CrPC like, Prevention of Corruption Act, 1991, Terrorist and Disruptive Activities (Prevention) Act, 1984 etc. Every state is divided into a sessions' division and every sessions' division into districts. The state government in consultation with the high court alters the limits / numbers of such divisions and districts. There is only one Court of Sessions for every session's division, though it may have several judges. Further we move on to see the safeguards for detainees during arrest, interrogation and also safeguards against torture.



### **2.3.4. SAFEGUARDS FOR DETAINEES**

The Constitution of India and other laws provide certain safeguards to the detainees while in custody. Below are some safeguards for detainees during arrest, detention, interrogation and torture.

#### **2.3.4.1. SAFEGUARDS DURING ARREST AND DETENTION IN LAW AND IN PRACTICE**

Article 22(2) of the Constitution of India and Section 57 of the CrPC requires that all arrested persons be brought before a Magistrate within 24 hours of arrest. In *Sheela Barse vs. State of Maharashtra*<sup>222</sup> the Supreme Court clarified that section 54 of the CrPC required that “the Magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in the police custody and inform him that he has right under section 54 of the CrPC to be medically examined”. Article 22 3(b) of the Indian Constitution excludes those detained under preventive detention legislation from the right to be informed of the grounds of arrest “as soon as may be”, the right to consult and be defended by a legal practitioner of their choice and to be produced before a Magistrate within 24 hours guaranteed under Article 22.

Section 41 of the CrPC provides police with sweeping powers to arrest individuals without warrant in a number of broadly defined situations including the arrest of a person “against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists”. The CrPC Amendment 2005 has incorporated safeguards for arrest and detention. Section 46 of the CrPC prohibits the arrest of a woman after sunset and before sunrise except in “exceptional circumstances” and where such circumstances exist the prior permission of the Judicial Magistrate 1st Class is required. Under section 46 of the CrPC police can use unspecified and unlimited force to arrest individuals. Subsection 2 permits a police officer to use “all means necessary to effect the arrest” if a person attempts to resist or evade arrest. Sub-

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<sup>222</sup> *Sheela Barse vs. State of Maharashtra* AIR 1983 SC 378

section 3 allows police to cause the death of a person only if a person is accused of an offence punishable with death or with imprisonment for life. Section 50 A ensures that “Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and the place where the arrested person is being held to such person as may be nominated by the arrested person for the purpose of giving such information”.

Section 160(1) of the CrPC allows police to require attendance of witnesses at a police station “provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.” It is, however, routinely ignored. The list of “Dos and Don’ts” recommended by the Supreme Court in its 1997 judgment<sup>223</sup> on the Armed Forces (Special Powers) Act, 1958 include the instruction that women should not be searched or arrested without the presence of a female police officer. Section 18(2) of the current Juvenile Justice (Care and Protection) Act, 2000 specifies that no child can be put in jail or police lock-up. Children should be taken immediately before a Magistrate who can order their detention in a Remand Home. In its most far-reaching judgment to date on this issue in *D.K. Basu vs. State of West Bengal*<sup>224</sup> the Supreme Court in December 1996 issued 11 requirements to be followed as preventive measures against custodial violence in all cases of arrest or detention “till legal provisions are made in that behalf”. These 11 requirements are as follows:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particular of all such personnel who handle interrogation of the arrestee must be recorded in a register.

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<sup>223</sup> Naga People'S Movement, Of Human ... vs Union Of India on 27 November, 1997 [WRIT PETITIONS NOS. (C) NOS. 5328/80, ,9229-30/82 CIVIL APPEALS NOS. 721/85, 722/85, 723/85, 724/85, 2173-76/91, 2551/91 AND WRIT PETITIONS (C) NOS. 13644-45/84 S.C. AGRAWAL, J.:]

<sup>224</sup> *D.K. Basu vs. State of West Bengal* AIR 1997 SC 610.

2. That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names of the land particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so request, be also examined at the time of his arrest and major and minor injuries, if any present on his /her body, must be recorded at that time. The Inspector Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctor appointed by Director, Health Services of the

concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In *Joginder Kumar vs. state of UP and others*<sup>225</sup> the Supreme Court directed that those arrested should be allowed to inform someone of their arrest and detention, that they should be informed of this right and an entry made in the general diary of who was informed. The court further directed that the Magistrate before whom the detainee was brought should check that these requirements have been fulfilled and concluded that “The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals. These requirements are not exhaustive. The DGPs (Director Generals of Police) of all states in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest”.

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<sup>225</sup> *Joginder Kumar vs. state of UP and others* 1994 AIR 1349, 1994 SCC (4) 260

### **2.3.4.2.SAFEGUARDS DURING INTERROGATION**

Sections 25 and 26 of the Indian Evidence Act, 1872<sup>226</sup> make it clear that confessions made to a police officer are not admissible as evidence. Section 27 of the Indian Evidence Act, 1872 (confessions leading to finding of corroborating evidence) means that confessions are still of use to the police. If a crime is 'solved' on the basis of illegal extraction of evidence, that evidence is still admissible. Section 162 of the CrPC prohibits the use of a statement of an accused recorded by a police officer and prohibits the police officer from obtaining the signature of a person on the statement made by the accused. Despite this, it is common practice for police to force detainees to sign statements or blank sheets of paper. Section 164 of the CrPC states that Magistrates are required to ensure that a confession is made voluntarily. The right of detainees to legal counsel has been granted under Article 21 of the Constitution and the Supreme Court in *Nandini Satpathy vs. P.L. Dani*<sup>227</sup> has interpreted that right to mean that detainees have a right to consult a lawyer of choice and that right includes the right to the presence of a lawyer during interrogation.

### **2.3.4.3.SAFEGUARDS AGAINST TORTURE**

The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resort to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity

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<sup>226</sup> Indian Evidence Act, 1872  
<http://chddistrictcourts.gov.in/THE%20INDIAN%20EVIDENCE%20ACT.pdf> [accessed on 1<sup>st</sup> December 2011]

<sup>227</sup> *Nandini Satpathy vs. P.L. Dani* AIR 1978 SC 1025.

and whenever human dignity is wounded, civilisation takes a step backward – flag of humanity must on each such occasion fly half-mast.<sup>228</sup> Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/ undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in “*Khaki*” (police uniforms) to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing.<sup>229</sup>

While torture is not specifically prohibited under the constitution, Indian courts have held that Article 21 of The Constitution of India which is the right to life implies protection against torture. Sections 330 of the IPC which speaks of voluntary causing hurt to extort confession or information, punishable with 7 years of imprisonment and Section 331 of IPC which talks about causing grievous hurt, punishable with 10 years of imprisonment. Section 29 of the Indian Police Act, 1861 specifically forbids the practice and provides for imprisonment not exceeding three months with or without hard labour for offences including “unwarrantable personal violence to any person in his custody”. However these provisions are rarely used against police officials.

In addition, Section 376 of the IPC specifies the offence of rape in custody. Article 21 - Right to Life and Personal Liberty of the Constitution of India assures every individual a life of dignity and physical security. It guarantees justice to all and the right not to be deprived of freedom except by due process of law and through a fair trial. The Right to Life also casts a duty on the State to see that all inhabitants of the country have access to the basic requirements of a good and decent life such as an education, means of livelihood, a clean and healthy environment and so on. Article 32 and 226 Right to Constitutional Remedies of the Constitution of India guarantees every individual whose Fundamental Rights have been violated or not protected by the State, the right

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<sup>228</sup> *D.K. Basu v. State of West Bengal* – AIR (SC)-610, 1997-SCC-1-416.

<sup>229</sup> *State of Madhya Pradesh v. Shyamsunder Trivedi*, 1995-SCC-4-262.

to approach the Supreme Court or the High Court for their protection. It gives the Supreme Court or the High Court powers to take immediate action to stop a violation of Fundamental Rights and punish the offender. The National and State Human Rights Commissions have also been set up as additional places to get redress for human rights violations. In some states there are now human rights courts even at the district level. However, the Supreme Court has held that the right not to be tortured is enshrined in the Right to Life guaranteed in Article 21 of the Constitution of India.

The same judgment also says that police is under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it. In addition to this, this particular judgment talks that personal liberty is a sacred and cherished right under the Constitution. The expression “life or personal liberty” in Article 21 has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.<sup>230</sup>

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<sup>230</sup> *D. K. Basu v. State of West Bengal* – AIR (SC)-610, 1997-SCC-1-416.

### **2.3.5. RELEVANT LAWS AND PROCEDURES FOR THE DEATH PENALTY**

There are relevant laws and procedures to hand over death sentence. In addition to that there are guidelines for awarding the death sentence. Also after handing over the death sentence, prisoners can have three possible stages of judicial appeal against this sentence. Also this section discusses the circumstance in which the prisoner is issued a 'black warrant' which states when the prison would be executed. Besides this, the section also discusses the fundamental rights of condemned prisoners.

There are two broad categories of laws that provide for death sentences in India: the Indian Penal Code, 1860 (IPC)<sup>231</sup>; and special or local legislation. The source of the power to award death sentences arises from Section 53 of the IPC. This is a general provision on punishment. The IPC provides for capital punishment for the following offences, or for criminal conspiracy to commit any of the following offences (Section 120-B):

1. Treason, for waging war against the Government of India (Section 121);
2. Abetment of mutiny actually committed (Section 132);
3. Perjury resulting in the conviction and death of an innocent person (Section 194);
4. Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person (Section 195A);
5. Murder (Section 302) and murder committed by a life convict (Section 303);
6. Abetment of a suicide by a minor, insane person or intoxicated person (Section 305);
7. Attempted murder by a serving life convict (Section 307(2));
8. Kidnapping for ransom (Section 364A); and
9. Dacoity [armed robbery or banditry] with murder (Section 396).

The IPC provides a definition of crimes and prescribes the punishment to be imposed when the commission of a crime is established through a trial process

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<sup>231</sup> Indian Penal Code, 1860 See at <http://districtcourtallahabad.up.nic.in/articles/IPC.pdf> [accessed on 18th January 2012]



in a court of law in which evidence is placed before the court and the accused is provided with an opportunity not only to test the evidence of the prosecution but to also lead their own evidence, if so desired.

The Criminal Procedure Code, 1973 (CrPC)<sup>232</sup> is a comprehensive law that sets out procedural rules for the administration of criminal justice. The 1973 Code was the result of a major overhaul of the previous Code of 1898. The Code covers procedures from the registration of an offence, to the powers, duties and responsibilities of various authorities involved in investigation as well as procedural safeguards, provisions relating to bail and so on. The Code also elaborates on the principles and procedures governing the conduct of trials, the manner of admission of evidence and related issues, culminating in provisions that govern the handing down of a judgment at the end of a trial in a criminal prosecution. The Code also contains provisions relating to the right of convicted persons to file revision petitions and appeals in higher courts of law.

There are a number of other special legislations that also provide for the death penalty. In some cases the offences provide for mandatory death sentences

1. Laws relating to the Armed Forces, for example the Air Force Act, 1950, the Army Act, 1950 the Navy Act, 1950 and the Indo-Tibetan Border Police Force Act, 1992
2. Defence and Internal Security of India Act, 1971
3. Defence of India Act, 1971 (Section 5)
4. Commission of Sati (Prevention) Act, 1987 (Section 4(1))
5. Narcotic Drugs and Psychotropic Substances (Prevention) Act 1985, as amended in 1988 (Section 31A)
6. Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) (Section 3(2)(i))
7. Prevention of Terrorism Act, 2002 (POTA) (Section 3(2)(a))
8. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Section 3(2)(i))
9. Explosive Substances Act, 1908, as amended in 2001 (Section 3(b))

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<sup>232</sup> The Criminal Procedure Code, 1973 See at <http://mha.nic.in/pdfs/ccp1973.pdf> [accessed on 18th January 2012]

10. Arms Act, 1959, as amended in 1988 (Section 27)
11. Unlawful Activities Prevention Act, 1967, as amended in 2004 (Section 16(1))
12. A number of state laws, including: Maharashtra Control of Organised Crime Act, 1999 (Section 3(1)(i)), Karnataka Control of Organised Crime Act, 2000 (Section 3(1)(i)), The Andhra Pradesh Control of Organised Crime Act, 2001 (Section 3(1)(i)), The Arunachal Pradesh Control of Organised Crime Act, 2002 (Section 3(1)(i))

Unless special provisions are contained within the above-mentioned laws, the procedures set out in the CrPC are followed in relation to the investigation and prosecution of crimes under these laws. Crucially, a number of these laws include changes to the rules relating to the appreciation of evidence at trial stage. For example, a number of laws relating to alleged acts of “terrorism” have permitted the use of confessions made by an accused to a police officer as evidence. Under ordinary criminal law, such confessions are inadmissible and of no evidentiary value largely because of concerns about the use of torture by police to extract confessions. Similarly, while admissions made by one accused about another co-accused are not admissible under the ordinary criminal law, in some of the special laws such as TADA and POTA, the law has allowed for certain presumptions to be drawn implicating other accused.

#### **2.3.5.1. GUIDELINES FOR AWARDING DEATH SENTENCE**

In India the mandatory death penalty has not been in existence since at least 1860, except for a very limited class of offenders. In 1983 the Supreme Court of India struck down a mandatory death sentence on the basis that no judicial discretion existed for the offence concerned e.g. murder committed whilst under a life sentence.<sup>233</sup> The murders are “terrible” and therefore, the fact of the murder being “terrible” cannot be an adequate reason for imposing the death sentence, otherwise the death sentence will become a rule, not an exception and Section 354 (3) of the IPC will be a dead letter.<sup>234</sup>

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<sup>233</sup> *Mithu v. State of Punjab* (1983) AIR 473, 1983 SCR (2) 690

<sup>234</sup> *Sant Gopal Alias Bhagat v. State of U.P.*, 1995- Cr. L.J. – 312 – All.

The Supreme Court evolved various guidelines for awarding death sentence to an offender. One such case is *Bachan Singh vs. State of Punjab*<sup>235</sup>. The following propositions are mentioned in this case:<sup>236</sup>

1. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;
2. Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’;
3. Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;
4. A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances, before the option is exercised.

The Supreme Court further says that in order to apply these guidelines inter alia the following questions may be asked and answered:

1. Is there something uncommon about the crime which renders a sentence of imprisonment for life inadequate and calls for a death sentence?
2. Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

Life imprisonment is, as a normal rule, the appropriate sentence for murder and the death penalty can only be justified in the “rarest of rare” cases where, for special reasons in the individual case, the court is compelled to take the exceptional course of imposing the death penalty rather than the life sentence.

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<sup>235</sup> *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684: AIR 1980 SC 898.

<sup>236</sup> Siraujudeen, A. *Rights of prisoners*. Associated Book Company, Chennai, 2008.

Justice Chandrachud CJ in *Mithu v. State of Punjab*<sup>237</sup> summarises the ratio of the *Bachan Singh* case as follows: “The majority concluded that Section 302 of the Penal Code is valid for three reasons: Firstly, that the death sentence provided for by section 302 is an alternative to life imprisonment; secondly, that special reasons have to be stated if the normal rule is departed from and the death sentence has to be imposed; and thirdly, the accused is entitled to be heard on the question of sentence. The last of these three reasons becomes relevant only because of the first of these reasons. In other words, it is because the court has an option to impose either of the two sentences, subject to the rule that the normal punishment for murder is life imprisonment, that it is important to hear the accused on the question of sentence.”<sup>238</sup>

#### **2.3.5.2.THREE POSSIBLE STAGES OF JUDICIAL PROCESS IN DEATH PENALTY**

##### **CASES**

The CrPC, 1973 provides for the possibility of a three-stage judicial process. Since all death penalty cases involve a charge of murder or similar other serious offences, all initial trials under the ordinary criminal law are held before a District and Sessions Court in a particular state. In the event of the trial court awarding a death sentence, it is mandatory for the respective High Court of that state to confirm the sentence (Section 366 CrPC). The High Court has the power to direct further inquiry to be made or additional evidence to be taken upon any point bearing on the guilt or innocence of the accused at this stage (Section 367 CrPC). Based on its assessment of the evidence on record, the High Court may: (i) confirm or pass any other sentence, or (ii) annul the conviction and convict for any other offence that the Sessions Court might have convicted the accused of or order a new trial on the basis of the amended charge, or (iii) acquit the accused person.

The High Court is also the first appellate court for a person sentenced to death. At the third level is the Supreme Court of India. In the event that a trial court

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<sup>237</sup> *Mithu v. State of Punjab* (1983) AIR 473, 1983 SCR (2) 690

<sup>238</sup> Fitzgerald, QC Edward and Starmer, QC Keir. *A Guide to Sentencing in Capital Cases*. The Death Penalty Project Ltd, London 2007

acquits an accused in a case involving a crime punishable by death, the state alone can file an appeal against acquittal before the High Court (Section 378 CrPC). The High Court can either confirm the acquittal or set aside the acquittal and convict the accused for the alleged crimes and impose sentence. If the acquittal is set aside and a death sentence imposed, Section 379 of the CrPC provides for an automatic appeal to the Supreme Court. Appeals may also be filed by the state for enhancement of sentence imposed by the trial court or the High Court if it feels that the sentence imposed is inadequate (Section 377 CrPC). Ordinarily, relatives of the victims of the crime can file revision petitions (but not appeals) seeking enhancement of the punishment in the High Court or Supreme Court.

There is no automatic right of appeal from the order of the High Court to the Supreme Court in death penalty cases except in a situation in which the High Court has imposed a death sentence while quashing a trial court acquittal. 'Special Leave' to file an appeal with the Supreme Court has to be granted by the High Court or the Supreme Court has to give leave to file an appeal before it. In the case of some special legislations such as the Terrorist and Disruptive Activities (Prevention) Act 1987, the law provides that appeals against the ruling of the trial court should automatically lie only with the Supreme Court (though this Act lapsed in 1995, trials under the Act continue to this day). The Supreme Court can dismiss a death sentence case *in limine*, i.e. at the threshold stage itself without even admitting the appeal for consideration.

### **2.3.5.3. WHEN SENTENCED TO DEATH**

Nevertheless, when a prisoner is sentenced to death, Section 368(1) of the CrPC, 1898 provides for hanging by neck till death. This has not been amended by the CrPC, 1973. Section 354(5) reads, "When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead." The execution of the death penalty in India, under the CrPC, is thus carried out with hanging by neck till death during the last over hundred years. The execution of the death penalty is carried out in accordance with section 354(5) of the CrPC, 1973 and Jail Manuals of the respective States in India.

For example, Chapter XXXI, Jail Manual of Punjab and Haryana provides for the various steps leading to the execution of the death sentence. Paragraph 847(1) of the manual states that every prisoner under the sentence of the death shall immediately on his (her) arrival in the prison after sentence, be searched by, or by order of the Deputy Superintendent, and all articles shall be taken from her/him which the Deputy Superintendent deems it dangerous or inexpedient to leave in his possession. Further paragraph 847(2) states that every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard. After such admission of the prisoner in the jail, the Deputy Superintendent is required to examine the cell and has to satisfy her/himself that it is secure and has no article which can be used as a weapon or instrument with which the prisoner can commit suicide.

The said Deputy Superintendent also has to ensure that there is nothing in the cell which in her/his opinion is inexpedient to permit its remaining in such cell. Every cell in which any convict who is under sentence of death, is at any time to be confined shall, before such convict is placed in it, be examined by the Deputy Superintendent, or other officer appointed in that behalf, who shall satisfy her/himself that it is secure and contains no article of any kind which the prisoner could by any possibility use as a weapon of offence or as an instrument with which to commit suicide, or which it is, in the opinion of the Superintendent, inexpedient to permit to remain in such cell. It goes on further to describe the various restrictions pertaining to the use of the apparels, bedding, constant surveillance of the guard, how to keep the keys of the cell 'safe', that at no other time shall the door of the cell in which a condemned prisoner is confined, be opened without first handcuffing the prisoner and so securing her/him against the possibility of using violence or, if s/he declines to be handcuffed, unless at least three members of the establishment are present so on and so forth.<sup>239</sup>

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<sup>239</sup> \_\_\_\_\_, Law Commission of India: 187th Report on "*Mode of Execution of Death Sentence and Incident al Matters*", October 2003

#### **2.3.5.4. FUNDAMENTAL RIGHTS OF CONDEMNED PRISONERS**

Even a person under death sentence has human rights which are non-negotiable and even a dangerous prisoner, standing trial, has basic liberties which cannot be bartered away.<sup>240</sup> Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following a conviction, to live in a prison house entails to, by its own force, the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to “practice” a profession. The convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.<sup>241</sup>

Article 14 (Equality before law), Article 19 (freedoms of speech, assembly and movement, residence, practice profession.) and Article 21 (right to life and personal liberty) of the Constitution of India are not mutually exclusive. They sustain, strengthen and nourish each other. They are available to prisoners as well as free individuals. Prison walls do not keep out Fundamental Rights. A person under sentence of death may also claim Fundamental Rights. When a person is deprived of her life or liberty; it must be a just, fair and reasonable procedure. Just, fair and reasonable procedure implies a right to free legal services where s/he cannot avail them, the right to a speedy trial, humane conditions of detention. ‘Procedure established by law’ does not end with the pronouncement of sentence, it includes the carrying out of sentence.<sup>242</sup>

There are also several rules prescribed in the Prison Manual of each state. For instance, the State of Maharashtra in the Maharashtra Prisons (Prisoners Sentenced to Death) Rules, 1971<sup>243</sup> states the articles that the prisoner has to be given on admission in the prison, about the guarding of the cell, confinement in a cell, the right to be visited by relatives, friends or lawyer every week or even

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<sup>240</sup> *Sunil Batra v. Delhi Administration and other* 1978-(4)-SCC-494: 1978 – Cr.L.J – 1741 – SC

<sup>241</sup> *Bhuvan Mohan Patnaik v. State of A.P.*, (1975) 2 SCR 24: AIR 1974 SC 2092.

<sup>242</sup> *T.V. Vatheeswaran v. The State of T.N.* 1983 Cr. L.J. 481, 1983-SCC-2-68.

<sup>243</sup> Appendix 2: Prison Manual Chapter XLII (Prisoners sentenced to death)

more often based on the discretion of the superintendent of the prison etc. In the case of condemned prisoners, the Court awards only a single sentence viz., death. But it cannot be instantly executed because its executability is possible only on confirmation by the High Court. In the meanwhile, s/he cannot be let loose for s/he must be available for decapitation when the judicial processes are exhausted. So, it is Section 366 (2) of CrPC <sup>244</sup> that takes care of this interregnum by committing the convict to jail custody. Form 40 authorizes safe-keeping. It recites as follows: “This is to authorize and require you to receive the said (prisoner’s name) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.”

This ‘safe-keeping’ in jail custody is the limited jurisdiction of the jailor. The convict is not sentenced to imprisonment or is not sentenced to solitary confinement. S/he is a guest in custody, in the safe-keeping of the host-jailor until the terminal hour of terrestrial farewell whisks him away to the halter. This is trusteeship in the hands of the Superintendent, not imprisonment in the true sense. Section 366 (2) Criminal Procedure Code (Jail Custody)<sup>245</sup> and Form 40 (safely to keep) underscore this concept, reinforced by the absence of a sentence of imprisonment under Section 53<sup>246</sup> read with Section 73<sup>247</sup>, Indian Penal Code 1860.

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<sup>244</sup> Section 366 (2) CrPC (Jail Custody): The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

<sup>245</sup> Section 366 (2) CrPC (Jail Custody): The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

<sup>246</sup> Punishments.-- The punishments to which offenders are liable under the provisions of this Code are-- First.-- Death; 2[ Secondly.-- Imprisonment for life;] 3[ Fourthly.-- Imprisonment, which is of two descriptions, namely:- (1) Rigorous, that is with hard labour; (2) Simple; Fifthly.-- Forfeiture of property; Sixthly.-- Fine.

<sup>247</sup> Solitary confinement.-- Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say-- a time not exceeding one month if the term of imprisonment shall not exceed six months: a time not exceeding two months if the term of imprisonment shall exceed six months and 1[ shall not exceed one] year: a time not exceeding three months if the term of imprisonment shall exceed one year.



The inference is inevitable that if the ‘condemned’ wo/man were harmed by physical or mental torture, the law would not tolerate the doing since injury and safety are obvious enemies. And once this qualitative distinction between imprisonment and safe-keeping within the prison is grasped, the power of the jailor becomes benign. The prisoners are entitled to every creature comfort and cultural facility that compassionate safe-keeping implies. Bed and pillow, opportunity to commerce with human kind, worship in shrines, if any, games, books newspapers, writing material, meeting family members, and all the good things of life, so long as life lasts and prison facilities exist. To distort safe-keeping into a hidden opportunity to cage the ward and to traumatize her/him is to betray the custody of the law. Safe custody does not mean deprivation, isolation, banishment from the lantern banquet of prison life and inflictions of travails as if guardianship were best fulfilled by making the ward suffer near-insanity.<sup>248</sup>

For, long segregation lashes the sense until the spirit lapses into the neighbourhood of lunacy. Safe-keeping means keeping his body and mind in fair condition. To torture her/his mind is unsafe-keeping. Injury to her/his personality is not safe-keeping. So, Section 366, CrPC forbids any act which disrupts the man in his body and mind. To preserve her/his flesh and crush her/his spirit is not safe keeping, whatever else it be. Neither the Indian Penal Code nor the Criminal Procedure Code lends validity to any action beyond the needs of safety, and any other deprivation, whatever the reason, has not the authority of law. Any executive action which spells infraction of the life and liberty of a human being kept in prison precincts, purely for safe custody, is a challenge to the basic notion of the rule of law – unreasonable, unequal, arbitrary and unjust. A death sentence can no more be denuded of life’s amenities than a civil debtor, fine defaulter, maintenance defaulter or

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<sup>248</sup> *Sunil Batra v. Delhi Administration and other* 1978-(4)-SCC-494: 1978 – Cr.L.J – 1741 – SC; *Anand Mohan and ors. v. State of Bihar*, 2008 Cr. L. J. 1273 Bih; *Triveniben v. State of Gujrat*, AIR 1989 SC 1335; 1990 Cr. L.J. 1810.

contemner – indeed, a gross confusion accounts for this terrible maltreatment.<sup>249</sup>

Confinement inside a prison does not necessarily import cellular isolation. Segregation of one person all alone in a single cell is solitary confinement. Section 73, IPC prescribes the limit of solitary confinement. Since it is a separate punishment, the Court alone can impose it. It would be a subversion of this statutory provision (Section 73 and 74 IPC) to impart a meaning to section 30 (2)<sup>250</sup> of the Prisons Act 9 of 1894, whereby a disciplinary variant of solitary confinement can be clamped down on a prisoner under sentence of death.

### **2.3.6. RECENT HIGHLIGHTS OF DEATH PENALTY IN INDIA**

At the end of May 2011, the ex-President Pratibha Patil rejected the mercy petitions—the last appeals available to death row prisoners in India—in the cases of Devinder Pal Singh Bhullar and Mahendra Nath Das. Prof. Bhullar was sentenced to death in 2001 for plotting terrorist attacks that killed nine people in Delhi in 1993, while Das has been on death row since 1997 for committing a murder in Guwahati, Assam, in 1996.

Three more mercy petitions were rejected by the President in August 2011 in the case of three men who had been convicted in relation to the assassination of former Prime Minister Rajiv Gandhi. Murugan, Santhan and Arivu (alias Perarivalan) were sentenced to death in January 1998 by a Special Anti-Terrorist Court and had their sentences confirmed by the Supreme Court of India in May 1999. However, executions in the above mentioned cases were suspended by courts to allow for the consideration of separate legal challenges

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<sup>249</sup> *Sunil Batra v. Delhi Administration and others* 1978-(4)-SCC-494: 1978 – Cr.L.J – 1741 – SC; *Anand Mohan and ors. v. State of Bihar*, 2008 Cr. L. J. 1273 Bih; *Triveniben v. State of Gujrat*, AIR 1989 SC 1335; 1990 Cr. L.J. 1810.

<sup>250</sup> Section 30: Prisoners under sentence of death. – (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by the order of, the Jailer and all articles shall be taken from him, which the Jailer deems it dangerous or inexpedient to leave in his possession. (2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

on the delay in the decision of the mercy petitions, and the constitutionality of the prolonged stay on death row.

On 16 June 2011, the Mumbai High Court found that the mandatory imposition of the death penalty under Section 31-A of the *Narcotic Drugs and Psychotropic Substances Act, 1985* violated Article 21 of the Constitution of India, and ruled that it be changed to give judges a discretionary choice of punishment. Following the judgment, engaging in the production, manufacture, possession, transportation, import into India, export from India or trans-shipment of narcotic drugs as well as financing, directly or indirectly, any of these activities are offences that are punishable by death at the discretion of the judge.

In December 2011, the Indian Parliament approved legislation making acts of terrorism aimed at sabotaging oil and gas pipelines punishable by death, in cases where the act of sabotage is likely to cause death of any other person. During the same month in the western state of Gujarat a law making the production and sale of toxic alcohol punishable by death came into force.<sup>251</sup> The lone survivor of the Mumbai terror attacks in 2008 – Ajmal Kasab was executed on 21<sup>st</sup> November 2012 at Yerwarda Central Prison, Maharashtra.<sup>252</sup> The last execution in India was on 9<sup>th</sup> February when the State of Delhi executed Afzal Guru at Tihar Central Prison, Delhi.

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<sup>251</sup> Amnesty International Report “Death sentences and executions 2011” London accessed at [<http://www.amnesty.org/en/library/asset/ACT50/001/2012/en/241a8301-05b4-41c0-bfd9-2fe72899cda4/act500012012en.pdf>] on 1<sup>st</sup> December 2012

<sup>252</sup> Amnesty International News 21<sup>st</sup> November 2012 [accessed on 22<sup>nd</sup> November 2012 See at <http://www.amnesty.org/en/news/kasab-execution-represents-indian-death-penalty-backslide-2012-11-21>]

## **2.4. DIGNITY**

After discussing death penalty in the realm of various social theories and looking at it from the factual dimension of law; I attempt to discuss the concept of dignity which is central to this study. The guiding central question of this study explores if the dignity of prisoners is upheld while confronting the criminal justice system and while surviving the death row. I have used the following definition to operationalise dignity, "Human Dignity is the essential feature which distinguishes human beings from other creatures. Human Dignity and the uniqueness of the human being are grounded in human free will, in the capacity for moral choice and individual autonomy. Inherent in all human beings, human dignity is the moral and philosophical justification for equality and other universal human rights".<sup>253</sup> There is a vast array of literature on dignity in the field of history, philosophy, law and other social sciences. However, I limit this section with a discussion on dignity with specific reference to the prisoners and death penalty.

An analysis of dignity may begin with its etymological root, the Latin "*dignitas*" translated as 'worth'. One lexical meaning of dignity is "intrinsic worth." Thus, when the United Nations (UN) Charter refers to the "dignity and worth" of the human person, it uses synonyms for the same concept. Other UN instruments speak of "inherent dignity," an expression that is close to "intrinsic worth".<sup>254</sup> Historical accounts of human dignity typically distinguishes four different sources: the Greek and Roman heritage culminating in Cicero's notion of "*dignitas*": the biblical conception of man and woman as being created in the image of God; Kant's *Würde* as opposed to price; and, finally, the concept of dignity that turned up after 1945 in numerous declarations and constitutional laws. Although not unrelated, at first sight these traditions point in quite different directions.<sup>255</sup>

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<sup>253</sup> Nowak, Manfred. *Protecting Dignity: Agenda for Human Rights: Progress report of the Eminent Persons Panel*, 36 (2009); Statman, Daniel. "Humiliation, dignity and self-respect." *Philosophical Psychology* 13, no. 4 (2000): 523-540.

<sup>254</sup> Statman, Daniel. "Humiliation, dignity and self-respect." *Philosophical Psychology* 13, no. 4 (2000): 523-540.

<sup>255</sup> Kaufmann, Paulus, Hannes Kuch, Christian Neuhaeuser, and Elaine Webster, eds. *Humiliation, degradation, dehumanization: Human dignity violated*. Vol. 24. Springer, 2010.

The concept of ‘dignity’ is an omnipresent component of debates about capital punishment. It is a ‘vague but powerful idea’<sup>256</sup> that influences and defines the direction of the death penalty- dialogue, in no small part because its vagueness and power enable it to be invoked in support of myriad different views. The most commonly accepted understanding of dignity is the one that depicts it as an inalienable element of humanity, without which a person ceases to have any worth – physical, psychological, or moral. A person is nothing without his/her dignity. Dignity is ‘a kind of intrinsic worth that belongs equally to all human beings’.<sup>257</sup>

At a basic level, any kind of punishment is morally problematic because it involves applying punitive measures to certain individuals, measures which society deems immoral if applied to anyone else. There is something about the argument that dignity is an inalienable element of humanity that intensifies this problem. If every human being has dignity and is equal – insofar as they automatically possess dignity by virtue of being human – then surely an individual’s dignity is threatened by differential treatment. Differential treatment that is punitive – and, as such, is undesirable to the recipient – enhances the threat to dignity. In this respect, there can be no greater punitive act of indignity than an execution. Gewirth suggests that humans have such dignity regardless of how they are treated; certain modes of treatment may violate but not remove their dignity.<sup>258</sup> This is indeed true, but ends when the ‘treatment’ in question is capital punishment.<sup>259</sup>

With regards to death penalty, Justice V.R. Krishna Iyer, a former Supreme Court Judge, India says that “Death sentence is an inviolable command of compassionate culture and fundamental expression of social justice grandeur.

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<sup>256</sup> Dworkin, Ronald. *Taking rights seriously*. Harvard University Press, 1978. cited in Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

<sup>257</sup> Gewirth, Alan. "Human dignity as the basis of rights." *The constitution of rights: Human dignity and American values* (1992): 10-46. cited in Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

<sup>258</sup> Gewirth, Alan. "Human dignity as the basis of rights." *The constitution of rights: Human dignity and American values* (1992): 10-46.. cited in Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

<sup>259</sup> Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

No civilized state shall have authority to inflict death penalty even in the rarest of rare cases, lest it be condemned as guilty of barbarity and devoid of humanity. Universal respect for Human Rights commands absolute abolition of capital punishment as no state, committed to social justice and human rights can stultify or demolish the right to life of any human being". Similarly Justice Brennan suggests what constitutes as a "cruel and unusual" punishment. One of these criteria was that punishment must not by its severity be degrading to human dignity. Death penalty according to Justice Brennan degrades human dignity because it cannot be shown to serve any penal purpose more effectively than a significantly less drastic punishment.

The "paradigm violation" of human dignity is "torturous punishment," which capital punishment is, mentally more than physically. In the Furman case, the target is torture or what is torture- like: living on death row for a long period and then enduring execution that is rarely free of serious pain. The trouble is that apart from the metaphor of the human being as an object that is toyed with and discarded, and the reference to the state's failure to recognize a prisoner as a fellow human being, the entire burden of Brennan's reasoning against capital punishment is carried by the view that the infliction of such severe pain is immoral, a great immorality committed by the state.<sup>260</sup>

Kaufmann and others also add that if we want to understand human dignity, we should start with instances of its violation, instead of attempting to derive a conception of human dignity from our normative ethics as Kant did. Kaufmann suggests that we should choose a *negative approach*, i.e. start from situations which we are inclined to describe as violations of human dignity and then ask what is it that makes it so appealing to use this concept instead of referring to, for example, harming, infringing autonomy or violating human rights. The negative turn, i.e. to start with violations, not only provides us with a philosophical motivation to look into human dignity but also gives us an idea of which features may be essential.<sup>261</sup> Starting also with the negative approach

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<sup>260</sup> Kateb, George. *Human dignity*. Harvard University Press, 2011.

<sup>261</sup> Kaufmann, Paulus, Hannes Kuch, Christian Neuhaeuser, and Elaine Webster, eds. *Humiliation, degradation, dehumanization: Human dignity violated*. Vol. 24. Springer, 2010.

it has been explicated in literature earlier about torture that prisoners face in custody. Nowak says that torture is the most serious violation of the human right to personal integrity and dignity. It can be considered an aggravated form of “Cruel, Inhumane, and Degrading treatment (CIDT)”. He further adds that the decisive distinction between torture and CIDT is not the intensity of the pain or suffering inflicted, but the powerlessness of the victim and the purpose for which the pain is being inflicted. Powerlessness means that the victim is under the direct control of the torturer; this usually means detention or a similar form of deprivation of personal liberty.<sup>262</sup>

The research also tries to explore and understand the different stages that the prisoners experience before being sentenced to death- their experience and perceptions about the treatment meted out to them. Literature has often explicated that individuals are tortured in custody with whipping, stripping, and beating and even to the extent of the state killing an individual by using torture.<sup>263</sup> In addition to this, the other aim of this study is to understand the prisoners’ perceptions and experiences about their conditions on the death row and their survival on the death row. The “death row phenomenon” or “death row syndrome” is a combination of circumstances found on death row<sup>264</sup> that produce severe mental trauma and physical deterioration in prisoners under those sentences.<sup>265</sup> There has been a lot of deliberation on death penalty as a form of torture.<sup>266</sup>

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<sup>262</sup> Nowak, Manfred. "What practices constitute torture? US and UN standards." *Human Rights Quarterly* 28, no. 4 (2006): 809-841.

<sup>263</sup> Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.

<sup>264</sup> Note: Death row is the prison that houses inmates sentenced to death.

<sup>265</sup> Hudson, Patrick. "Does the death row phenomenon violate a prisoner's human rights under international law?." *European Journal of International Law* 11, no. 4 (2000): 833-856.

<sup>266</sup> Camus, Albert. *Reflections on the Guillotine*. Fridtjof-Karla Publications, 1960.; Bluestone, Harvey, and Carl L. McGahee. "Reaction to extreme stress: Impending death by execution." *The American Journal of Psychiatry*; *The American Journal of Psychiatry* (1962).; UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: note/ by the Secretary-General*, 28 July 2008, A/63/175, available at: <http://www.unhcr.org/refworld/docid/48db99e82.html> [accessed 30 December 2012] (Transmits interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with [General Assembly resolution 62/148](#). "Annex: Istanbul Statement on the Use and Effects of Solitary Confinement": p. 22-25.)

It is the experience of absolute powerlessness which creates the feeling among the victims of certain gross human rights violations, to have lost their dignity and humanity.<sup>267</sup> This brings us to the next concept of vulnerability which defines our humanity and acts as the common basis of human rights. The idea of our vulnerable human nature is closely associated with certain fundamental rights, such as the right to life. Moreover, one could also feel self-respect to be injured if one is humiliated.<sup>268</sup> Someone can feel humiliated without in fact being humiliated and one can respond to a humiliation with different feelings, or stoic indifference. Humiliation in the normative sense is when someone attempts to lower another person below the status of a human being with dignity through an improper attitude or treatment. In this normative sense, humiliation is close to dehumanization, however not all kinds of degrading treatment can be understood as humiliating.<sup>269</sup> The purpose of torture is not only to make a person talk, but make him betray others too. The victim must turn himself by his screams and by his submission into a lower animal, in the eyes of all and in his own eyes.<sup>270</sup> In the course of torture, the victim loses more and more his reference to the world, being thrown back to his own bodily existence. The victim thus gradually loses his or her human voice.<sup>271</sup> At the end, he or she can but scream like an animal, or only just breathe and stutter.

It is rejection or exclusion that lies at the heart of humiliation. Exclusion is one form of a deep loss of recognition. Surely, not every loss of recognition is humiliating. An insult constitutes a “weak” form of loss of recognition which threatens a person in his/ her honour or prestige, but not yet in his/her dignity.<sup>272</sup> An important practical realization of strong forms of disrespect is the practice of exclusion. Exclusion, in this view, refers to an essentially social process, as it is linked with recognition, or, more precisely, with misrecognition. Of course, exclusion can be understood literally, as spatial

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<sup>267</sup> Nowak, Manfred foreword in Kaufmann, Paulus, Hannes Kuch, Christian Neuhaeuser, and Elaine Webster, eds. *Humiliation, degradation, dehumanization: Human dignity violated*. Vol. 24. Springer, 2010.

<sup>268</sup> Margalit, Avishai. *The decent society*. Harvard University Press, 1996.

<sup>269</sup> Margalit, Avishai. *The decent society*. Harvard University Press, 1996.

<sup>270</sup> Sartre, Jean-Paul. 1958. Preface in Alleg, Henri. *The question*. Bison Books, 2006.

<sup>271</sup> Scarry, Elaine. *The body in pain: The making and unmaking of the world*. Oxford University Press, USA, 1985.

<sup>272</sup> Margalit, Avishai. *The decent society*. Harvard University Press, 1996.



segregation, when we think of ghettos, for example. In the perspective of social exclusion, however, the process of exclusion is internally linked with the problem of recognition.<sup>273</sup> Wacquant compares ghettos and prisons as they both belong to the same class of organizations, namely, institutions of forced confinement: the ghetto is a manner of 'social prison' while the prison functions as a 'judicial ghetto'. He says that both are entrusted with enclosing a stigmatized population so as to neutralize the material and/or symbolic threat that it poses for the broader society from which it has been extruded. And, for that reason, ghetto and prison tend to evolve relational patterns and cultural forms that display striking similarities and intriguing parallels deserving of systematic study in diverse national and historical settings.<sup>274</sup>

Concurrently, Statman claims that an intimate connection exists between the notion of human dignity and the notion of humiliation seems to be a commonplace.<sup>275</sup> Humiliation is seen as first and foremost an injury to the dignity of its victims, an injury usually described in figurative language: in humiliation, one "is stripped of one's dignity"<sup>276</sup> one is "robbed of" dignity,<sup>277</sup> or simply "loses" it.<sup>278</sup> In Avishai Margalit's words, "if there is no concept of human dignity, then there is no concept of humiliation either".<sup>279</sup> David Luban has discussed the relationship between US interrogation methods and the concept of dignity, arguing for a conception of dignity as non-humiliation. According to Luban, techniques such as the stripping of detainees, terrifying them into fouling themselves, and sexually taunting them, epitomise the loss of dignity that accompanies deliberate humiliation.

In the case of torture, the connection is with terrifying and "breaking" the victim. Fear is perhaps the most important evil-maker connected with the pain

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<sup>273</sup> Kaufmann, Paulus, Hannes Kuch, Christian Neuhaeuser, and Elaine Webster, eds. *Humiliation, degradation, dehumanization: Human dignity violated*. Vol. 24. Springer, 2010.

<sup>274</sup> Wacquant, Loïc. "The newpeculiar institution': On the prison as surrogate ghetto." *Theoretical criminology* 4, no. 3 (2000): 377-389.

<sup>275</sup> Statman, Daniel. "Humiliation, dignity and self-respect." *Philosophical Psychology* 13, no. 4 (2000): 523-540.

<sup>276</sup> Gilbert, Paul. "The evolution of social attractiveness and its role in shame, humiliation, guilt and therapy." *British Journal of Medical Psychology* 70, no. 2 (2011): 113-147.

<sup>277</sup> Dillon, Robin S. "Self-respect: Moral, emotional, political." *Ethics* (1997): 226-249.

<sup>278</sup> Margalit, Avishai. *The decent society*. Harvard University Press, 1996.

<sup>279</sup> Margalit, Avishai. *The decent society*. Harvard University Press, 1996.

of torture. The torture victim never knows whether his torturer will do even worse things, regardless of any legal restrictions; the uncertainty is perpetual. And terror itself is closely connected with humiliation, especially when someone else sets about terrifying us. Terror makes us whimper and beg; it makes us lose control of our bowel and bladder. The Abu Ghraib dog handlers had contests to see who could make a detainee foul himself first. The strategic use of terror is one way that torture and humiliation are tightly bound together. But that is not all. The experience of acute pain is itself degrading because it collapses our world and reduces us to mere prisoners of our bodies. Pain forcibly severs our focus on anything outside of us; it shrinks our horizon to our own body. This is degrading in itself, but when it happens in front of spectators, the experience is doubly shameful and humiliating.<sup>280</sup>

The need to belong is so strong that its protective monitor, that is, self-esteem, alters one to perceive threats of exclusion in an automatic manner which does not depend on rational reflection, though such reflection might sometimes be able to turn off the alarm, so to say, if found to be ungrounded. Some diminishing of our self-esteem occurs automatically even when an insult comes from people who pose no real threat to our social status.<sup>281</sup> An evolutionary framework for the understanding of shame and humiliation is also developed by Paul Gilbert who suggests that social attractiveness, rather than fighting, has become the most salient strategy for humans to gain status and to develop useful relationships in groups. That is why the experience of being degraded, devalued, unattractive, "not worth bothering with," is so threatening for humans, an experience common to both shame and humiliation.<sup>282</sup>

This connection between humiliation and social exclusion helps us realise how such exclusion might entail humiliation irrespective of other moral aspects of the situation at hand. First, humiliation is independent of the overall moral justification of the humiliating behaviour. For many years it was believed that

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<sup>280</sup> Luban, David. "Human Dignity, Humiliation, and Torture." *Kennedy Institute of Ethics Journal* 19, no. 3 (2009): 211-230.

<sup>281</sup> Leary, Mark R., and Deborah L. Downs. "Interpersonal functions of the self-esteem motive: The self-esteem system as a sociometer." (1995).

<sup>282</sup> Gilbert, Paul. "The evolution of social attractiveness and its role in shame, humiliation, guilt and therapy." *British Journal of Medical Psychology* 70, no. 2 (2011): 113-147.

retributive justice permits, maybe even requires, the humiliation of wicked criminals. The vulnerability to humiliation is the flip side of the human urge for social inclusion and recognition. Since this urge - and the vulnerability to humiliation that comes with it - has obvious evolutionary advantages, it is not irrational. Nor is further philosophical justification required to render humiliation rational. A strong feeling for feeling humiliated exists when the humiliating behaviour is explicitly intended to degrade its victims. When there is no intent to humiliate, or when one simply misunderstands the message of the assumed humiliator, the reason for feeling humiliated is much weaker, or does not exist.<sup>283</sup>

In this context, it is also imperative to understand the relation between human dignity and human rights. In the context of the Universal Declaration of Human Rights (UDHR) we find the assumption that there is an internal relationship between having human dignity and having human rights. In several documents we find the idea that human dignity is the basis of human rights such as in Articles 21 and 23 of the UDHR where it is stated that “everyone [. . .] is entitled to realization [. . .] of the economic, social and cultural rights indispensable for his dignity”, and that these are rights “ensuring [. . .] an existence worthy of human dignity”. Human dignity is seen as only another label for “the entire set of human rights”; the difference would just be a linguistic one. Human dignity might be understood as a term for the most basic human rights. In this sense human dignity would be violated if the most fundamental liberties and rights were at stake.

This approach would additionally leave the relationship between human dignity and the entire concept of human rights unexplained and this concept of human dignity could not be the basis of human rights. Human dignity is understood as “the right to have rights”. This concept of “human dignity” refers to some reflections of Hannah Arendt in her analysis of totalitarianism. In the context of the 1<sup>st</sup> World War she wrote how many refugees lost their citizenship and with it all legal protection and particularly referred to the

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<sup>283</sup> Statman, Daniel. "Humiliation, dignity and self-respect." *Philosophical Psychology* 13, no. 4 (2000): 523-540.

statelessness of people. Here, to claim a “right to have rights” is a claim for a right to citizenship for each human being and with this citizenship, the protection that a political and legal community would grant. Of course, the first “right” in the “right to have rights” must be of another kind than the “rights” that come with citizenship. This concept of human dignity emphasizes the rights-orientations of human dignity.

Human dignity is also considered as the basis of human rights. This idea is formulated in the context of the human rights framework itself. This would imply that human dignity is something other than human rights; it would not just be another name for the entire set of human rights but possessing human rights would be the normative consequence of having human dignity. The foundational function in relation to human rights is central to this concept of human dignity. In this context, the normative consequences of human dignity would have to be explained in terms of human rights. One can doubt whether “human dignity” here has a distinct normative content beyond the human rights. The specificity of human dignity would have to be seen in the foundational function in relation to the rights and not in a specific normative content. If one were to assume that “human dignity” has normative elements that go beyond the human rights themselves, those elements would have to be explained within the whole framework of human rights.<sup>284</sup>

Marx however has criticized the protection of rights while responding to the proclamation of rights in the Constitutions of Pennsylvania and New Hampshire and in the French Declaration by deriding the idea that rights could be useful in creating a new political community. For Marx, these rights stressed the individual's egoistic preoccupations, rather than providing human emancipation from religion, property, and law. Marx had a vision of a future community in which all needs would be satisfied, and in which there would be no conflicts of interests and, therefore, no role for rights or their enforcement. Marx also highlighted the puzzle that if rights can be limited for the public

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<sup>284</sup> Kaufmann, Paulus, Hannes Kuch, Christian Neuhaeuser, and Elaine Webster, eds. *Humiliation, degradation, dehumanization: Human dignity violated*. Vol. 24. Springer, 2010.

good then the proclamation that the aim of political life is the protection of rights becomes convoluted.<sup>285</sup>

The concept of dignity is not without any critics. Macklin for instance while talking about medical ethics claims dignity to be useless and describes it as "Either vague restatements of other, more precise, notions or mere slogans that add nothing to an understanding of the topic"<sup>286</sup> There was an immediate response to this statement by Macklin.<sup>287</sup> This has been critiqued recently by Schroeder who attempts to rescue dignity by positing four distinct concepts that fall under one umbrella term namely Kantian dignity, Aristocratic dignity, Comportment dignity and Meritorious dignity. Kantian dignity is an inviolable property of all human beings, which gives the possessor the right never to be treated simply as a means, but always at the same time as an end. Aristocratic dignity is the outwardly-displayed quality of a human being who acts in accordance with her superior rank and position. Comportment dignity is the outwardly displayed quality of a human being who acts in accordance with society's expectations of well-mannered demeanour and bearing. Finally, Meritorious dignity is a virtue, which subsumes the four cardinal virtues and one's sense of self-worth.

Equipped with these four definitions of dignity, Schroeder says that unbearable pain, embarrassment, and anxiety have no relevance for Kantian-inspired, inviolable dignity. Such intrinsic dignity cannot be lost and is not available in degrees. Those under extreme pain, embarrassment, and anxiety have no less or no more dignity than the more fortunate. She further adds that people like Nelson Mandela and Aung San Suu Kyiv show dignified defiance in their fight for human rights. Dignified-defiance is mostly fuelled by dignity as a virtue, a strong sense of self-worth, courage, wisdom, temperance, and justice. Yet, it

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<sup>285</sup> Marx, Karl. "On the Jewish Question" (1843)." *Writings of the young Marx on philosophy and society* (1975).

<sup>286</sup> Macklin, Ruth. "Dignity is a useless concept: it means no more than respect for persons or their autonomy." *BMJ: British Medical Journal* 327, no. 7429 (2003): 1419.

<sup>287</sup> Responses to Macklin, Ruth. "Dignity is a useless concept: it means no more than respect for persons or their autonomy." *BMJ: British Medical Journal* 327, no. 7429 (2003): 1419. Eg. by Miles, Bore, R. "Dignity: not useless, just a concept in need of greater understanding." 17 February 2004; Rapoport, Jayson "Dignity a useless concept??" 22 December 2003 *BMJ: British Medical Journal*

also has an element of comportment dignity, as shown in defiant posture and poise. When asked who shows great dignity, human beings tend to look for dignity as a virtue with the required comportment and not as an intrinsic quality of human beings, which can never be lost which is a view expressed by most legislative instruments.<sup>288</sup>

Similarly another critic is where Misztal terms the notion of dignity to be problematic as it has been frequently criticized for its lack of conceptual clarity and openness to misinterpretation. Further she elaborates that in practice the meaning of dignity is context-specific, varying significantly from nation to nation and often over time within particular jurisdictions. She emphasises that the current universalistic identity of dignity calls for respect of autonomous wills, rejects humiliating constraints on freedom and refers to rights than duties. She also reflects on dignity as Kant's categorical imperatives 'the intrinsic, non-negotiable non-fungible worth that inheres in the very human being'<sup>289</sup> where she points out that it would be a mistake to associate the discovery of the idea of dignity with modern societies. The notion of dignity is a concept with long history, which stretches from antiquity to contemporary ethical and legal debates and documents.<sup>290</sup>

These constitutive elements of dignity, therefore, articulate what, from this perspective, would be the 'minimum core' characteristics of 'being human', notably the singularity of each human being, the equality of all human beings, and the personal autonomy necessary to live a dignified life. Two ideas, in particular, encapsulate this essence of dignity: justice and freedom. Justice here denotes the aspiration to organize society in a way that every human is treated according to the fullness of his or her being, to not reduce him or her to abstract categories, and to do so equally with all. Freedom in relation to dignity

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<sup>288</sup> Schroeder, Doris. "Dignity: Two riddles and four concepts." *Cambridge Quarterly of Healthcare Ethics* 17, no. 02 (2008): 230-238.

<sup>289</sup> Waldron, Jeremy, and Locke God. "Dignity and rank." *Archives Européennes de Sociologie* 48, no. 2 (2007): 201. Cited in Misztal, Barbara A. "The idea of dignity Its modern significance." *European Journal of Social Theory* 16, no. 1 (2013): 101-121.

<sup>290</sup> Misztal, Barbara A. "The idea of dignity Its modern significance." *European Journal of Social Theory* 16, no. 1 (2013): 101-121.

refers to freedom from domination or freedom from instrumentalisation. This "freedom from", however, is not simply in the sense of a classic negative right, i.e. a liberty like freedom from arbitrary arrest, freedom from discrimination. Rather it is something like a "right of rights", a right to be treated for what one is as opposed to simply as an instance of a universal abstraction, and indeed a right not to be instrumentalized even for the purpose of guaranteeing rights of others or even of oneself. In addition, freedom from domination is not so much an "absence" of non-domination, as a positive state that is linked to a feeling of being treated with integrity. Both justice and freedom, hence, give dignity its particular flavour: dignity is *empowerment*.<sup>291</sup>

Coming back to Nowak, human dignity is inherent to all human beings and culling from the above that dignity is empowerment leads me to claim that all human beings must be empowered under any condition. This research here seeks to explore this concept of dignity if they are upheld while confronting the criminal justice system and while surviving the death row. It will also be a point of departure to assess if any of these circumstances empower prisoners on death row.

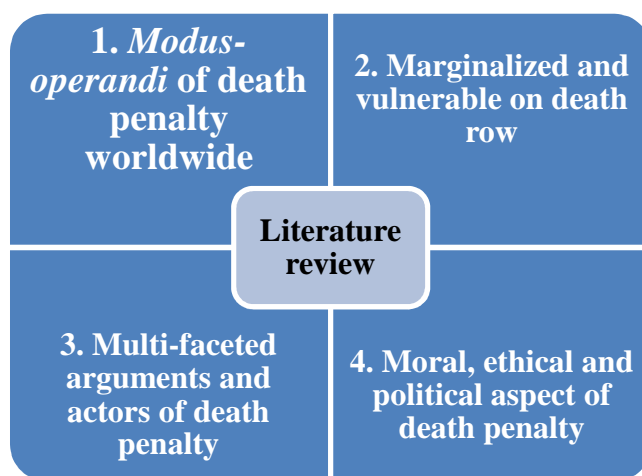
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<sup>291</sup> Beyleveld, Deryck, and Roger Brownsword. *Human dignity in bioethics and biolaw*. Oxford University Press, 2001.; Whitman, James Q. "Two Western Cultures of Privacy: Dignity versus Liberty, The." *Yale LJ* 113 (2003): 1151.

## **2.5. EVIDENCE – REVIEW OF LITERATURE**

We have looked at the issue of death penalty from the context of various social theories, legal dimension and by exploring the concept of dignity of prisoners. However without having the ‘state of the art of death penalty’ the review of literature would be incomplete. Trying to fill this gap, the literature review is conceptualized with 4 M’s. They are *modus-operandi* of death penalty worldwide; the marginalised and the vulnerable on death row; the multi-faceted arguments and the actors of death penalty; and moral, ethical and political aspect of death penalty. Figure 3 below represents the conceptual map of the literature review. Literature mainly comes from the United States (U.S.) where there are a vast number of studies done on death penalty and related issues however there are also a few studies from African, Middle Eastern and Asian continents. This section firstly traces the issue of death penalty in the U.S. and then worldwide. Secondly, it looks at various studies which focus on the marginalised and the vulnerable people on the death row which includes ethnic and racial minority, women, mentally ill and juveniles on death row. Thirdly, it discusses diverse researches on abolition, deterrence effect, delay, reversal, right of the family and researches on death penalty cases. In addition to this, it also discusses researches with actors in the process of death penalty which includes jurors, family members and doctors. Finally, this section ends with a discussion on researches conducted on the moral, ethical and political aspect of death penalty.

**Figure 3: Conceptual map of literature review**





### **2.5.1. MODUS-OPERANDI OF DEATH PENALTY WORLDWIDE**

Over the past three decades, the United States has embraced the death penalty with tenacious enthusiasm. While most of those countries whose legal systems and cultures are normally compared to the United States have abolished capital punishment, the United States continues to employ this ultimate tool of punishment. The death penalty has achieved an unparalleled prominence in our public life and left an indelible imprint on our politics and culture. It has also provoked intense scholarly debate, much of it devoted to explaining the roots of American exceptionalism. Another study takes a different approach to the issue by examining the historical and theoretical assumptions that have underpinned the discussion of capital punishment in the United States today. At various times the death penalty has been portrayed as an anachronism, an inheritance, or an innovation, with little reflection on the consequences that flow from the choice of words by using comparative and historical investigations of both Europe and America in order to cast fresh light on familiar questions about the meaning of capital punishment.<sup>292</sup>

Garland has described the death penalty in the U.S. as a peculiar institution, and a uniquely American one. Despite its comprehensive abolition elsewhere in the Western world, capital punishment continues in dozens of American states— a fact that is frequently discussed but rarely understood. Garland argues that the same puzzlement surrounds the peculiar form that American capital punishment now takes, with its uneven application, its seemingly endless delays, and the uncertainty of its ever being carried out in individual cases, none of which seem conducive to effective crime control or criminal justice. He explains this tenacity and shows how the practice of death penalty has come to bear the distinctive hallmarks of America's political institutions and cultural conflicts. America's radical federalism and local democracy, as well as its legacy of violence and racism, account for its divergence from the rest of the West. However, the elites of other nations were able to impose nationwide abolition from above, despite public objections. American elites are unable and

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<sup>292</sup> Garland, David, McGowen, Randall and Michael Meranze. *America's Death Penalty: Between Past and Present*. NYU Press, 2011.

unwilling to end a punishment that has the support of the local majorities and has a storied place in popular culture. Federal courts sought to rationalize and civilize an institution that, too often resembled a lynching, not only producing layers of legal process but also delays and reversals. Yet the Supreme Court insists that the issue is to be decided by the local political actors and public opinion. So the death penalty continues to respond to popular will, enhancing the power of the criminal justice professionals, providing drama for the media, and bringing pleasure to a public audience who consume its chilling tales.<sup>293</sup>

Hugo Adam Bedau, one of our prominent scholars on the issue of death penalty has written extensively with updated statistical and research data, recent Supreme Court decisions, and the current debate over capital punishment. He also describes the status of the death penalty worldwide to current attitudes of Americans toward convicted killers, from legal arguments challenging the constitutionality of the death penalty to moral arguments enlisting the New Testament in support of it, from controversies over the role of race and class in the judicial system to proposals to televise executions.<sup>294</sup> Similarly, Bedau and Cassell have argued that one of the main reasons to oppose the death penalty is that it may violate Eighth Amendment rights, which is against cruel and unusual punishments.

That was the reason for introducing the electric chair in New York in 1890 as an improved method of execution over hanging. But that method has been debated because the electric chair is known to catch on fire and the thought of watching a condemned man burn to death is not humane. This same humanitarian argument was used for the execution method of lethal gas, which was introduced in Nevada in 1923. Today, the most widespread method of execution is use of the lethal injection. Lethal injection is thought to include no bodily mutilation, no disfigurement, no delay, no odour, and no pain. But in 2006, it became recognized that condemned prisoners may have received extremely painful executions due to poor administration of the injections and

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<sup>293</sup> Garland, David. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Harvard University Press, 2010.

<sup>294</sup> Bedau, Hugo Adam, ed. *The death penalty in America: Current controversies*. Oxford University Press, USA, 1998.

it's been argued and grounds for appeal of death sentences in court unsuccessfully. Another argument against the death penalty is the risk of executing the innocent. Defendants are convicted for murder based on circumstantial evidence, false eyewitness testimony, and coerced false confessions during police interrogations. Defendants on trial for murder also receive poor legal counsel with little or no experience. The courts assume that public defenders who have experience only in insurance fraud and bank fraud type cases could handle capital cases. Public defenders also handle appeals of death sentences improperly. There has never been a rich person executed.<sup>295</sup>

Bedau and Cassell said that "Support for capital punishment necessarily means accepting a punishment that is applied unequally and that largely condemns poor and disfavoured defendants who are unable to obtain adequate legal assistance". Two Justices on the United States Supreme Court actually publicly admitted on the pervasive inadequacy of appointed counsel in capital cases. Public defenders are also under-paid and over-worked. Over 80 per cent of the inmates with a death sentence were tried, convicted and sentenced to death with a public defender whose compensation was capped at \$1,000. Therefore, public defenders usually do not spend the necessary amount of time on a capital case to effectively defend the defendant.

Bedau and Cassell conclude that death sentences are imposed in a criminal justice system that treats you better if you are rich and guilty than if you are poor and innocent. Another argument is that defendants of a different race are treated unfairly in the criminal justice system. A jury is more likely to convict a black defendant and sentence him to death for murdering a white victim than a white defendant for murdering a black victim. Many prisoners who were executed were mentally ill and some were juveniles at the time of their crime. There are a number of moral arguments against the death penalty. Abolitionists believe in the value of human life and the respect for human life. Others believe that the state has no right to kill any of its prisoners. Some see the death

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<sup>295</sup> Bedau, Hugo Adam, and Paul G. Cassell, eds. *Debating the death penalty: should America have capital punishment? The experts on both sides make their best case*. Oxford University Press, USA, 2004.

penalty as an affront to human dignity. Others believe the death penalty violates the offender's right to life. Some oppose the death penalty because of what it reveals about Americans in tolerating and not advocating these killings.<sup>296</sup>

In addition to this, there is a vast amount of literature on the death row syndrome which has been written in the previous section of the same chapter. It is imperative to mention that both the European Court of Human Rights and the Human Rights Committee have considered the question of “the death row phenomenon”; whether or not the long wait for execution on death row constitutes a form of “cruel, inhuman or degrading treatment” in contravention of their respective human rights instruments. While the approaches and decisions of the two bodies are somewhat different, what is clear is that the anguished wait on death row for execution has become a claim on the part of the convicted petitioners to seek redress from international bodies from their death sentence and/or extradition from a jurisdiction without capital punishment to one where the death row phenomenon is claimed to be violative of human rights law.<sup>297</sup>

There have been very few studies or peer reviewed articles written about death penalty in India. One such study the author pointed out, political leaders have remained in two minds on the issue. While being inclined towards abolition in theory they have nevertheless recognized the existence of extremely heinous cases which, in their view, deserve death penalty.<sup>298</sup> Another study reveals the non-adherence to the mandatory procedural requirement pre-sentencing hearing, the real possibility of the wrong being convicted, the uncertainty of executive clemency and the domination of debate by the retentionist.<sup>299</sup>

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<sup>296</sup> Bedau, Hugo Adam, and Paul G. Cassell, eds. *Debating the death penalty: should America have capital punishment? The experts on both sides make their best case*. Oxford University Press, USA, 2004.

<sup>297</sup> Manfred Nowak, *The Death Penalty An Inhuman Punishment?* in Orlin, Rosas and Scheinin, *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach*, Institute for Human Rights, Abo Akademi University, Turku, 2000, at p. 30.

<sup>298</sup> Gupta, Subhash C. *Capital punishment in India*. Deep & Deep Publications, 1986.

<sup>299</sup> Muralidhar, S., Hang Them Now, and Hang Them Not. "India's Travails with the Death Penalty." *Journal of Indian Law Institute* 40 (1998): 143-173.

Scholars have discussed the aspect of 'closure' for the family members of the victims killed. Madeira calls it the 'closure genie' arguing that the closure genie proves false or its pursuit violates a defendant's constitutional rights. Closure, though a term with great rhetorical force in the capital punishment context, has to date evaded systematic analysis, instead has embroiled in ideological controversy. For victims who have rubbed the rights lamp for years, inclusion in capital proceedings and accompanying closure opportunities are perceived as a force with the potential to grant wishes of peace and finality. Madeira argues against rebottling the closure genie, a task not only seriously implausible but unsound under principles of communicative theory.

He summarizes how legal scholarship has described closure up to this point, and then examines how courts utilize the rhetoric of closure to effect change for victims' families in a variety of contexts by reviewing widespread scholarly opposition to utilizing criminal law to pursue therapeutic ends. It seeks to broaden the contemporary understanding of closure by exploring how members of one victim population - Oklahoma City Bombing victims' families and survivors have described closure in intensive face-to-face interviews. These reflections provide the foundation for theorizing closure as a communicative concept composed of two interdependent behaviours: intervention and reflexivity. While intervention is an interpersonal component that urges victims' families to take action to effect change and pursue accountability, reflexivity is an intrapersonal component that nudges them to contemplate and work through grief, emotion, and trauma after a loved one's murder.<sup>300</sup>

Adding to the number of studies on death penalty conducted in the U.S. one such study on death penalty was commissioned in the State of New Jersey. The New Jersey Death Penalty Study Commission was created by P.L.2005, c.321. The enactment directed the Commission to study all aspects of the death penalty as currently administered in New Jersey and to report its findings and recommendations, including any recommended legislation, to the Legislature and the Governor. The Commission's findings and recommendations indicated

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<sup>300</sup> Madeira, Jody L. "'Why Rebottle the Genie?': Capitalizing on Closure in Death Penalty Proceedings." (2009).

the lack of compelling evidence to prove that New Jersey death penalty rationally serves a legitimate penological intent. Secondly it suggested that the costs of the death penalty are greater than the costs of life in prison without parole, but it is not possible to measure these costs with any degree of precision. Further, there is increasing evidence that the death penalty is inconsistent with evolving standards of decency. It revealed that the available data do not support a finding of invidious racial bias in the application of the death penalty in New Jersey. It also revealed that the abolition of the death penalty will eliminate the risk of disproportionality in capital sentencing. Moreover, it showed that the penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible mistake and that the alternative of life imprisonment in a maximum security institution without the possibility of parole would sufficiently ensure public safety and address other legitimate social and penological interests, including the interests of the families of murder victims.<sup>301</sup>

Further to give a brief overview of the federal death penalty system in the U.S, a research provides information regarding the federal death penalty system since the enactment of the first modern capital punishment statute in 1988. The study explains the Department of Justice's internal decision-making process for deciding whether to seek the death penalty in individual cases, and presents statistical information focusing on the racial/ethnic and geographic distribution of defendants and their victims at particular stages of that decision-making process. Overall, however, the federal government continues to play a relatively small role in administering the death penalty in this country. From 1930 to 1999, state governments executed over 4,400 defendants. During the same time period, the federal government executed 33 defendants and has not carried out any executions since 1963. Furthermore, the Department of Justice's Bureau of Justice Statistics (BJS) reports that by the end of 1998 (the most recent year for which this statistic is available), there were 3,433 defendants with pending death sentences in the States, compared to 19 defendants with

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<sup>301</sup> \_\_\_\_\_, New Jersey. Death Penalty Study Commission. *New Jersey Death Penalty Study Commission Report*. New Jersey Death Penalty Study Commission, 2007.

currently pending death sentences in the federal system. Thus, despite the expansion of the availability of the federal death penalty since 1988, federal defendants account for approximately one-half of one per cent of all the defendants on death row in the United States.<sup>302</sup>

There have been few studies conducted worldwide on death penalty but here is an attempt to discuss a few that were published beginning with Africa, Iran, China and India. Capital punishment was introduced in the colonies during the British rule in many African countries and the Indian subcontinent. Capital punishment in British colonial Africa was not just a method of crime control or individual punishment, but an integral aspect of colonial networks of power and violence. The treatment of condemned criminals and the rituals of execution which brought their lives to an end illustrate the tensions within colonialism surrounding the relationship between these states and their subjects, and with their metropolitan overlords. The state may have had the legal right to kill its subjects, but this right and the manner in which it was enacted were contested. This research explores the interactions between various actors in this penal 'theatre of death', looking at the motivations behind changing uses of the death penalty, the treatment of the condemned convicts whilst they awaited death, and the performance of a hanging itself to show how British colonial governments in Africa attempted to create and manage the deaths of their condemned subjects.

It concluded that the execution of a condemned convict in British colonial Africa was a process rather than an event. The changing rituals of capital punishment paralleled the process of colonization itself, being accompanied by bureaucratization, 'modernization' and a desire for efficiency, cost-effectiveness and 'humanity'. The search to find an 'acceptable' method of execution showed both the continued social investment in penal violence and the boundaries of colonial public sensibilities, as states sought to discover new methods of performing the terminal violence of execution whilst simultaneously concealing its brutality. Executions also revealed the

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<sup>302</sup> \_\_\_\_\_, *The Federal Death Penalty System- A statistical survey (1988-2000)* Published U.S. Department of Justice Washington, DC. September 12, 2000

contradictions in colonial rule: the legal, social and physical processes of dehumanization that marked a condemned man's journey from court to gallows were complex and often internally contradictory, creating him as both dangerously 'Other' and a legal individual deserving of rights. In the end, although the 'theatre of death' had to be recast throughout the colonial period to suit its changing audience, judicial execution remained a valued weapon in the arsenal of state control.<sup>303</sup>

Hood and others highlighted the mandatory death penalty in Trinidad and Tobago. Giving a background they said that a decade ago, in 1998, 98 killings had been recorded as murder; by 2002 the number had risen to 171; by 2005 to 387; and by 2008 to an estimated 550. At the same time, the number of persons committed for trial in the High Court of Trinidad and Tobago on a charge of murder, as a proportion of recorded murders, had declined from 62 (1 committal to 1.6 recorded murders) in 1998 to 72 (1 committal to 7.7 recorded murders) in 2008. They reported and discussed the findings of a recent study of opinions of judges, prosecutors and counsel on the mandatory death penalty in Trinidad and Tobago, and on the basis of these findings to suggest a possible way forward. But first it was necessary to set the new study in context by reviewing the main findings of our earlier research on the relationship between homicide and conviction for murder in Trinidad and Tobago, published under the title "A Rare and Arbitrary Fate in 2006".

The research covered two overlapping samples of cases: all 633 murders recorded by the police during the five-year period from 1st January 1998 to 31st December 2002 and all 297 defendants prosecuted for murder and committed to the Trinidad and Tobago High Court for trial during the same period. The findings of this research have, to a large extent, complemented those of the previous statistical study of homicide and the use of the mandatory death penalty in Trinidad and Tobago. Specifically it showed that a considerable proportion of judges, prosecutors and defence counsel, amounting to just over a half of those interviewed, were able to recall instances when, in

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<sup>303</sup> Hynd, Stacey. "Killing the Condemned: The Practice and Process of Capital Punishment in British Africa, 1900-1950s." *J. Afr. Hist.* 49 (2008): 403-405.



their judgement a mandatory death sentence had been imposed which they considered to be an excessive punishment given the nature of the murder and the characteristics of the defendant.

Further, a majority of the respondents from all sectors had dealt with cases where, in their judgment, the jury would have brought in a verdict of guilty to murder had it not been that the penalty would have been a mandatory death sentence. It also revealed that almost two-thirds of the respondents, including 11 of the 13 prosecutors, said that they believed that the conviction rate for murder would increase if the mandatory element were to be abolished. It further revealed that eight out of ten respondents believed that if the current mandatory death penalty for all murders were to be abolished it would not have a deleterious effect on the murder rate in Trinidad and Tobago. The clearest conclusion to be drawn from this study is that there is very little support among those who administer punishment for murder for the status quo. In other words, in their opinion the mandatory death penalty lacks legitimacy, being regarded as an unfair and ineffective response to all types of murder. It therefore appears that the government could count on support from this influential and knowledgeable section of the community in repealing the mandatory death penalty for all murders, in line with the policy elsewhere in the world where capital punishment is still retained. Above all, what is now required is the generation of the political will necessary to bring about the change required.<sup>304</sup>

In Botswana, there is a fact-finding report about the secrecy surrounding the executions of death row prisoners. The objectives of this fact-finding mission were to document the administration of criminal justice and the obstacles, if any, to the abolition of the death penalty in this country. The mission took place from 6 to 14 April 2006 in Gaborone, capital city of Botswana. Only a few days before the arrival of the delegation, on April 1st, 2006, Mr Oteng Modisane Ping, convicted for two murders, was executed in utmost secrecy. This execution witnessed once again the total lack of transparency concerning

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<sup>304</sup> Hood Roger, Seemungal Florence, Mendes Douglas, and Fagan Jeffrey, *A Penalty Without Legitimacy The Mandatory Death Penalty In Trinidad And Tobago* Conference in Port of Spain March 2009.

the administration of the death penalty in Botswana. The mission was refused access to visit prisons and to meet prisoners and persons awaiting trial. The delegation asked to visit Lobatse and Gaborone prisons (in the presence of a prison officer); prisoners including those on death row and detainees awaiting trials generally (which include those charged with capital offences). The purpose was to document the conditions of detention of all detainees and prisoners and to interview prison staff, notably medical staff, prison officers and the hangman, to gather information about their role and tasks. The request was rejected and this according to the fact-finding team suggested a lack of cooperation by the authorities.<sup>305</sup>

In another report on the delay in execution in countries, Hatchard mentions the case in Zimbabwe. In March 1993 it was reported in a national newspaper in Zimbabwe that four men convicted of murder and under sentence of death were to be executed shortly. They were all sentenced between 1987 and 1988 although in all but one case their appeals were not heard and dismissed by the Supreme Court until 1991. The Catholic Commission for Justice and Peace (CCJP) obtained a provisional order from the Supreme Court interdicting the respondents from carrying out the sentences, pending a decision as to whether to (i) declare that the delay in carrying out the sentences of death constituted a contravention of section 15(1) of the Constitution of Zimbabwe; and (ii) order that such sentences be permanently stayed. These sections [Section 15(1)] provide that: "No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment." The issue before the Supreme Court of Zimbabwe in *Catholic Commission for Justice and Peace in Zimbabwe vs. Attorney-General* was thus a relatively narrow one: whether by March 1993 the dehumanizing factor of prolonged delay, viewed in conjunction with the harsh and degrading conditions in the condemned section of the holding prison, meant that the executions themselves would have constituted inhuman and degrading treatment contrary to section 15(1). The case arouse considerable public debate with all views on the abolition debate being postulated although, as the Supreme Court clearly noted, the case

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<sup>305</sup> \_\_\_\_\_, *Hasty and secretive hangings*, Botswana Centre for Human Rights, Botswana, 2007

concerned neither the constitutionality of the death sentence itself nor the manner of execution.<sup>306</sup>

Another study extends several theories of judicial behaviour developed in the American context to South Africa's highest court, the Appellate Division, throughout the time period 1950-1990—roughly the rise and fall of apartheid. Specifically, the study employed an integrated approach derived from both the legal and extralegal approaches of judicial decision making to a particularly salient issue area, the death penalty. The study reveals that ideology and race rather than legal factors are the strongest predictors of death penalty decisions. The implications of these findings are that judicial decision making is much more complex than what the legal model suggests and, concomitantly, that theories of judicial behaviour extrapolated from the American context are capable of similarly determining the degree to which politics plays a role within the legal system of South Africa.<sup>307</sup>

The laws of the Islamic Republic of Iran punish by death a very large number of offences, including offences that are not considered as “most serious” under international law – in particular political, economic, drug-related and so-called sexual offences. This report reveals that death sentences are pronounced after unfair trials: the Judiciary is not independent from the Executive, there are numerous special courts, and attacks on and even imprisonment of lawyers involved in the defence of sensitive cases are recurrent. Execution of juvenile offenders occur regularly, a widespread practice being to keep a minor convicted of a capital crime in prison until she or he grows older and later execute him or her. It further says that despite several legislative proposals to ban execution of juvenile offenders, this practice is not yet banned under domestic law. Further it reveals that persons belonging to ethnic minorities in Iran (Kurds, Arabs, Baluchis) are often condemned to death and subsequently

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<sup>306</sup> Hatchard, John. "Delay and the Death Sentence: The Zimbabwean Approach." *Journal of African Law* 37, no. 2 (1993): 185-192.

<sup>307</sup> Franks, Stephenie E. "An Integrated Approach to Judicial Decision Making: The Death Penalty in South Africa." PhD diss., Faculty of the Louisiana State University and Agricultural and Mechanical College in partial fulfilment of the requirements for the degree of Master of Arts in The Department of Political Science by Stephenie E. Franks BA, Louisiana State University, 2003.

executed for offences related to the security of the state. Fair trial guarantees are violated and witnesses regularly report widespread use of torture in those cases. Last but not the least, the methods of execution may themselves amount to an inhuman and degrading treatment: stoning remains the punishment for adultery, while people condemned to death for other offences are hanged. Hanging regularly occurs in public, a practice that contravenes international human rights standards. However, there are no publicly available statistics on the number of death sentences pronounced and executions implemented, and this prevents any informed public debate on these practices.<sup>308</sup>

China is one of the oldest civilized countries. It is also one of the oldest countries in which the government has used capital punishment for thousands of years. As early as the Xia Dynasty which was from 2207–1766 B.C., China used the death penalty as a legal sanction.<sup>309</sup> Since then, China has never really abolished the death penalty.<sup>310</sup> There is a lack of research on attitudes toward capital punishment in China, and there is even less research on cross-national comparisons of capital punishment views. Using data recently collected from college students in the United States and China, this study finds that U.S. and Chinese students have differences in their views on the death penalty and its functions of deterrence, rehabilitation, and incapacitation. This study also reveals that the respondents' perspectives of deterrence, rehabilitation, retribution, and incapacitation all affect their attitudes toward the death penalty in the United States, whereas only the first three views affect attitudes toward capital punishment in China. Furthermore, retribution is the strongest predictor in the United States, whereas deterrence is the strongest predictor in China.<sup>311</sup>

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<sup>308</sup> \_\_\_\_\_, *Death penalty – A state terror policy*, International Federation for Human Rights, Republic of Iran, 2009

<sup>309</sup> Hewitt, John D., Adam Regoli, Robert M. Regoli, and Peter Iadicola. "A Comparison of Death Penalty Opinion Among University Students in the United States and Taiwan" *Crime and Criminal Justice International*, 3 (2004): 72-102.

<sup>310</sup> Wang, David Der-wei. *The monster that is history: history, violence, and fictional writing in twentieth-century China*. University of California Press, 2004.

<sup>311</sup> Jiang, Shanhe, Eric G. Lambert, and Jin Wang. "Capital Punishment Views in China and the United States A Preliminary Study Among College Students." *International journal of offender therapy and comparative criminology* 51, no. 1 (2007): 84-97.

Yunhai writes about why are death penalty provisions, convictions and executions so prevalent in China. Yunhai defines China as a 'state power'-based society characterized by a socialist social system. Further she claims that the prevalence of the death penalty in China can be explained in terms of the following factors: first, the death penalty is a political issue of state power; second, the death penalty is a crucial part of criminal policy in a 'state power'-based society; third, the issue of whether to retain the death penalty is a political rather than a legal matter. Contrary to the argument offered in this article, a commonly held view in the West cites a lack of democracy as the main factor driving the prevalence of death penalty policy and practice in China. While the fundamental elements of democracy are popular sovereignty and majority rule, the fundamentals of law – that is, of the 'rule of law' according to the modern perspective – are individual liberty, due process and rationality. The Chinese government has improved its death penalty system in recent years; however, the situation has not fundamentally changed. This article states that the future of death penalty policy and practice in China depends primarily on legal rather than democratic developments.<sup>312</sup>

Although China has long used capital punishment, there is a lack of research on the views of Chinese people about it. Using survey data from 524 college students at a Chinese university, this study examined their support for the death penalty and the correlates of the support. The study revealed that the surveyed college students had a strong support for capital punishment. Students who held the deterrence and retribution perspectives were more likely to support capital punishment than those who did not, whereas students who held the rehabilitation perspective were more likely to oppose capital punishment than students who did not. The variable incapacitation was not related to the support for capital punishment.<sup>313</sup>

While research abounds on attitudes toward capital punishment in the United States, such work has been lacking in non-western nations – particularly in

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<sup>312</sup> Yunhai, Wang. "The death penalty and society in contemporary China." *Punishment & Society* 10, no. 2 (2008): 137-151.

<sup>313</sup> Jiang, Shanhe, and Jin Wang. "Correlates of support for capital punishment in China." *International Criminal Justice Review* 18, no. 1 (2008): 24-38.

India, the world's largest democracy. Data recently collected have revealed variance in levels of support for the death penalty among Indian college students that 44 per cent express some degree of opposition, 13 per cent are uncertain, and 43 per cent express some degree of support. Reasons for support or opposition also exhibited variance. According to a multivariate analysis, statistically significant reasons for support 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.<sup>314</sup> There has been no research on death penalty in India however there was a legal analysis of death penalty cases from 1950-2006 on judgments from the Supreme Court of India. This analysis dealt with the sentencing policies, factors affecting these policies, concerns on judicial process and concerns relating to fair trial.<sup>315</sup> This study has also been used in further sections of this chapter.

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<sup>314</sup> Lambert, Eric G., Sudershan Pasupuleti, Shanhe Jiang, K. Jaishankar, and Jagadish V. Bhimarasetty. "Views on the death penalty among college students in India." *Punishment & Society* 10, no. 2 (2008): 207-218.

<sup>315</sup> Lethal Lottery: The Death Penalty in India - A study of Supreme Court judgments in death penalty cases 1950-2006

### **2.5.2. THE MARGINALISED AND VULNERABLE ON DEATH ROW**

Prisoners are a category which are socially excluded and marginalised.<sup>316</sup> Apart from this they also form a vulnerable group when they belong to a certain race or if they are juveniles facing the death row or women on death row. In this section of the review, I try to expound on the researches done with these vulnerable and marginalised groups. Almost all these studies have been carried out in the United States. Observers believe that the southern states' prolific execution record can be traced back to a violent southern past. A research on death penalty in North Carolina invites a reconsideration of vengeance, justice, and race in one southern state and says that the death penalty's history in North Carolina is one of anxieties and ambivalence as much as racism and vengeance. Concerns about pain and its effects on an audience inspired lawmakers to try to make executions less painful and less visible and North Carolina became among the nation's first adopters of the electric chair and the gas chamber. The racism of the Jim Crow South informed death penalty, and North Carolina disproportionately executed African Americans, especially those who committed crimes against whites.<sup>317</sup>

A study on the operation of Delaware's death penalty in the modern era of capital punishment reveals that its reversal rate in capital cases, 44%, while substantial, is also substantially less than that of other jurisdictions. This was because Delaware's emphasis for much of the time period on judge- sentencing and that jury verdicts offer more opportunities for reversal. Indeed, reversal rates during the jury sentencing period approximate the national average. Also judge- sentencing in Delaware results in more death sentences, a result consistent with greater harshness being the motivation behind the statutory change to judge sentencing. This effect is more pronounced in Delaware than in other states. The other finding revealed that a dramatic disparity of death

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<sup>316</sup> Wacquant, Loic. "Deadly symbiosis when ghetto and prison meet and mesh." *Punishment & Society* 3, no. 1 (2001): 95-133.

<sup>317</sup> Kotch, Seth. "Unduly harsh and unworkably rigid" The death penalty in North Carolina, 1910--1961." PhD diss., The University of North Carolina at Chapel Hill, 2009.

sentencing rates by race, one substantially more pronounced than in other jurisdictions.<sup>318</sup>

Another study re-evaluates published research on racial bias in criminal sentencing and of data on execution rates by race from 1930 to 1967 and on death-sentencing rates from 1967 to 1978. This research indicated that, except in the South, black homicide offenders have been less likely than whites to receive a death sentence or be executed. For the 11% of executions imposed for rape, discrimination against black defendants who had raped white victims was substantial, but only in the South. The research also showed the evidence for noncapital sentencing largely contradicts a hypothesis of overt discrimination against black defendants. Although black offender-white victim crimes are generally punished more severely than crimes involving other racial combinations, this appeared to be due to legally relevant factors related to such offenses. Crimes with black victims, however, are less likely than those with white victims to result in imposition of the death penalty. The devalued status of black crime victims is one of several hypothetical explanations of the more lenient sentencing of black defendants.<sup>319</sup>

There are studies which explores the question of whether death penalty statutes passed after the 1972 Supreme Court decision in *Furman v. Georgia* successfully eliminate racial disparities in capital cases. Over 600 homicide indictments in twenty Florida counties in 1976 and 1977 were examined, focusing on homicides between strangers (non-primary homicides). Those accused of murdering whites are more likely to be sentenced to death than those accused of murdering blacks. This trend was due primarily to the higher probability for those accused of murdering whites to be indicted for first degree murder. When controlling for race of the victim, the data do not clearly support the hypothesis that race of the defendant is strongly associated with the

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<sup>318</sup> Blume, John, Theodore Eisenberg, Sheri Lynn Johnson, and Valerie Hans. "The Death Penalty in Delaware: An Empirical Study." *Cornell Legal Studies Research Paper* 08-025 (2008).

<sup>319</sup> Kleck, Gary. "Racial discrimination in criminal sentencing: A critical evaluation of the evidence with additional evidence on the death penalty." *American Sociological Review* (1981): 783-805.



probability of a first degree murder indictment or the imposition of the death penalty.<sup>320</sup>

Using data from the 2000 National Election Study, another research investigates the sources of the racial divide in support for capital punishment with a specific focus on white racism. After delineating a measure of white racism, we explore whether it can account for why a majority of African Americans oppose the death penalty while most whites support it. The results indicate that one-third of the racial divide in support for the death penalty can be attributed to the influence of our measure of white racism. The analyses also revealed that when other factors are controlled, support for capital punishment among nonracist whites is similar to that of African Americans. We examine the implications of these findings for using public opinion to justify the death penalty.<sup>321</sup>

Yet another research uses data on the entire population of prisoners under a sentence of death in the United States between 1977 and 1997. This study investigates the probability of transition from death row to various possible outcomes (execution, death by other causes, commutation, and overturned sentence or conviction) in any given year, as well as the probability of commutation when reaching the end of death row. The analyses control for personal characteristics and previous criminal record of death row inmates and a number of characteristics of the state where the inmate is in custody, including variables that measure the degree to which the political process enters into the final outcome in a death penalty case. The results showed that who lives and who dies on death row depends on the race and gender of the inmate, the race and political affiliation of the governor, and whether the governor is a lame duck.<sup>322</sup>

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<sup>320</sup> Radelet, Michael L. "Racial characteristics and the imposition of the death penalty." *American Sociological Review* (1981): 918-927.

<sup>321</sup> Unnever, James D., and Francis T. Cullen. "The racial divide in support for the death penalty: Does white racism matter?." *Social Forces* 85, no. 3 (2007): 1281-1301.

<sup>322</sup> Argys, Laura, and Naci Mocan. *Who shall live and who shall die? An analysis of prisoners on death row in the United States*. No. w9507. National Bureau of Economic Research, 2003.

In the context of death penalty in India, a paper indicates that the death penalty in India is imposed disproportionately upon those who are poor and uneducated. The dangers of arbitrary, unequal, and mistaken application of the death penalty are compounded by the inadequacy of procedural safeguards afforded to defendants accused of capital crimes. The Constitution of India protects the right to life (Article 21), the right not to be arbitrarily deprived of one's life (Article 21), and the right to equal protection by law (Article 14). Capital punishment violates all of these. The courts and the executive, which decide on mercy petitions sometimes impose the penalty arbitrarily; discriminatory considerations, such as the offender's economic status and political background often play a part in executions; and the procedural safeguards in place to ensure that only the guilty are executed are grossly inadequate. The penalty is also unjustified as either a deterrent or retributive measure and is a form of cruel, unusual, and degrading punishment.<sup>323</sup>

While examining the social factors related to use of the death penalty another study analyses the number of executions in each of the 50 states of the United States since 1976. These factors were predicted from the degree of social hierarchy, old Confederacy status, political conservatism, degree of violent crime, income, population size, population density, degree of education, proportion of population which is white, and proportion of whites murdered. Social hierarchy and conservatism were consistently and significantly related to use of executions. The results indicated that the degree of social hierarchy and number of murders were significantly related to execution-use while some of these results were predicted by the symbolic motives model or the deterrence model, it is argued that social dominance theory offers a more comprehensive explanation of the results as a whole.<sup>324</sup>

Further, looking at the factors that produce jurisdictional differences in the use of the death sentence in political explanation, threat accounts and public ideologies, a study centred on the political explanations emphasizes the

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<sup>323</sup> \_\_\_\_\_, Human Rights Feature Volume 4 July - September 2002: *Death penalty: No end to it*

<sup>324</sup> Mitchell, Michael, and Jim Sidanius. "Social hierarchy and the death penalty: A social dominance perspective." *Political Psychology* (1995): 591-619.

conservative values and the strength of conservative political parties. Threat accounts suggest that this sentence will be more likely in jurisdictions with larger minority populations. After controlling for many explanations using two-equation count models, the results showed that larger numbers of death sentences are probable in states with greater membership in conservative churches and in states with higher violence and crime rates. The findings suggested that political conservatism, a stronger Republican Party, and racial threat explained whether a state ever used the death sentence. By highlighting the explanatory power of public ideologies, these findings supported political explanations for the harshest criminal punishment.<sup>325</sup>

After controlling for social disorganization, region, period, and violent crime, panel analyses, another study suggests that the minority presence and economic inequality enhance the likelihood of a legal death penalty. Conservative values and Republican strength in the legislature have equivalent effects. Despite the interest in the death penalty, no statistical studies have isolated the social and political forces that account for the legality of this punishment. Racial or ethnic threat theories suggest that the death penalty is more likely to be legal in jurisdictions with relatively large Black or Hispanic populations. Economic threat explanations suggest that this punishment is present in unequal areas. Jurisdictions with a more conservative public or a stronger law-and-order Republican party should be more likely to legalize the death penalty as well. A supplemental time-to-event analysis supports these conclusions. The results of this study suggest that a political approach has explanatory power because threat effects expressed through politics and effects that are directly political invariably account for decisions about the legality of capital punishment.<sup>326</sup>

Also looking at the relationships between death row offender attributes, social arrangements, and executions yet another study uses a discrete-time event history analysis to detect the individual and state-level contextual factors that shape execution probabilities. It claims that theorists view this sanction as

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<sup>325</sup> Jacobs, David, and Jason T. Carmichael. "Ideology, social threat, and the death sentence: Capital sentences across time and space." *Social Forces* 83, no. 1 (2004): 249-278.

<sup>326</sup> Jacobs, David, and Jason T. Carmichael. "The political sociology of the death penalty: A pooled time-series analysis." *American Sociological Review* (2002): 109-131.

intrinsically political, partly because public officials control executions. States differ sharply in their willingness to execute and less than 10 per cent of those given a death sentence are executed. The findings revealed that minority death row inmates convicted of killing whites face higher execution probabilities than other capital offenders. Theoretically relevant contextual factors with explanatory power include minority presence in nonlinear form, political ideology, and votes for Republican presidential candidates.<sup>327</sup>

Studying how the consciousness of ordinary citizens enlisted as jurors in death penalty trials is racialised another study draws on post-trial inter views with some 66 white and black jurors who served on 24 capital trials in which either a white or black defendant received the death sentence. Findings among white jurors reveal a hegemonic tale of racial inferiority. However, other characteristics such as social class or relevant biographical experiences help explain how jurors' stories are racialised. More specifically, racial inferiority is articulated in four congruous narratives: "individual responsibility," "the tragedy of the 'black' group," "the bad kid and the caring family," and "the threatening outsider." Furthermore, black jurors' stories are influenced by their background experiences as well. More-educated black jurors employ a sympathetic discourse toward the "culturally distant whites." On the other hand, working-class blacks that have had negative experiences with whites in public are found to employ a narrative of "resisting white racism." Understanding the subtle influences of legal agents' multiple identities in the remaking of racial hegemony has broader implications for a revised constitutive perspective of law- what Fleury-Steiner calls a "theory of legal narrativity."<sup>328</sup>

An essay explores a general pedagogy of contextualization within the particular context of a class on race and the death penalty. Teaching the Supreme Court's infamous 1987 opinion in the case of *McCleskey v. Kemp* within its historical,

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<sup>327</sup> Jacobs, David, Zhenchao Qian, Jason T. Carmichael, and Stephanie L. Kent. "Who survives on death row? An individual and contextual analysis." *American sociological review* 72, no. 4 (2007): 610-632.

<sup>328</sup> Fleury-Steiner, Benjamin. "Narratives of the death sentence: Toward a theory of legal narrativity." *Law & Soc'y Rev.* 36 (2002): 549.

doctrinal, cultural, and human contexts - rather than as a self-explanatory pronouncement - provides a deeper understanding of America's death penalty system, its connection to America's racial caste system, and the Supreme Court's role in each. These multiple contexts provide a foundation for comprehension and critique of values served by conventional legal methods. They also create conditions for progressive insights about what law enables and what it elides.<sup>329</sup>

Children or juveniles become a vulnerable category when it comes to the aspect of death penalty. The United States is almost alone among nations in permitting the execution of juvenile offenders. Citing this fact, along with a variety of legal and historical materials, litigants and scholars are increasingly claiming that the United States' use of the juvenile death penalty violates international law. Rapaport examines the validity of this claim, from the perspective of both the international legal system and the U.S. legal system. Based on a detailed examination of the United States' interaction with treaty regimes and international institutions since the late 1940s, the Article concludes that the international law arguments against the juvenile death penalty have significant weaknesses. As the Article documents, for a number of reasons, the United States has consistently declined consent to treaty provisions restricting the juvenile death penalty, and it has consistently declared the human rights treaties that contain such restrictions to be non-self-executing.<sup>330</sup>

Furthermore, women also fall into the category of vulnerable when on the death row. Despite the paucity of research on the death penalty and gender discrimination, it is widely supposed that women murderers are chivalrously spared the death sentence. This supposition is fuelled by the relatively small number of women who are condemned. Rapoport argues that women who are represented on contemporary U.S. death rows in numbers commensurate with the infrequency of female commission of those crimes which the society labels

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<sup>329</sup> Goldfarb, Phyllis. "Pedagogy of the Suppressed: A Class on Race and the Death Penalty." *NYU Rev. L. & Soc. Change* 31 (2006): 547.

<sup>330</sup> Rapaport, Elizabeth. "The death penalty and gender discrimination." *Law and Society Review* (1991): 367-383.

sufficiently reprehensible to merit capital punishment. Additionally, this research also suggests that death-sentenced women are more likely than death-sentenced men to have killed intimates, although the explanation for this disparity is not yet at hand. She also argues that there is a form of gender bias inimical to the interests of women in our capital punishment-law calling the death penalty a dramatic symbol of the imputation of greater seriousness to economic and other predatory murder as compared with domestic murder.<sup>331</sup>

While looking at the gender dimensions of death penalty in India, Chandra focused on the Indian Supreme Court's death penalty jurisprudence; and argued that the Court's exposition on the subject routinely devalues and discounts the forms and sites of violence most common to women's experiences. While determining what constitutes "rarest of rare" cases the Court has privileged violence on account of property, violence in the public sphere, and violence for power; over violence within the family or in intimate settings, or those forms of violence that women are more commonly victims of. Chandra argues that by not valuing violence against women as severely as those forms and sites of violence that are more reflective of the male worldview, the court creates an arbitrary distinction that derives justification from discriminatory social norms that legitimate violence against women in the first place which adds an additional element to the already arbitrary regime of awarding death penalty.<sup>332</sup>

Research indicates that no capital punishment statute classifies by gender, but it is arguable that gender bias infects the administration of capital punishment because the discretion of prosecutors, juries and judges is employed to the advantage of female murderers. Prior to Furman, capital punishment statutes typically gave sentencing authorities untrammelled discretion to mete out life or death. Although sentencing discretion has been substantially reduced in the modern death penalty regime, it remains arguable post-Furman that the sparseness of women on death row testifies to the discriminatory use of capital

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<sup>331</sup> Rapaport, Elizabeth. "The death penalty and gender discrimination." *Law and Society Review* (1991): 367-383.

<sup>332</sup> Chandra, Aparna. "Gender Dimensions of the Death Penalty in India." *Available at SSRN 1617603* (2010).

sentencing discretion. However, Rapaport notes that in light of the decision in *McCleskey v. Kemp*, in which the Supreme Court finally took up the question of racial discrimination in the application of the death penalty, it appears that even in the face of convincing evidence of gender disparity, male offenders could not expect to successfully challenge the death penalty on the grounds that males are disproportionately selected for death.<sup>333</sup>

A research which indicates the way the media has dealt with men and women while covering the stories of their execution used family letters, prison correspondence, photographs, court transcripts, and last-minute pleas for mercy which chronicles the crimes, the times, and the media attention surrounding these cases. The tales of these death row women shed light on the death penalty as it applies to women and the role of the media in both the trials and executions of these convicts. The research claims that in these cases, the press affected the prosecutions, the judgements, and the decisions of authorities along the way claiming that contemporary headlines of the era are revealing in their blatant bias and leave little doubt of their purpose. In the 20th century, only six women were legally executed by the State of New York at Sing Sing Prison. In each case, the condemned faced a process of demonization and public humiliation that was orchestrated by a powerful and unforgiving media. When compared to the media treatment of men who went to the electric chair for similar offenses, the press coverage of female killers was ferocious and unrelenting. Granite woman, black-eyed Borgia, roadhouse tramp, sex-mad, and lousy prostitute were some of the terms used by newspapers to describe these women. Unlike their male counterparts, females endured a campaign of expulsion and disgrace before they were put to death.<sup>334</sup>

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<sup>333</sup> Rapaport, Elizabeth. "Some questions about gender and the death penalty." *Golden Gate UL Rev.* 20 (1990): 501.

<sup>334</sup> Gado, Mark. *Death row women: Murder, justice, and the New York press*. Praeger Pub Text, 2008.

### **2.5.3. MULTI-FACETED ARGUMENTS AND ACTORS OF DEATH PENALTY**

There is a vast amount of literature arguing for and against death penalty. Many of the studies advocate abolition of the death sentence. At the same time there are studies which examine the deterrent effect of capital punishment and advocate keeping it in the system. Apart from these, there are also studies which discuss the death penalty case laws. Finally, there are studies which look at the actors who are involved in the process of death penalty – the actors include jurors, family members, lawyers and doctors. To begin with, it is worthwhile to explore the literature that discusses the abolition of death penalty. Camus perhaps has been quoted widely for his strong abolitionist views. He says that “For years I have been unable to see anything in capital punishment but a penalty the imagination could not endure and a lazy disorder that my reason condemned. I argue for an immediate abolition of the death penalty.”– Albert Camus (1913-1960), “Reflections on the Guillotine”.<sup>335</sup> Chenwi gives an excellent account of the abolition trend in Africa with a legal perspective.<sup>336</sup> Similarly another paper which is geared towards abolition discusses death penalty in the United States and Nigeria and concludes that joining the international trend for the abolition of the death penalty ought to be universal, considering that the justifications for the retention of death penalty are fundamentally flawed, and that alternatives to the death penalty exist.<sup>337</sup> Huey raises questions on whether the abolition of capital punishment is a feminist issue thus questioning the roles that race, gender, socio-economic status, and sexuality play in one’s understanding or acceptance of execution. She argues throughout that the death penalty clearly offends the values and goals that we hold dear and that the question concerning the abolition of capital punishment being a feminist issue can only be answered in the affirmative.<sup>338</sup>

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<sup>335</sup> Camus, Albert. *Reflections on the Guillotine*. Fridtjof-Karla Publications, 1960.

<sup>336</sup> Chenwi, Lilian Manka. *Towards the abolition of the death penalty in Africa: a human rights perspective*. Pulp, 2007.

<sup>337</sup> Anwo, J. O., and G. A. Arowolo. "Critical Analysis of Abolition of Death Penalty in International Law: An Analysis of Death Penalty under the United States and Nigerian Laws." *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 2 (2012).

<sup>338</sup> Huey, Laura. "The abolition of capital punishment as a feminist issue." *Feminist Review* (2004): 175-180.



There are also essays written to develop and defend a theory of state punishment within a wider conception of political legitimacy by theorizing punishment within the specific context of the state's relationship to its citizens. One such essay uses Rawls's "Liberal principle of Legitimacy," which requires that all state coercion be justifiable to all citizens. The idea is extended to the justification of political coercion to criminals qua citizens and that the liberal principle of legitimacy implicitly requires states to respect the basic political rights of those who are guilty of committing crimes, thus prohibiting capital punishment.<sup>339</sup>

Schabas, a committed abolitionist has written extensively on the abolition of death penalty in International Law. He brings in various arguments such as: if death penalty is a threat to International Law thus discussing the Right to Life provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as on the Second Optional Protocol to that Covenant which requires abolition in peacetime and Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty. Further, he also discusses the position in European and inter-American human rights law. A concluding chapter also draws the topical strands together, but perhaps too succinctly for a full appreciation of the juridical nature and scope of the various rules in question.<sup>340</sup>

The debate over the legitimacy or propriety of the death penalty may be almost as old as the death penalty itself and, in the view of the increasing trend towards its complete abolition, perhaps as outdated. Not surprisingly, and as is generally recognized by contemporary writers on this topic, the philosophical and moral arguments for or against the death penalty have remained remarkably unchanged since the beginning of the debate. One outstanding issue which is the deterrent effect has become the subject of increased investigation, especially in recent years, due to its objective nature and the

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<sup>339</sup> Brettschneider, Corey. "The Rights of the Guilty Punishment and Political Legitimacy." *Political theory* 35, no. 2 (2007): 175-199.

<sup>340</sup> Schabas, William A. *The abolition of the death penalty in international law*. Cambridge University Press, 2002.

dominant role it has played in shaping the analytical and practical case against the death penalty.<sup>341</sup>

Similarly the question of whether the death penalty is a more effective deterrent than long-term imprisonment has been debated for decades or longer by scholars, policy makers, and the general public. There are plenty of studies on the aspect of death penalty acting as a deterrent to further crimes. Some studies claim that awarding death penalty is a clear deterrent to crimes while some claim that handing over death penalty has no deterrent effect on future crimes. One such study which says that death penalty has no deterrent effect analysed the views of 67 of the 70 current and former P residents of three professional criminology organizations: The American Society of Criminology, Academy of Criminal Justice Sciences, and Law and Society Association with a goal to determine if there is consensus among expert criminologists on whether the death penalty has been, is, or could be a general deterrent to criminal homicide. The study revealed that over 80 per cent of these experts believed the existing research fails to support a deterrence justification for capital punishment.

Over three-quarters believed that increasing the frequency of executions, or decreasing the time spent on death row before execution, would not produce a general deterrent effects. The results of this study show that there is a wide consensus among America's top criminologists that the death penalty does, or can do, little to reduce rates of criminal violence in our society. The study also suggests that political debates about how to reduce criminal violence in America should shift away from debates about the death penalty.<sup>342</sup> A similar study asking the views of leading criminologist was conducted almost 12 years later. In this study a survey of the world's leading criminologists was conducted asking for their expert opinions on whether the empirical research supports the contention that the death penalty is a superior deterrent. The findings demonstrated an overwhelming consensus among these criminologists

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<sup>341</sup> Ehrlich, Isaac. "The deterrent effect of capital punishment: A question of life and death." (1973).

<sup>342</sup> Radelet, Michael L., and Ronald L. Akers. "Deterrence and the death penalty: The views of the experts." *Journal of Criminal Law and Criminology* (1996): 1-16.

that the empirical research conducted on the deterrence question strongly supports the conclusion that the death penalty does not add deterrent effects to those already achieved by long imprisonment.<sup>343</sup> Former U.S. Attorney General Janet Reno says that, "I have inquired for most of my adult life about studies that might show that the death penalty is a deterrent, and I have not seen any research that would substantiate that point".<sup>344</sup>

However, there has been a surge of recent studies purport to show robust and precise estimates of a substantial deterrent effect of capital punishment. In such a context, a study on empirical evidence in death penalty debate, the researches assess the various approaches that have been used in this literature, testing the robustness of these inferences. They assess the time series evidence, comparing the history of executions and homicides in the United States and Canada, and within the United States, between executing and non-executing states and analyse the effects of the judicial experiments provided by the 1972 Furman and 1976 Gregg decisions and assess the relationship between execution and homicide rates in state panel data since 1934. Further they re-visit the existing instrumental variables approaches and assess two recent state-specific execution moratoria. In each case, the study revealed that previous inferences of large deterrent effects based upon specific samples, functional forms, control variables, comparison groups, or strategies were extremely fragile and that even small changes in specifications yield dramatically different results.

The fundamental difficulty facing the econometrician is that the death penalty - at least as it has been implemented in the United States - is applied so rarely that the number of homicides that it can plausibly have caused or deterred cannot be reliably disentangled from the large year-to-year changes in the homicide rate caused by other factors. As such, short samples and particular specifications may yield large but spurious correlations. They conclude that existing estimates appear to reflect a small and unrepresentative sample of the

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<sup>343</sup> Radelet, Michael L., and Traci L. Lacoek. "Do Executions Lower Homicide Rates: The Views of Leading Criminologists." *J. Crim. L. & Criminology* 99 (2008): 489.

<sup>344</sup> Former U.S. Attorney General Janet Reno at a Justice Department press briefing, January 20, 2000 cited in Mocan, H. Naci, and R. Kaj Gittings. "Getting off death row: Commuted sentences and the deterrent effect of capital punishment." *JL & Econ.* 46 (2003): 453.

estimates that arise from alternative approaches. Sampling from the broader universe of plausible approaches suggests not just reasonable doubt about whether there is any deterrent effect of the death penalty, but profound uncertainty - even about its sign.<sup>345</sup>

Another study merges a state-level panel data-set that includes crime and deterrence measures and state characteristics with information on all death sentences handed out in the United States between 1977 and 1997. Because the exact month and year of each execution and removal from death row can be identified, they were matched with state-level criminal activity in the relevant time-frame. Controlling for a variety of state characteristics, the paper investigated the impact of the execution rate, commutation and removal rates, homicide arrest rate, sentencing rate, imprisonment rate, and prison death rate on the rate of homicide. The results showed that each additional execution decreases homicides by about five, and each additional commutation increases homicides by the same amount, while an additional removal from death row generates one additional murder. Executions, commutations, and removals have no impact on robberies, burglaries, assaults, or motor-vehicle thefts.<sup>346</sup>

Examining the simultaneous deterrent effect of imprisonment and executions on homicide of the census years 1920 to 1960 showed the certainty of execution and homicide rates to be generally unrelated. Also contrary to the deterrence hypothesis, the significant negative bi-variate relationship between the severity of prison sentence and homicide rates found and in earlier investigations is shown to be a statistical artefact resulting from a failure to control for the effects of alternative legal sanctions and socio-demographic factors. It further revealed that neither imprisonment nor executions were found to have a significant deterrent effect on homicide.<sup>347</sup>

There are also studies that provide evidence on the deterrent effect of capital punishment. This particular study examined the deterrent hypothesis by using

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<sup>345</sup> Donohue, John J., and Justin Wolfers. "DP5493 Uses and Abuses of Empirical Evidence in the Death Penalty Debate." (2006).

<sup>346</sup> Mocan, H. Naci, and R. Kaj Gittings. "Getting off death row: Commuted sentences and the deterrent effect of capital punishment." *JL & Econ.* 46 (2003): 453.

<sup>347</sup> Bailey, William C. "Imprisonment v. The death penalty as a deterrent to murder." *Law and Human Behaviour; Law and Human Behaviour* 1, no. 3 (1977): 239.

county-level, post moratorium panel data and a system of simultaneous equation. The procedure they employed overcame common aggregation problems, eliminated the bias arising from unobserved heterogeneity, and provided evidence relevant for current conditions. The results suggested that capital punishment has a strong deterrent effect; each execution results, on average, in eighteen fewer murders – with a margin of error of plus or minus ten and further tests showed that results were not driven by tougher sentencing laws and were robust to many alternative specifications.<sup>348</sup>

In another study that supports the deterrence effect, Cass Sunstein and Adrian Vermeule argue that, if recent empirical studies' findings that capital punishment has a substantial deterrent effect are valid, consequentialists and deontologists alike should conclude that capital punishment is not merely morally permissible but actually morally required.<sup>349</sup> At the same time another article directly critiques Sunstein and Vermeule's moral argument. Acknowledging that the government has special moral duties does not render inadequately deterred private murders the moral equivalent of government executions. Rather, executions constitute a distinctive moral wrong which is purposeful as opposed to non-purposeful killing and a distinctive kind of injustice which is unjustified punishment. Moreover, acceptance of "threshold" deontology in no way requires a commitment to capital punishment even if substantial deterrence is proven. Rather, arguments about catastrophic "thresholds" face special challenges in the context of criminal punishment. Steiker also argues how Sunstein and Vermeule's argument necessarily commits one to accepting other brutal or disproportionate punishments and suggests that even consequentialists should not be convinced by this argument.<sup>350</sup>

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<sup>348</sup> Dezhbakhsh, Hashem, Paul H. Rubin, and Joanna M. Shepherd. "Does capital punishment have a deterrent effect? New evidence from postmoratorium panel data." *American Law and Economics Review* 5, no. 2 (2003): 344-376.

<sup>349</sup> Sunstein, Cass R., and Adrian Vermeule. "Is Capital Punishment Morally Required-Acts, Omissions, and Life-Life Tradeoffs." *Stan. L. Rev.* 58 (2005): 703.

<sup>350</sup> Steiker, Carol. "No, Capital Punishment Is Not Morally Required: Deterrence, Deontology, and the Death Penalty." *Stanford Law Review, Forthcoming* (2005).

There are similar studies which claim that an additional execution generates a reduction in homicide by five, an additional commutation increases homicides by four to five, and an additional removal brings about one additional murder.<sup>351</sup> Another study reveals that each execution results in, on an average, three fewer murders. It further says that capital punishment deters murders previously believed to be undeterrable: crimes of passion and murders by intimates. Further, it said that longer waits on death row before execution lessens the deterrence and that one less murder is committed for every 2.75-year reduction in death row waits. Thus, recent legislation to shorten the wait should strengthen capital punishment's deterrent effect.<sup>352</sup> In another research, it reveals that the impact of executions differs substantially among the different states in the U.S. Executions deter murders in six states while executions have no effect on murders in eight states and on the other hand executions increase murders in thirteen states. Additional empirical analyses indicate that there is a threshold effect that explains the differing impacts of capital punishment. On an average, the states with deterrence execute many more people than do the states where executions increase crime or have no effect and the study further claims that to achieve deterrence, states must execute several people.<sup>353</sup> Further, there are sociologists arguing that greater general deterrence and conformity to law, strengthening of taboos generally, and emphasis on the value of life and argues for systematic use of the death penalty as a part of rational state policy for the greater protection of society and a net saving of innocent lives.<sup>354</sup>

Fagan says that a recent cohort of studies report deterrent effects of capital punishment that substantially exceed almost all previous estimates of lives saved by execution and that some of the new studies go further to claim that pardons, commutations, and exonerations cause murders to increase, as does the trial-delay. He says that this putative life-life trade-off is the basis for

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<sup>351</sup> Mocan, H. Naci, and R. Kaj Gittings. "Getting off death row: Commuted sentences and the deterrent effect of capital punishment." *JL & Econ.* 46 (2003): 453.

<sup>352</sup> Shepherd, Joanna M. "Murders of passion, execution delays, and the deterrence of capital punishment." *The Journal of Legal Studies* 33, no. 2 (2004): 283-321.

<sup>353</sup> Shepherd, Joanna M. "Deterrence versus brutalization: Capital punishment's differing impacts among states." (2004).

<sup>354</sup> Lehtinen, Marlene W. "The Value of Life An Argument for the Death Penalty." *Crime & Delinquency* 23, no. 3 (1977): 237-252.

claims by legal academics and advocates of a moral imperative to aggressively prosecute capital crimes, brushing off evidentiary doubts as unreasonable cautions that place potential beneficiaries at risk of severe harm. He identifies numerous technical and conceptual errors in the "new deterrence" studies that further erode their reliability: inappropriate methods of statistical analysis, failures to consider several factors such as drug epidemics that drive murder rates, missing data on key variables in key states, the tyranny of a few outlier states and years, weak to non-existent tests of concurrent effects of incarceration, inadequate instruments to disentangle statistical confounding of murder rates with death sentences and other punishments, failure to consider the general performance of the criminal justice system as a competing deterrent, artifactual results from truncated time frames, and the absence of any direct test of the components of contemporary theoretical constructions of deterrence.

Re-analysis of one of the data sets showed that even simple adjustments to the data produce contradictory results, while alternate statistical methods produced contrary estimates. But the central mistake in this enterprise was one of causal reasoning: the attempt to draw causal inferences from a flawed and limited set of observational data, the absence of direct tests of the moving parts of the deterrence story, and the failure to address important competing influences on murder. He claimed that there was no reliable, scientifically sound evidence that pits execution against a robust set of competing explanations to identify whether it exerts a deterrent effect that is uniquely and sufficiently powerful to overwhelm the recurring epidemic cycles of murder.<sup>355</sup>

Observing at the various studies on case analysis of Supreme Court judgments one such research examines opinions by Supreme Court Justices of the most significant death penalty cases of the 1970s and 1980s [i.e., *Furman v. Georgia* (1972), *Gregg v. Georgia* (1976), *Woodson v. North Carolina* (1976), and *McCleskey v. Kemp* (1987)]. This research sought to determine the main justifications used by the Justices to support their own opinions; the

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<sup>355</sup> Fagan, Jeffrey. "Death and Deterrence Redux: Science, Law and Causal Reasoning on Capital Punishment." *Ohio State Journal of Criminal Law* 4 (2006): 255.

inconsistency of the Justices over these cases in issuing their opinions; factors that led to changes in opinions across time. The three types of inconsistency that were examined were issuing an opinion that is contradictory to opinions issued in earlier cases (e.g., a justice rules in favour of capital punishment in one case and then against it in another, or vice versa); issuing an opinion that appears to be contradictory to statements made in written opinions in earlier cases (e.g., a Justice votes in a way opposite to the principles he or she has put forth in previous cases); and ruling in a way that appears to violate a precedent or rule of the law. This research explained such inconsistencies to illuminate why capital punishment is still legal despite numerous problems with its application and these cases best illustrate why capital punishment persists.<sup>356</sup>

Even in the dearth of available literature in India regarding death penalty there is an important study on death penalty by analyzing Supreme Court judgments. One of the most comprehensive study of Supreme Court judgments in death penalty cases from 1950 to 2006 concluded that it is an abusive and inconsistent process, hanging people on the basis of shockingly inadequate evidence. The research describes the death penalty system as a "lethal lottery" claiming that "The fate of these death row prisoners is ultimately a lottery". It found that the death penalty was not limited to the "rarest of rare cases" as claimed by politicians and courts, "on the contrary, there is ample evidence to show that the death penalty has been an arbitrary, imprecise and abusive means of dealing with defendants". The main findings of this analysis were that firstly, there were errors in consideration of evidence. Most death sentences handed down in India are based on circumstantial evidence alone. In a 1994 Supreme Court appeal, the Court noted the main witness' memory constantly improved from his statement a few days after the incident to the trial three years later. Secondly, there was inadequate legal representation by the lawyers of the prisoners. Some other concerns included that lawyers ignored the key facts of mental incompetence, omitted to provide any arguments on sentencing, or failed to dispute claims that the accused was under 18 years of age at the

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<sup>356</sup> Robinson, Matthew B., and Kathleen M. Simon. "Logical and Consistent? An Analysis of Supreme Court Opinions Regarding the Death Penalty." *Justice Policy Journal* 3, no. 1 (2006): 59.



time of the crime despite evidence to the contrary. These also included challenging the insufficient safeguards on arrest, and provisions allowed for confessions made to police that was admissible as evidence in cases of 'terrorists'. Thirdly there was arbitrariness in sentencing. The report further revealed that in the same month, different benches of the Supreme Court have treated similar cases differently, with mitigating factors taken into account or disregarded arbitrarily.<sup>357</sup>

In the battle over the constitutionality of the death penalty during the past twenty years, the trial and appellate stages of the capital punishment process have been scrutinized by the courts and reworked by the state legislatures. There has been virtually no attention paid, however, to the clemency stage of that process. Now, as prisoners are condemned under newly approved procedures and as the moratorium on executions ends, capital clemency has gained importance as the last chance of relief for death row inmates who are exhausting their appeals. Although clemency is critical to the process of determining punishment in capital cases, executive authorities today exercise their power virtually free from procedural control by the courts. Such uncontrolled discretion permits practices that detract from the value of clemency as the state's final opportunity to assess the appropriateness of a death sentence. In this context, Leavy argues that procedural protections should be extended to the clemency stage of the capital punishment process for clemency to fulfil its expected role in determining punishment and to satisfy the high procedural standards demanded by the Supreme Court when life is at stake. It also recommends procedural safeguards that would enhance the amount and accuracy of information available to the clemency authority, without infringing on the substantive discretion inherent in the clemency power.<sup>358</sup>

Another study which centres on the delay in death sentence appeals studied fourteen states in the U.S. namely Arizona, Florida, Georgia, Kentucky, Missouri, Nevada, New Jersey, North Carolina, Ohio, South Carolina,

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<sup>357</sup> Lethal Lottery: The Death Penalty in India - A study of Supreme Court judgments in death penalty cases 1950-2006

<sup>358</sup> Leavy, Deborah. "A Matter of Life and Death: Due Process Protection in Capital Clemency Proceedings." *Yale LJ* 90 (1981): 889.

Tennessee, Texas, Virginia, and Washington examined every capital case resolved on direct appeal by the court of last resort ("COLR") between January 1, 1992 and December 31, 2002. This generated a database of 1,676 cases. The descriptive results indicated that the frequency of COLR decisions by year reflects national homicide trends. The number of capital appeals resolved annually rose steadily from 1992 to 1997 and declined thereafter. Further it said that three-quarters of the appeals upheld the capital conviction and sentence. The reversal rate was 26.3 per cent. Six out of ten reversals overturned the sentence alone. In eleven per cent of the cases the conviction was overturned. Virginia is the most efficient of all states in the study, with a median processing time from sentence to COLR ruling of 295 days. Measuring from notice of appeal to COLR decision, Georgia, at 297 days, is the fastest court of last resort.

Ohio, Tennessee, and Kentucky were the least efficient COLRs, consuming respectively, 1,388, 1,350 and 1,309 days. Ohio reduced its time consumption by 25 per cent by eliminating intermediate appeals court review.<sup>359</sup> Similarly there has been a study which centres on reversal of death sentences. Reversal of death sentence would mean acquittal in the crime or commutation of the death sentence and sent to life imprisonment. To look at the cases of reversals, in a certain study, data was collected on the appeals process for all death sentences in the U.S. states between 1973 and 1995. The reversal rate was high, with an estimated chance of at least two-thirds that any death sentence would be overturned by a state or federal appeals court. Multilevel regression models fit to the data by state and year indicate that high reversal rates are strongly associated with higher death-sentencing rates and lower rates of apprehending and imprisoning violent offenders.<sup>360</sup>

As mentioned earlier, there are several actors who play a role in the process of death penalty. There are studies that retreat on the problems of the death

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<sup>359</sup> Latzer, B. A. R. R. Y., and J. N. G. Cauthen. "Justice delayed." *Time consumption in capital* (2007).

<sup>360</sup> Gelman, Andrew, James S. Liebman, Valerie West, and Alexander Kiss. "A Broken System: The Persistent Patterns of Reversals of Death Sentences in the United States." *Journal of Empirical Legal Studies* 1, no. 2 (2004): 209-261.

penalty from the perspective of jurors. While jurors have always occupied an esteemed position in the broader criminal justice system in the United States, in capital cases the responsibility of jurors is even more critical as they decide whether the defendants should live or die. Even with this unique authority in capital cases, they are treated less than respectfully. Frequently, they are kept in the dark regarding key information about the case and are often barred from serving based on their beliefs or their race. Deciding guilt beyond a reasonable doubt is not easy.

This research examines the ways in which the death penalty fails jurors and, in turn, fails as a system of justice. It looks at the distorted way in which jurors are selected in capital cases and describes how critical information is often withheld from the jurors, and how the evidence they do hear is often unreliable. Further, it describes how the complex rules of death sentencing procedures ensure a sense of frustration and emotional pain as jurors are asked to make one of the most difficult choices of their lives. The findings reveal that jurors' colour and gender often play a key role in whether they are chosen for a death penalty trial. In recent Gallup Polls, far more blacks and women oppose the death penalty than white males, making it more likely that they will be excluded from capital juries. Similar considerations work against those with certain religious beliefs. Additionally, it reveals that jurors in capital cases are not representative of the population as a whole. Those allowed to serve are more pro-prosecution and conviction-prone than those who are excluded. It says that those jurors who are selected might expect a high-quality pursuit of justice on a level playing field, but the truth is often hidden from them: prosecutors withhold critical evidence and defence attorneys fail to investigate basic facts.

Far beyond their traditional role of determining guilt and innocence, jurors are instructed to weigh the terrible aspects of the crime against any redeeming qualities of the defendant. From such an abstract comparison they are expected to arrive at a decision with life and death consequences. Further jurors' emotions are acutely played upon as the most gruesome aspects of the crime are displayed in graphic detail, and as the victim's family are pitted against the

defendant and his family. They are told nothing about more heinous cases in the same jurisdiction where the death penalty was not even sought, much less imposed. The report also claims that slowly, jurors are beginning to react to the flagrant flaws in this system. Some have offered affidavits to judges and governors about what they would have done had they known the whole truth. In increasing numbers, they are voting for life sentences, given what they have seen and heard about abuses in the system. As one juror in Louisiana said after sentencing someone to death who was later exonerated, "I don't think many jurors feel comfortable playing *Russian Roulette* with people's lives. Jurors are recognizing that life in prison is perhaps the only responsible way to vote." <sup>361</sup>

Another similar study reveals that death qualification may bias capital juries not only because it alters the composition of the group "qualified" to sit, but also because it exposes them to an unusual and suggestive legal process. The subjects were randomly assigned to one of two conditions in which they were exposed to standard criminal voir dire that either included death qualification or did not. Subjects who were exposed to death qualification were significantly more conviction prone, more likely to believe that other trial participants thought the defendant was guilty, were more likely to sentence him to death, and believed that the law disapproves of death penalty opposition. Several psychological features of the death-qualification process are suggested to account for the biasing effects. <sup>362</sup>

In another study, with jurors it revealed that potential jurors in capital cases are often queried on their attitudes toward capital punishment. The extreme groups say they would never or they would always approve capital punishment, given a guilty verdict. In many jurisdictions, these two groups are routinely excluded from juries deciding whether the defendant is guilty in capital cases. This exclusion persists even when the potential jurors say they could be fair and

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<sup>361</sup> Richard C. Dieter, *Blind Justice: Juries deciding life and death with only half the truth*, A Death Penalty Information Centre Report, Washington D.C. October 2005

<sup>362</sup> Haney, Craig. "On the selection of capital juries." *Law and Human Behaviour* 8, no. 1 (1984): 121-132.

impartial in deciding guilt or innocence. The current study shows that this exclusion creates a bias that almost certainly works against the defendant.<sup>363</sup>

Concurrently, family members are also one of the actors in this process of death penalty. Kings argues that the death penalty violates the constitutional rights of the family members of death row prisoners. It establishes that the Americans are entitled to a fundamental “right to family,” based on a long history of Supreme Court jurisprudence that has established substantive due process rights such as the right to marry, to use contraceptives, to have children, to make educational decisions for children, and to make decisions about how to configure one’s household. Further it contends that the death penalty interferes with the constitutional right to family by harming the prisoner’s family members, whether or not the prisoner is ever executed and examines each of the justifications for the death penalty in the context of the myriad problems associated with it, such as the conviction of innocent people, racial bias, unfairness in the prosecution of death penalty cases, unequal access to attorneys, and the higher costs of capital punishment compared to long-term incarceration. King argues that the problems associated with the death penalty cannot survive a strict scrutiny analysis, especially when alternatives, such as long-term incarceration, can adequately accomplish the death penalty’s purported goals of retribution, deterrence, incapacitation, and restoration of social order.<sup>364</sup>

Prisoners under the sentence of death also create unique problems for the medical professionals who are responsible for providing health services to nearly two million persons incarcerated in jails and prisons throughout the United States.<sup>365</sup> Though there are good arguments against physicians’ participation in executions, physicians should be allowed to make their own decisions about whether they will participate, and professional medical

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<sup>363</sup> Kadane, Joseph B. "Juries hearing death penalty cases: Statistical analysis of a legal procedure." *Journal of the American Statistical Association* 78, no. 383 (1983): 544-552.

<sup>364</sup> King, Rachel C. "No due process: How the death penalty violates the constitutional rights of the family members of death row prisoners." *bepress Legal Series* (2006): 1584.

<sup>365</sup> Beck, A. J., & Karberg, J. C. (2001, March). Prison and jail inmates at midyear 2000 (Bureau of Justice Statistics Bulletin NCJ 185989). Washington, DC: U.S. Department of Justice, Office of Justice Programs.

organizations should not flatly destroy the careers of those who do.<sup>366</sup> Since the advent of lethal injection as a method of execution there has been an increasing escalation of executions in the United States. While most health professions have issued position statements that officially denounce the participation of their members, the actual involvement of health professionals in executions has increased. LeGraw and Grodin found that the guidelines regarding the limits or the ethical parameters of physician participation in executions by lethal injection have been ignored by state legislatures, have been ineffective in influencing public opinion, and have been largely unenforced because professional associations have neither the power to revoke a health professional's license nor the ability to prevent its members from violating its guidelines. In addition, there are broader ethical implications in the use of an overdose of drugs to effectuate the death penalty and simply refusing to participate does not address such issues. Lethal injection execution is a violation of medical ethics because it utilizes medical skills and knowledge to give judicial homicide the appearance of painless clinical competence and humanity, which in turn has insulated such executions from constitutional scrutiny and public attack. The authors maintain that, because all other methods have routinely been acknowledged to be painful and cruel, without lethal injection, the death penalty in the United States would be unlikely to survive. Therefore, the complicity of the health professionals in this continued violation of human rights extends beyond the actual participation of licensed practitioners.<sup>367</sup>

Recent court rulings addressing the constitutionality of United States' lethal injection procedures have taken as a given the faulty notion that doctors cannot and will not participate in executions. As a result, courts have dismissed the feasibility of a remedy requiring physician participation, and openly expressed suspicion of the motives of lawyers who would propose such a remedy. This research exposes two myths that have come to dominate the capital punishment discourse: first, that requiring physician participation would grind the

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<sup>366</sup> Nelson, Lawrence, and Brandon Ashby. "Rethinking the Ethics of Physician Participation in Lethal Injection Execution." *Hastings CentreReport* 41, no. 3 (2011): 28-37.

<sup>367</sup> LeGraw, Joan M., and Michael A. Grodin. "Health professionals and lethal injection execution in the United States." *Human Rights Quarterly* 24, no. 2 (2002): 382-423.

administration of the death penalty to a halt because doctors cannot participate; and second, that advocating for such a requirement is a disingenuous abolitionist strategy as opposed to a principled remedial argument. This research demonstrated through a review of available research and recent litigation, doctors can, are willing to, and in fact do regularly participate in executions, though often not in the manner necessary to ensure humane executions. Lawyers for death row inmates have argued that skilled anaesthetic monitoring by trained medical professionals is a necessary component of a constitutional three-drug lethal injection protocol. In response, state officials have strategically emphasized the positions of national medical associations (the ethical guidelines of which are not binding on doctors) and exaggerated their inability to find willing doctors. The state has also exploited the activism of the death penalty abolitionist movement, which has long decried physician participation in executions.<sup>368</sup>

In another true case vignette describes a death row inmate who overdosed on sedative medication 48 hours before his scheduled execution and was rushed to a university hospital for care. After treatment and stabilization, he was returned to prison where he was immediately executed by lethal injection. This clinical case raises several professional, legal, and ethical issues, including how general medical care should be provided to the death row inmate and how this care might be influenced by the increasing proximity of execution. This study also presented new guidelines for medical care on death row. For instance, when execution is not imminent and the prisoner-patient requires comprehensive, hospital-based treatment, decisions about the care-plan should be the exclusive preserve of the patient's attending health professionals, who act in accord with the prisoner-patient's consent. The aim of this study is that guidelines such as these balance the physician's professional obligations to the inmate as a patient against the requirements of the criminal justice system.<sup>369</sup>

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<sup>368</sup> Alper, Ty. "Truth about Physician Participation in Lethal Injection Executions, The." *NCL Rev.* 88 (2009): 11.

<sup>369</sup> Eugene V. Boisaubin, Alexander G. Duarte, Patricia Blair and T. Howard Stone, "Well Enough to Execute": The Health Professional's Responsibility to the Death Row Inmate. *J Correct Health Care* 2004 11: 31

#### **2.5.4. MORAL, ETHICAL AND POLITICAL ASPECT OF DEATH PENALTY**

Hood points out that there is nothing new to say about death penalty, as the arguments essentially remain the same.<sup>370</sup> However the nature of the debate has moved on. Focusing on the last 25 years of debate, this research examined the changing nature of death penalty arguments in six specific areas: deterrence, incapacitation, caprice and bias, cost, innocence, and retribution. The analysis suggested that social science scholarship is changing the way Americans debate the death penalty. Particularly when viewed within a historical and world-wide context, these changes suggest a gradual movement toward the eventual abolition of capital punishment in America.<sup>371</sup>

While examining a population that can offer first-hand empirical insights about criminal motivation and the efficacy of sanctions - prison inmates themselves, a study was conducted with 309 inmates at a close-security prison in southwest Ohio. Results indicated that 43% supported the death penalty but that support softened considerably when alternatives such as “true” life were offered. Based on their personal experiences, much of the opposition to capital punishment (53%) stemmed from the inmates’ beliefs that executions do not deter violent crime. However, that opposition dropped to 34% when the respondents were asked if the death penalty should apply to the physical and sexual abuse of children. This study also indicated that the softness issue is a double-edged sword, eviscerating substance from both ends of the death penalty spectrum, and points to the need for a more concerted attention regarding the precariousness of death penalty opposition. The study also looked at what the inmates thought are the reasons for their beliefs. Their responses suggested that inmate attitudes derive from knowledge gained through personal experiences and insights rather than an affective ideological orientation. Their opposition did not appear to stem from the fear that they themselves will be executed or from profound empathy for their fellow captives who will.

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<sup>370</sup> FBA, Roger Hood CBE QC Hon DCL, and Carolyn Hoyle. *The death penalty: A worldwide perspective*. Oxford University Press, USA, 2008.

<sup>371</sup> Radelet, Michael L., and Marian J. Borg. "The changing nature of death penalty debates." *Annual Review of Sociology* (2000): 43-61.



Few of these men have taken a life and those who have are no more likely to oppose the death penalty than to support it. Rather, their experiences have convinced them that executions do not deter violent crime. They argue that most capital crimes are unplanned and that the criminal justice system is fundamentally flawed, opinions shared by other experts in the field.<sup>372</sup> The research also rightly pointed out that the inmates' cynicism regarding the lack of fairness and effectiveness of the criminal justice system may sound like sour grapes or standard inmate fare, but the survey responses indicate that these attitudes are shaped primarily from informed experience and observation rather than self-indulgent bitterness toward their captors. The inmates saw the prison population every day, and it looks remarkably like them—poor, undereducated, and disenfranchised. Many have experienced a public defence system that is underfunded and understaffed and decry the practice of plea bargaining as being a “charade” and “state-funded blackmail.” In sum, these inmates occupy a unique position in the criminal justice system from which valid critiques of the system's policies and practices can be made, and which society can ill afford to dismiss.<sup>373</sup>

Concentrating on the waning of capital punishment in the immediate post-World War II period and its resurgence in the 1980s and 1990s LaChance argues that State killing was compatible with a cultural consensus that social problems could be solved only by individual acts of will and not by large-scale social engineering. The revival of the death penalty reflected Americans' discomfort with the way that modern, utilitarian approaches to punishment, which peaked in the years after World War II, failed to take individuals seriously, prioritizing social goals over individual autonomy. In this context, capital punishment legitimized, rather than simply masked, the state's withdrawal of its claim to being the central provider of social, economic, and personal security. It denied, rather than endorsed, the state's role as a dispenser of traditional morality. Contradictory understandings of the role of the killing

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<sup>372</sup> Radelet, Michael L., and Ronald L. Akers. "Deterrence and the death penalty: The views of the experts." *Journal of Criminal Law and Criminology* (1996): 1-16.

<sup>373</sup> Wilcox, Norma, and Tracey Steele. "Just the facts: A descriptive analysis of inmate attitudes toward capital punishment." *The Prison Journal* 83, no. 4 (2003): 464-482.

state as normatively and descriptively strong and weak worked, moreover, to sustain the practice of capital punishment in the United States.<sup>374</sup>

Philosophers and legal theorists have traditionally analysed capital punishment as a moral or ethical problem. However, Thurschwell has criticized the moral-philosophical approach and argued that a far more fruitful way of analyzing the institution of the death penalty is to approach it from a political-philosophical perspective - in particular, by viewing it in its relation to the concept and practice of sovereignty that undergirds the understanding of the political state. Thus he argues that capital punishment is a component of the essential attribute political sovereignty: the sovereign's right to the death of its citizens. It is the sovereign alone that has not only the power but the right to kill for violation of its edicts, and to force its citizens to sacrifice their lives in defence of its own life through military conscription. He further argues that approaching capital punishment as an essential component and expression of sovereignty provides more conceptual and practical insight into the contemporary vagaries of capital punishment than does the moral perspective thus concluding how the sovereignty perspective sheds light on a wide range of theoretical, political, and legal-doctrinal phenomena occurring within the sphere of capital punishment today that remain entirely mysterious from the moral perspective. These include, among others, the United States' stubbornly retentionist position in the face of the accelerating trend toward abolition among other nations, the legal-doctrinal conundrums that arise when capital defendants waive their right to defend and volunteer for execution sometimes referred to as state-assisted suicide, and the fact that the heated controversy over the use of international law in the Supreme Court's interpretation of the United States Constitution first emerged in a capital case - *Roper v. Simmons*, in which the Supreme Court declared it unconstitutional to employ death as a punishment for crimes committed by juveniles.<sup>375</sup>

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<sup>374</sup> LaChance, Daniel. "Condemned To Be Free: The Cultural Life of Capital Punishment in the United States, 1945-Present." PhD diss., UNIVERSITY OF MINNESOTA, 2011.

<sup>375</sup> Thurschwell, Adam. "Ethical Exception: Capital Punishment in the Figure of Sovereignty." *South Atlantic Quarterly* 107, no. 3 (2008): 571-596.

## **2.6. SUMMARY AND RESEARCH GAPS**

I have made an attempt to discuss the structure, category and phenomenon such as the prison, prisoners and punishment respectively in the realm of social theories. This was with an aim to conceptualize the main concerns of the study. In addition to this, I have given a very brief overview of the international legal framework. Furthermore, this chapter has tried to highlight the central theme of the study by discussing the concepts of human rights and dignity. Most of the studies have been carried out in the United States. There is a discussion on the status of death penalty in the U.S. and around the world. Further researches indicate the marginalised, vulnerable and ethnic minorities on death row in the U.S. In addition to that, there are several arguments for and against death penalty with various actors in play such as lawyers, jurists and doctors. There is also an ethical, moral and political dimension to the aspect of death penalty. There has been enough written about the concept of dignity in relation to death penalty – the act itself but there has been no researches to explore the dignity of prisoners on death row. I deduce that exploring the lives of prisoners on the death row in this manner would reveal substantial insights into the profile of the prisoners who are on death row, the way they have been given death sentence according to them and finally their everyday life on the death row from the perspective of human rights. The present study seeks to address this knowledge gap.

The “death penalty” as a whole has been the subject of much literature but death penalty in India has not been the subject of much academic writing. Therefore it is a formidable task to review the available literature on death penalty. Secondly, some of the literature does not represent the current status and operation of death penalty in India. The information it contains has changed or is outdated. Some of the literature on death penalty in many countries around the world including India was written in the 1980s and hence, does not represent the current status and operation of the death penalty in India. Thirdly, some studies have dealt with the current state of the death penalty in the world with reference to India but do not provide enough detail on certain aspect of the death penalty in India. For e.g. Hood does not provide enough

detail especially on the death row phenomenon in India, as he does for other regions. He also fails to deal with the issue of alternatives to the death penalty and to address the question of judicial abolition of the death penalty – whether it guarantees respect for the rule of law and the right to life in enforcing the law. Fourthly, some studies which have dealt partly with death penalty in India generally have not provided the reader with detailed research on the death row phenomenon in India. For example, Schmidt addresses the question on whether or not a continued stay on death row constitutes cruel, inhuman, or degrading treatment. However, he focuses only on the judicial decisions on the death row phenomenon in India, without discussing the death row situation in India. Fifthly, some studies have dealt with the human rights implications of the death penalty, but do not go further to address the issue whether as a result of these implications the death penalty should be retained or abolished. In addition, there have not been studies on the death penalty in India that capture the voice of the prisoners on the death row. This study therefore will also attempt to address the limitations in previous the literature on death penalty in India with specific reference to human rights.

In the past one year, death penalty has been much of a debate in India with a few mercy petitions being rejected and with two executions - one in the end of the year 2012 and the second in the beginning on 2013. A lot has been written in the Indian media regarding the death sentence. I suspect that exploring the voices of death row prisoners would divulge considerable insights into the nature and debate of death penalty in India from the perspective of a marginalised and excluded category – the prisoners themselves. It is also one of my aims to capture some of the gaps in the existing literature especially bringing out the voices of prisoners on death row.

## **CHAPTER THREE: THE ‘RHYTHM’ OF METHODS USED**

### **3.1. INTRODUCTION**

It goes without saying that the death penalty constitutes a sociological problem. However the subtle fact is that the voices of death row prisoners are unheard which deepens the existing problem. From time to time there are reports in the media concerning the prisoners on death row but mostly the reports are narratives by prison officials.<sup>376</sup> There is also a substantial body of literature pertaining to death penalty. Most of these literatures constitute law books and academic research in the United States. A few studies have been undertaken from the point of view of prisoners on death row, a perspective which would suggest studies with a qualitative approach. This study thus tries to illuminate its central questions: “Are human rights and dignity of prisoners protected while confronting the criminal justice system and while surviving the death row?” The more specific contextual questions are: What are the perception and experiences of social life of prisoners on death row? What are the stages that prisoners experience before being sentenced to death? How do prisoners perceive and experience the treatment received by the criminal justice system during these stages? How do prisoners perceive and experience their conditions on the death row? How do prisoners on death row perceive and experience dignity? The study involves a number of actors like prisoners on death row, family members of the prisoners, the prison staff, judges, lawyers and media personnel who posit themselves within this study both methodologically and in the framework of interpretation that I have adopted.

My own embedding within this study has had many roles. Having worked as a social worker in the prisons, I was not alien to the prison setting. At the same time, I carry an experience of being a researcher within the criminal justice system. Hence I have had dual roles of being both a social worker and a researcher which required some amount of distinction which is described in the

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<sup>376</sup> Dastane Sarang and others “Ajmal Kasab loses composure at gallows, seeks forgiveness” Times of India Nov 22, 2012. See [http://articles.timesofindia.indiatimes.com/2012-11-22/mumbai/35301740\\_1\\_ajmal-kasab-yerwada-jail-mumbai-s-arthur-road](http://articles.timesofindia.indiatimes.com/2012-11-22/mumbai/35301740_1_ajmal-kasab-yerwada-jail-mumbai-s-arthur-road) [accessed on 23rd November 2012]

chapter on ethics related to the study. This chapter begins with the discussion on the research phase which includes the time-line and the details of each phase to orient about the study. It further discusses the methodological strategy which includes the description of the research paradigm used, the conceptualisation of research design and the sampling procedure. In addition to that, it gives a description of the permission received and how it affected the initial sampling. This chapter also describes the instrument used in the study and the testing of interview guides before going for field work. Furthermore, it describes the data collection procedure in detail which comprises of the interview setting, training of translators, entry into the prison and handling of data after the interview. Besides that it describes the methodological interpretation and framework of the study and how the theories used in the study are deeply embedded within the methodological strategies and finally it also discusses the limitations of the methodology and me as a researcher. This chapter thus sets the '*rhythm*' of the methods used.

### **3.2. RESEARCH PHASES**

The research phase is included to orient the readers of the various phases of the study with reference to the time frame. The study as any other study began with a project proposal. This was revised again in due course and literature was reviewed during this time. At the same time, the process for the permission to gain access to the prison began. Quite in the beginning of the research, I presented a paper at an international criminology conference. This paper was the findings of my previous death row study<sup>377</sup> at a conference. Furthermore, the interview guides were developed and was sent out for peer review. These instruments were tested among friends and colleagues in Vienna. Methodological and ethical concerns were discussed in seminars conducted by my supervisor. After receiving permissions from four states, I went to India for data collection. During the data collection, I presented the ethical challenges faced in the prison setting in a social science university. After finishing the data collection, I briefed my supervisors and colleagues about the fieldwork.

Then began the phase of analysis. During this phase, I also presented two papers at international conferences. One was a paper on Economic Social Cultural Rights of Prisoners at the Erasmus Mundus University, Rotterdam. I wrote this paper to distance myself from the topic of death penalty yet this paper was embedded in the field of criminal justice. I also presented a paper on the “Perception of death row prisoners on the role of media” which was based on the initial findings of the study. This was also a time to read literature from Tata Institute of Social Sciences (TISS) which has several books and researchers in the area of criminal justice system in India. Analysing and drafting the report took the most amount of time. A part of the findings and the theoretical framework was presented in the PhD School organised by the AHRI-COST Network and *Initiative Kollege*. The first draft was submitted in the beginning of January 2013. The table (Table 2) below provides an overview of the research phase with reference to the time-frame.

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<sup>377</sup> George, Reena Mary *Death penalty: A Human Rights Perspective* University of Mumbai, September 2009

**Table 2: Overview of research phase**

Phase	Details	Time frame
Proposal submission	The proposal for this study was submitted in September 2009. The study commenced in March 2010	30th September 2009
<i>Initiative Kollege (IK)</i>	Joined the <i>IK</i>	March 2010
Permission	The permission for the study was sent as soon the proposal was revised	April 2010
Paper presentation	British Criminology conference “Death Penalty: A Human Rights Perspective”	July 2010
Methodological challenges	The draft proposal and the field work methodology and ethical challenges were discussed with both my supervisors. It was also elaborately discussed in the “PhD Seminar on Global Sociology” conducted by Prof. Dr. Christoph Reinprecht.	December 2010



Instruments	The instrument for the study was an interview guide. This was sent out for peer-review	December 2010
Testing the instruments	On suggestion from my supervisor, I tested the questionnaire among friends and colleagues. The pilot study was conducted in Vienna among peers who played 'theatre' by being prisoners on death row. The instruments were revised after testing.	January 2010
Fieldwork	I was in touch with my Supervisors updating them about the progress of the field work and the challenges faced during the field work.	February 2011 to July 2011
Ethical concerns Paper presentation	Mahatma Gandhi University	May 2011
Post field work and before draft report	The fieldwork was discussed with my supervisors. This was additionally discussed also the "PhD Seminar on	Aug 2011

	Global Sociology” conducted by Prof. Christoph Reinprecht in the summer term.	
Paper presentation	“Economic Social Cultural Rights of Prisoners in India”, Erasmus Mundus University, Rotterdam, Netherlands	November 2011
Paper presentation	“Perception of death row prisoners on the role of media” Tata Institute of Social Sciences, Mumbai	March 2012
Paper presentation	PhD School of AHRI-COST Network and IK. Presentation of one of the findings and theoretical framework	September 2012
Report writing	Analyzing the data and report writing	August 2011 - February 2013

### **3.3. RESEARCH DESIGN**

In order to explore the way prisoners on death row experience and perceive their lives, world and make meaning of that, a design which encapsulates their lives was implemented.<sup>378</sup> This approach allowed access to contents that were not anticipated a priori as well as exploration of the research topic from the standpoint of the research population. <sup>379</sup> Qualitative methodology and the phenomenological semi-structured interview were used to collect and analyse information from the participants. This study employed a qualitative approach using the theories of symbolic interactionism and phenomenology. Data from the prisoners was collected by visiting the prisoners on death row. The prisoners who wanted to talk more than once were allowed to talk to me since I went to each prison for longer duration. The interviews were open-ended interviews which also sought to map the process leading to death, their perception and experience on social and legal stages as prisoners on death row and the treatment they received on death row.

#### **3.3.1. THE QUALITATIVE RESEARCH PARADIGM**

This study employed a qualitative approach. The label 'qualitative research' is a generic term for a range of different research approaches. These differ in their theoretical assumptions, their understanding of their object of investigation and their methodological focus. The traditions of symbolic interactionism and phenomenology tend to pursue subjective meanings and individual sense. Strauss and Corbin defined the qualitative approach as research about a person's life, lived experiences, behaviours, emotions, and feelings as well as about organizational functioning, social movements, and cultural phenomena. The work is interpretive and "carried out for the purpose of discovering concepts and relationships in raw data and organizing these into a theoretical explanatory scheme". Similarly they said that in qualitative research, "It is not the researcher's perception or perspective that matters, but rather how the

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<sup>378</sup> Briggs, Charles L. *Learning how to ask: A sociolinguistic appraisal of the role of the interview in social science research*. No. 1. Cambridge University Press, 1986.

<sup>379</sup> Silverman, David. *Interpreting qualitative data: Strategies for analyzing talk, text and interaction* London Sage Publications Limited, 1993.

research participant sees events or happenings".<sup>380</sup> The qualitative research design endeavours to elicit the data into findings based on the experiences and perceptions of prisoners on death row.

### **3.3.2. PARTICIPANTS AND 'REACHING' THE PARTICIPANTS**

India is primarily divided into six regions: Central, Eastern, Northern, North-Eastern, Southern and Western region. The initial sampling scheme was to choose one state from each region based on certain criteria<sup>381</sup> such as area, capital, population, language, rate of literacy and sex ratio. This data was obtained from the Census Data of India, 2001. In addition to this data, particulars about each prison such as that of the prison population, number of custodial deaths in the prison, number of prisoners on death row, educational status, religion and caste were taken from the Prison Statistics 2007.<sup>382</sup> At the same time, the crime-rate in India has increased in crimes such as murder, rape, kidnapping and abduction, dacoity, robbery, riots, burglary and housebreaking. The average increase in these crimes is 253.84%<sup>383</sup>. Hence it was assumed that there will be an increase in the prisoners on death row than what is mentioned in the existing Prison Statistics Data, 2007<sup>384</sup>. According to the Prison Statistics 2007,<sup>385</sup> 21 prisons housed 186 prisoners on death row shown in the table (Table 3) below.

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<sup>380</sup> Strauss, Anselm, and Juliet Corbin. *Basics of Qualitative Research*. Thousand Oaks 1998.

<sup>381</sup> See Appendix 1: Sampling criteria

<sup>382</sup> National Crime Records Bureau. Prison Statistics India 2007 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

<sup>383</sup> National Crime Records Bureau "Trend of some major crime heads over the years 1953-2008" New Delhi 2008 See <http://ncrb.nic.in/cii2008/cii-2008/Snapshots-5308.pdf> [accessed on 28th April 2010]

<sup>384</sup> National Crime Records Bureau. Prison Statistics India 2007 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

<sup>385</sup> National Crime Records Bureau. Prison Statistics India 2007 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

**Table 3: Prisons and prisoners on death row (Prison Statistics 2007)**

Sr. No.	Region	No of prisons housing prisoners on death row	No of prisoners on death row
1	Eastern	4	36
2	Western	3	33
3	Northern	6	48
4	Southern	3	33
5	Central	2	29
6	North Eastern	3	7
	TOTAL	21	186

Based on this information, I used purposive sampling to create a sample (Table 4) for the study. The following states were selected based on the sampling. The sampling criterion is annexed at the end of the study.<sup>386</sup>

**Table 4: Initial chosen sample**

Sr. No.	Region	State	No of prisoners	Rationale
1	Eastern	Bihar	14	State with lowest rate of literacy
2	Western	Maharashtra	29	Financial capital of India
3	Northern	Delhi	9	National capital of India
4	Southern	Kerala	5	State with highest rate of literacy
5	Central	Chhattisgarh	7	A newly formed state with the highest number of scheduled caste (ethnic minority)
6	North Eastern	Assam	2	North eastern state with highest number of prison population
Total			66	

<sup>386</sup> See Appendix 1: Sampling criteria

As soon as I had my sample states, the process of permission for the study began. A letter seeking permission was sent to the Home Ministry, Government of India in April 2010. I made enquiries on the phone after two weeks. The officer-in-charge told me that permission cannot be obtained centrally for all the states, hence I must write to individual states. He then asked me, “How can you do a study on death penalty? It is unconstitutional to do such a study and you are bringing shame India in the international arena.” I responded that it is purely an academic study and I have no intentions of inviting any to shame my country.

A colleague<sup>387</sup> from Mumbai advised me that I should send letters to all the states in India instead of sending it only to the states which are in my ‘sampling list’. Hence letters were sent to all the 21 states which housed death penalty prisoners in India in May 2010. By October 2010, I received the first permission to conduct the study. South Indian states are known to be more ‘progressive’ and it was somehow proved with the way I received permission for the study. I received permission from three south Indian states in spite of the fact that only one state was originally in my sample. I received permission from the North, North-East and West. However Central and Eastern Indian states refused to reply to the permission letter or even respond to my telephonic enquiries. There were several conditions attached to the permission letter such as not to sketch prison or prisoners, not to take finger prints of prisoners, not to take personal details of prisoners and not to photograph prisoners or prison, that an interview with the convict has to be in the presence of a gazetted officer and finally that I should abide by the rules of the prison according to the prison manual of the state.

The permission was given by the Inspector General (IG) Prisons or the Home Ministry of each state. I received four permissions before I went to India and two while I was in India. In one of these two states, I had to visit the IG’s office six times to finally receive my permission. While waiting at the IG

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<sup>387</sup> Advocate Vijay Hiremath – Bombay High Court

office, guards or officers asked me questions such as “Why do you want to research about death row prisoners; why don’t you go research about poor people in the slums?” Also another question I faced was, “Why are you studying in Vienna if you want to research about prisoners in India?”

The next step after receiving permission letters was to contact the prison superintendent to fix a date for my visit. Once the dates were fixed, I went to this particular state. My base was always Mumbai - my hometown. Even when I had fixed appointments there were states, where I had to wait outside the prison waiting to be called ‘inside’ the prison gate. The maximum I have stood outside the prison was four and a half hours and the minimum was fifteen minutes. In one of the prisons where I had an appointment, I was asked to wait for over two hours and when I was finally called ‘inside’ the main gate, the prison superintendent told me that I should go back and come the next day without giving me any specific reason for this change. I tried to reason with him that I had limited time and my return journey to Mumbai and later to Vienna was fixed, hence I have to finish the interviews within this period. He still sent me back. I went outside and called the Inspector General Prisons of this particular state and told him that he should speak to the Superintendent to let me in and conduct the interviews.

The IG asked me to call him in 20 minutes. I did. He asked me to go back to the prison and that he had talked to the Superintendent. I went back and the Superintendent asked me, “So you, now complained to the IG that I am harassing you?” I told him that “I just informed him about the situation and did not in particular mention about any harassment.” I was allowed to conduct interviews the same day. There were also very positive experiences where Superintendents made an officer or a warder<sup>388</sup> ‘in charge’ of helping me (take me to the death row, arrange tables, bring the prisoner) to make the process easier. But again, Indian prisons have a shortage of staff and I would not blame any prison official of ‘non-cooperation’ with me. In the end, I was able to do all the interviews for the permissions I received.

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<sup>388</sup> Note: A trusted convict incharge of certain duties in the prison.

I conducted interviews in Punjab, Maharashtra, Tamil Nadu, Karnataka, Kerala and Assam. All these states are politically and culturally diverse. While Punjab has one of the lowest sex ratio among all states in India, Kerala has the highest literacy rate and sex ratio among all states in India. I also wanted to choose the states based on these criteria but that never materialised because I was unable to obtain permission from certain states. This triggered me to just conduct the interviews in the States that gave me the permission.

The final sampling list was not the purposive sampling that I formulated; it was entirely based on mainly the permission I received from the state. During this phase two regions (Eastern and Central) were excluded. At the same time, I had three states in the Southern region. Three states among my current sample corresponded to the original purposive sampling. In Punjab, only 2 out of 3 prisons housed death-row-prisoners and hence one prison was automatically omitted. In Tamil Nadu, I could only visit 5 prisons from the 7 prisons that I had received permissions for. Out of these, I could not visit Palayamcottai Central Prison and Salem Central Prison. Each of these prisons housed one prisoner on death row at this time (February 2011-July 2011) as per the information I received from the prison officials. But lack of time and the distance of these prisons from the main state were the major difficulties that were encountered. Palayamcottai Central Prison was constructed in the year 1880<sup>389</sup> and Salem Central Prison in 1862<sup>390</sup>. I was informed by the prisoners in Tamil Nadu that Palayamcottai was a 'punishment transfer' for them because it was very far away from the city limits making it impossible for their family members to visit them. Another prison officer informed me that quite a number of freedom fighters were housed in Palayamcottai Central Prison during India's independence struggle. The table below (Table 5) represents the actual sample of the study.

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<sup>389</sup> Tamil Nadu Prison Department see <http://www.prisons.tn.nic.in/history.htm> [accessed on 11th October 2011]

<sup>390</sup> Tamil Nadu Prison Department see <http://www.prisons.tn.nic.in/history.htm> [accessed on 11th October 2011]



**Table 5: Actual study sample**

Sr. No.	Region	State	Permissions received for the number of prisons	Actual prisons visited
1	Western	Maharashtra	2	2
2	Northern	Punjab	3	2
3	Southern	Kerala	2	2
		Karnataka	2	2
		Tamil Nadu	7	5
4	North Eastern	Assam	3	3
Total			19	16

### **3.3.3. INSTRUMENTS USED IN THE STUDY**

The interview guides used in this study drew on narrative and phenomenological framework of interviewing. The use of interview guides was productive in facilitating information of the complex subjective experience and perception of the prisoners. Such interviews followed a format which explored both the experience and perception of the prisoners. These were captured with the phenomenological approach of tapping experiences. At the same time this interactive process in a ‘total institution’ was necessary to understand the meanings of these experiences or perception.<sup>391</sup> I used a semi-structured interview-guide which had closed and open-ended questions. The questions were designed mainly to understand the demographic profile of the prisoners, to record their experiences after the arrest, their experiences in police custody, being produced before the Magistrate for the first time, being transferred to judicial custody (prison), their appeal stage, their perceptions and experiences during the trial and finally after being sentenced to death and living on the death row. Additionally, there were questions on the perception of the treatment in all these situations by the criminal justice system. There were other actors such as family members, lawyers, judges/magistrates, prison

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<sup>391</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

officials, police officers, prison visitors and media personnel in the narration of the prisoners. Furthermore, the culmination of questions was related to their perception of dignity. These questions are annexed.<sup>392</sup> The instruments were tested among friends and colleagues in Vienna because it was not feasible to test the instruments directly in an Indian prison setting due to time constraints. The questions were prepared with my understanding about the working of the criminal justice system and also based on literature<sup>393</sup>

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<sup>392</sup> Appendix 3: Interview guide for prisoners on death row

<sup>393</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> [accessed 1 January 2013] [Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.]; Heylin, Greg. "Evaluating Prisons, Prisoners and Others." (2001)

### **3.4. DATA COLLECTION PROCEDURE**

Data gathering (collection) is the precise, systematic gathering of information relevant to the research sub-problems, using methods such as interviews, participant observation, focus group discussion, narratives and case histories. The empirical phase, which involves the actual collection of data, is followed by the preparation for data analysis.<sup>394</sup> The data collection was reflective to give the participants the opportunity to reflectively express their experience. In this study, the collection of raw data from participants took place in one stage. Data from the prisoners was initially planned to be gathered in two phases. Phase one was supposed be an open interview with the prisoners on their own perception as prisoners on death row and phase two would be to map the procedure leading to death, their experience on social and legal states as prisoners on death row and their perception on the treatment they receive. However, this data collection in two phases went topsy-turvy in the actual field situation because of various reasons mentioned in the coming sections.

#### **3.4.1. FIELD-WORK LOCATION**

The main setting for this study was a prison and inside the prison it was the death row, superintendent's office, prison-classroom or work-shed. In all, I went to 16 prisons in six states and four regions in India. It lasted for a period of five months (February 2011 – July 2011). The table (Table 6) below reveals the field work locations region, state and prison wise.

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<sup>394</sup> Polit, Denise F., Bernadette P. Hungler, and Cheryl Tatano. "Essentials of nursing research." (1993).

**Table 6: Field work locations**

Sr. No.	Time frame (Year 2011)	Region	State	Prison
1	February – March	Southern	Kerala	Kannur Central Prison
				Poojapuram Central Prison
2	March – April	North Eastern	Assam	Guwahati Central Prison
				Jorhat Central Prison
				North-Lakhimpur District Prison
3	April – May	Southern	Tamil Nadu	Vellore Central Prison
				Cuddalore Central Prison
				Trichy Central Prison
				Madhurai Central Prison
				Puzhal Central Prison
4	May	Northern	Punjab	Amritsar Central Prison
				Patiala Central Prison
5	May – June	Western	Maharashtra	Yerwada Central Prison
				Nagpur Central Prison
6	June- July	Southern	Karnataka	Belgaum Central Prison
				Bangalore Central Prison

This map below (Figure 4) gives us an orientation of the different location of the fieldwork. The coloured part indicates the states, I visited to collect data.

**Figure 4: Map of fieldwork location**

This is the map of the field work locations. The coloured portions are the states that I visited as a part of fieldwork.



Disclaimer: This is for boundary identification and should not be considered as a politically correct map

### **3.4.2. TRANSLATORS**

I went to six states in India where the main spoken languages were Marathi, Hindi, Malayalam, Tamil, Kannada, Punjabi and Assamese. I spoke three of these languages (Marathi, Hindi, Malayalam) fluently and two languages (Punjabi, Tamil) not so fluently and did not speak two languages (Assamese and Kannada) at all. I managed to find translators for three states through personal and professional contacts. My translators were students of Psychology, Law and English Literature. There were four translators in all - three men and one woman. I chose a woman translator to interview the only woman on death row in this particular study. This woman (also a Law-student) was a contact person of the male translator in that particular state. There were two methodological challenges using translators. One was their own biases against particular prisoners in that state, where they grew up reading the crime reports in the media. Second was their apprehension to ask 'uncomfortable' questions such as "Were you tortured in a particular way?", "Were you raped/molested/sexually assaulted in custody?" There were other concerns with the translators which are elaborated in the fourth chapter of this study.

### **3.4.3. THE INTERVIEW SETTING**

Interviewing refers to structured or unstructured verbal communication between the researcher and the participants, in which information is presented to the researcher. In this study, data was gathered by interviewing research participants in the prison either inside the death row or in a classroom, prison-workshop or superintendents' office and these interviews lasted for an average of twenty-five minutes.

After receiving the permission letter, I made a telephone call to the particular prison and made an appointment with the prison superintendent fixing a time to meet him and conduct the interview. This was also one of the instructions on the permission letter that I should call the prison superintendent directly and fix an appointment with him/her. I went to the prison at the allotted time and I was asked for my identity card at the main gate. Once this was verified, I was asked to step inside the prison gate. Here I had to enter my name in the register and

deposit my bags and other belongings at the security guard. I was allowed to take a file, notepad and a pen. After talking to the prison superintendent about the study, I was either taken to the death row or the prisoners were called in the superintendent's office or a classroom or a prison workshop. I arranged the chairs and tables in a fashion where I would have a face-to-face interview with the prisoner. There was usually always a prison officer with me sitting in the same room at a seeing distance. Since I was not allowed to take a tape-recorder inside the prison, I took down notes during the interview.

When the prisoners came in, I greeted them and told them my purpose of the visit. It was a short time to explain the study to the prisoner and give him/her the opportunity to decide if s/he wants to talk to me further. If they wished to continue to talk to me about their lives, I told them about the official consent that they had to give to take part in the study. From my previous experience in prison studies, prisoners have always been reluctant to give a written consent. The thought of signing a document scared them because of their previous experience. I also informed them that they were free to withdraw from the study at any point in time and that they can refuse to give me information where they felt threatened or uncomfortable. I also briefed them about the questions that I would ask them. The consent note was prepared in the local language and it contained my information and also the purpose of the study. I always maintained that their families could contact me in case of any further information. My plan initially was to divide the interview in two phases, but I realised that I had to merge the two phases together because of time constraints and also gaining access to the same prisoners the very next day was uncertain. Also prisoners handed me their thoughts about death penalty in written format, newspaper clippings about them, articles on death penalty and certain prisoners also gave me copies of their judgment and mercy petitions. The memos of my observation of the prison environment, informal chats with prison personnel on death row prisoners and death penalty are part of the data.

### **3.5. DATA ANALYSIS**

Data analysis is a mechanism for reducing and organising data to produce findings that require interpretation by the researcher.<sup>395</sup> It goes beyond description because the data is transformed and extended.<sup>396</sup> In this process, there is an identification of essential features and description of interrelations among them. It is a challenging and creative process characterised by an intimate relationship of the researcher with the participants and the data generated.<sup>397</sup> In this analysis, I read the entire interview, identifying several topics. These topics then become primary categories or category labels. With too many categories, saturation was achieved slowly. Once the categories had ample data, I selected to categorise this data into sub-categories of two or more. A tree diagram developed with types of the main category. When each category was reasonably full and saturation was reached where no new data emerged, I wrote descriptive paragraphs about the categories and looked for relationships between categories. These relationships could be concurrence, antecedents or consequences of an initial category.<sup>398</sup>

I have adapted Tesch's<sup>399</sup> proposed steps for data analysis. Once I finished the interviews in the prison, I transferred them into a new notebook handwritten and then typed that into a word document in the computer. This information was stored as interviews and was grouped state- wise. Once I had all the interviews state-wise, I grouped all the interviews together and arranged similar themes in groups. The main themes identified were socio-demographic profile, arrest, police custody, court room experiences, judicial (prison) custody, media, death row, lawyers, family, death sentence, death row phenomenon and dignity and extra information emerging from interviews. I

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<sup>395</sup> Burns, Nancy, and Susan K. Grove. *Understanding nursing research: Building an evidence-based practice*. Saunders, 2010.

<sup>396</sup> Burns, Nancy, and Susan K. Grove. *Understanding nursing research: Building an evidence-based practice*. Saunders, 2010.

<sup>397</sup> De Vos, A. S. "Scientific theory and professional research." *De Vos, AS, Strydom, H., Fouché, CB & Delpont, CSL* (2005). cited in De Vos, A. S., Herman Strydom, Christa B. Fouché, and C. S. L. Delpont. "Research at grass roots: for the social sciences and human service professions." *Pretoria: Van Schaik Publishers* (2005).

<sup>398</sup> Morse, Janice M., and Peggy-Anne Field. *Nursing research: The application of qualitative approaches*. Nelson Thornes, 1995.

<sup>399</sup> Tesch, Renata. *Qualitative research: Analysis types and software tools*. Routledge, 1990.



abbreviated the themes as codes and wrote the codes next to the appropriate segment of the text and then observed the organisation of data to check if new categories or codes emerged. I found the most descriptive wording for the topics and covered them into categories. The aim was to reduce the total list of categories by grouping topics together that relate to each other. Lines drawn between the categories indicated interrelationship of categories. A final decision was then made on the abbreviation of each category and the codes were arranged alphabetically. The data material belonging to each category was put together in one place and the preliminary analysis was performed. Re-coding of the data was done, if necessary.<sup>400</sup> At the same time, memos were used to record insights or ideas related to notes or informal and formal talks with prison officials or lawyers, judges or family members. I recorded any ideas that emerged, even if they were vague or not well-thought out and each memo was given titles and dates.<sup>401</sup> It is imperative to mention that the waiting period of the prisoners influenced the data largely. The recalling of narratives depended on the stage of punishment they were in. For instance a prisoner who has been recently sentenced to death spoke more about the trial and the interaction with the media. In another case, where the prisoner has been on death for over five or seven years describes more about the living death s/he has to undergo each day.

Furthermore, there was a minor quantitative part in the study, where I analysed the demographic profile of the prisoners whom I interviewed. Since there were 111 prisoners in the study it was logical to scrutinise the data quantitatively in terms of age, education, ethnic background, language, education and occupation. This minor quantitative data was analysed using Microsoft Excel. In addition to this, I have developed an assessment criterion<sup>402</sup> to answer the central question: is the dignity of the prisoners protected while confronting the criminal justice system and while surviving the death row?

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<sup>400</sup> De Vos, A. S. "Scientific theory and professional research." *De Vos, AS, Strydom, H., Fouché, CB & Delpont, CSL* (2005). cited in De Vos, A. S., Herman Strydom, Christa B. Fouché, and C. S. L. Delpont. "Research at grass roots: for the social sciences and human service professions." *Pretoria: Van Schaik Publishers* (2005).

<sup>401</sup> Tesch, Renata. *Qualitative research: Analysis types and software tools*. Routledge, 1990.

<sup>402</sup> Annexure 4: Data analysis for dignity

### **3.6. METHODOLOGICAL INTERPRETATION AND FRAMEWORK**

The study was concerned with the meanings that the prisoners assign to their situation, dignity and themselves. The study drew from the phenomenological approach an "attempt to understand the meaning of events and interactions to ordinary people in particular situations"<sup>403</sup>. In the phenomenological approach, I as a researcher attempted to gain entry into the world of the participant and understand how meaning is constructed about their daily lives. The goal is to understand the participant's point of view. In simplest terms, phenomenology is the interpretive study of human experience. The aim is to examine and clarify human situations, events, meanings, and experiences "as they spontaneously occur in the course of daily life".<sup>404</sup> The goal is "a rigorous description of human life as it is lived and reflected upon, in all of its first-person concreteness, urgency, and ambiguity".<sup>405</sup> Patton's identification of phenomenology with qualitative orientations is certainly acceptable, though it is also important to realize that these various qualitative perspectives involve as many differences as similarities, thus, for example, ethnographic inquiry typically studies a *particular* person or group in a *particular* place in time; in contrast, a phenomenological study might begin with a similar real-world situation but would then use that specific instance as a foundation for identifying deeper, more generalisable patterns, structures, and meanings.<sup>406</sup>

At the same time, a perspective was thus 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. According to this perspective, the individual is viewed as a conscious actor in one's world, who perceives situations and events in terms of his own meanings

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<sup>403</sup> Bogdan, Robert C., and Sari Knopp Biklen. *Qualitative research in education. An introduction to theory and methods*. Allyn & Bacon, A Viacom Company, 160 Gould St., Needham Heights, MA 02194; Internet: [www.abacon.com](http://www.abacon.com), 1998.

<sup>404</sup> Von Eckartsberg, Rolf. "Introducing existential-phenomenological psychology." (1998). Cited in Valle, Ron, ed. *Phenomenological inquiry in psychology: Existential and transpersonal dimensions*. Springer, 1998.

<sup>405</sup> Pollio DE, North CS, Thompson SJ, Paquin JW, Spitznagel EL. Predictors of achieving stable housing in a mentally ill homeless population. *Psychiatr Serv* 1997; 44(4): 528–30.

<sup>406</sup> Patton, Michael Quinn. *Qualitative evaluation methods*. Beverly Hills, CA: Sage publications, 1980.

and definitions of the situation which themselves arise from social interaction with others. Human beings are seen to interpret and define each other's actions instead of merely reacting. Responses are not made directly to the actions of another, as positivistic theories propose, but to the meanings attached to such actions. Human interaction is assumed to be mediated by the use of symbols, by interpretation and by imputing meaning to actions and the actions of others. The symbolic interactionist perspective thus approaches society from the viewpoint of the individual's constitution of meaning in interaction with other individuals. Interaction between individuals thus takes place in specific situations to which they bring interpretations which are their definitions of the situations. These definitions then direct the interaction process and constitute the reality of the actor.<sup>407</sup>

Similarly, both symbolic interactionism and phenomenology examine the kinds of symbols and understandings that give meaning to a particular group or society's way of living and experiencing. The perspective of the symbolic interactionist, however, most typically emphasizes the more explicit, cognitively-derived layers of meaning whereas a phenomenological perspective defines meaning in a broader way that includes bodily, visceral, intuitive, emotional, and transpersonal dimensions. Thus it provides a humanistic theoretical perspective for the investigation and is firmly grounded within a qualitative framework. Instead of viewing prisoners as mere respondents; the perspective afforded a more social approach to their experiential states, giving the perspective of the death row prisoners' primary importance. It also posits a fundamental link between prisoners and the social structure at the centre which rests on the role of symbolic and common meanings. The perspective thus permits an exploration of the understanding of how prisoners perceive themselves, their situation and their dignity.

Thus the theoretical position in this study is phenomenology and symbolic interactionism. The method of data collection was the use of semi-structured

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<sup>407</sup> Blumer, Herbert. *Symbolic interactionism: Perspective and method*. University of California Press, 1986.

interviews. Methods of interpretation of the data were qualitative content analysis. Finally, the fields of application were analysis of everyday knowledge. This has been adapted from the book “A companion to qualitative research”<sup>408</sup> and has been depicted in the table (Table 7) below.

**Table 7: Theoretical understanding of the study**

Theoretical understanding	Modes of access to subjective view points
Theoretical positions	Symbolic interactionism and Phenomenology
Methods of data collection	Semi structured and narrative interviews
Methods of interpretation	Qualitative content analysis
Fields of application	Analysis of everyday knowledge

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<sup>408</sup> Steinke, Ines, Ernst von Kardoff, and Uwe Flick, eds. *A companion to qualitative research*. Sage Publications Limited, 2004.

### **3.7. ETHICAL CONSIDERATION**

Ethical consideration was an important aspect of the study due to its sensitive nature. Possible risks were continuously examined to increase sensitivity towards the participants and not to expose them to further vulnerabilities. The ethical measures in this study are largely based on three principles – respect, beneficence, and justice. This has been explained in detail in chapter four which describes the ethical concerns of the study.

### **3.8. LIMITATIONS OF THE STUDY**

Like every research study, I faced a number of limitations with respect to methodology and as a researcher. This section begins with some of the methodological limitations further moving to limitations of me as a researcher.

#### **3.8.1. METHODOLOGICAL LIMITATIONS**

Some of the methodological limitations were related to the sample size, lack of availability of data or lack of prior research on the topic and so on and so forth.

##### **3.8.1.1. SAMPLE SIZE**

The number of the units of analysis used in the study is dictated by the type of research problem I was investigating. Sample size was not a problem but the representation of the sample is 1/3<sup>rd</sup> of the total prison population. I was not given permissions or did not hear from the Eastern and Central region in India. These are states which have the highest number of ethnic minority and lowest literacy rates. Hence samples from these regions would have enhanced the data and would have produced different findings. At the same time, according to the prison statistics 2007<sup>409</sup>, there were 186 prisoners on death row and I interviewed 111 prisoners. Hence it was quite a representative sample just in terms of the numbers.

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<sup>409</sup> National Crime Records Bureau. Prison Statistics India 2007 available <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf> at accessed on 2nd February 2013

### **3.8.1.2. LACK OF AVAILABLE AND/OR RELIABLE DATA**

A lack of data or of reliable data will likely require one to limit the scope of the analysis, the size of the sample, or it could be a significant obstacle in finding a trend and a meaningful relationship. In the present study, there was a lack of availability of recent statistics or information on death row prisoners. I used an older prison statistic data to determine the population of the study. This was outdated information, at the same time; I was not naive to the fact that this would be outdated information. In my previous study on death row prisoners<sup>410</sup>, the statistics mentioned 29 prisoners in a particular state and there were over 60 prisoners on death row in the same state.

### **3.8.1.3. LACK OF PRIOR RESEARCH STUDIES ON THE TOPIC**

There have been very few studies as mentioned in the earlier chapters about death penalty in India. In fact as far as my knowledge goes; there was only one empirical study about death penalty in India prior to this study.<sup>411</sup> There are legal analyses of judgments and articles in the newspapers on death penalty and death row prisoners, however, no sociological study on death row prisoners as such. This has been an exploratory empirical research; however, there is scope for further research based on the exploration of many issues touched upon by this study. For example, their experiences in the court rooms or with the media in itself could be the subject of another study.

### **3.8.1.4. MEASURE USED TO COLLECT THE DATA**

I used a semi-structured interview guide with closed and open-ended questions. In retrospect, if I have to do the data collection differently, I would give the prisoners the closed-ended questions and ask them to fill it out and give it to me the next day. Even though most of the prisoners could not read or write the ones who could, always help the ones who could not. Hence for further

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<sup>410</sup> George, Reena Mary *Death penalty: A Human Rights Perspective* University of Mumbai, September 2009

<sup>411</sup> George, Reena Mary *Death penalty: A Human Rights Perspective* University of Mumbai, September 2009

research in an Indian prison setting, I would give the closed-ended questions to the prisoners to fill it out themselves. This would also give the researcher the space to know the prisoner's background at least one day before s/he would have an open-interview with the prisoner. At the same time, access to same prisoners was always a matter of concern but this option of handing over closed-interview questions is quite feasible. However, one must not underestimate the risk of bad mood of the prison officials or an emergency situation like a custodial death, an escape from the prison, illness or hunger strike by prisoners during the collection of data.

#### **3.8.1.5. SELF-REPORTED DATA**

Self-reported data is limited by the fact that it rarely can be independently verified while conducting a qualitative research study and gathering the data on one's own. We have to capture what our participants articulate during the interviews or in questionnaires at face value. However, self-reported data contain several potential sources of bias that act as a methodological limitation. They are selective memory, telescoping, attribution and exaggeration. Selective memory refers to remembering or not remembering experiences or events that occurred at some point in the past. Prisoners have often talked more about being tortured in custody while they forget or do not recall the events the first time they are produced in court which happens almost at the same time. Telescoping is recalling events that occurred at one time as if they occurred at another time. Attribution is the act of attributing positive events and outcomes to one's own agency but attributing negative events and outcomes to external forces<sup>412</sup>. Finally, exaggeration is the act of representing outcomes or embellishing events as more significant than is actually suggested from other data. Nevertheless it is interesting to question why prisoners are selective about their memories, telescope, attribute or exaggerate certain events. This is also one of the discussions in the analysis chapter.

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<sup>412</sup> Harris, Lois Ruth, and Brown, Gavin Thomas Lumsden. "Mixing interview and questionnaire methods: Practical problems in aligning data." *Practical Assessment Research & Evaluation* 15, No. 1 (2010).

### **3.8.1.6. USE OF THEORIES**

Symbolic interactionism or phenomenology has no explicit methodology of its own. For the empirical investigation this perspective was therefore coupled with the methods of Weber's<sup>413</sup> *verstehende* approach. These methods aim at an "empathic understanding" of the emotional structure of a situation, as seen through the eyes of those concerned. The approaches of symbolic interactionism, phenomenology and *verstehen* are compatible inasmuch as the subject matter of both is typical social action from the viewpoint of the acting individual. In operationalising the study however, the methods of the *verstehende* approach were found to be rather limited in their capacity to describe the social action at the centre. Empathic understanding alone did not seem able to reveal all the significant aspects of the prisoners at the setting. It therefore seemed necessary to develop a broader methodological base within the overall qualitative paradigm, in which the premises of the *verstehende* approach could be retained and the perception, articulation and experience of the prisoner within the setting could be examined.<sup>414</sup>

### **3.8.2. LIMITATIONS OF THE RESEARCHER**

As a researcher, especially a woman studying in an institution primarily dominated by men was a challenging task. Below is a brief description of the limitations I faced as a researcher.

#### **3.8.2.1. ACCESS**

This study entirely depended on if I had access to prisoners on death row to find out about their experience. There were certain prisoners to whom the access was denied citing political, security and 'sociological' reasons. One of the reasons was that certain death row prisoners belonged to high profile criminal cases such as terror attacks or serial murders. In one of the prisons, I was also not given permission to conduct the study except with three prisoners

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<sup>413</sup> Weber, Max, Edward Shils, Henry A. Finch, Robert J. Antonio, and Alan Sica. *Methodology of Social Sciences*. Transaction Pub, 2011.

<sup>414</sup> Ferreira, Monica. "A Sociological Analysis of Medical Encounters of Aged Persons at an Outpatient Centre." PhD diss., Pretoria, University of South Africa, 1982.



who had murdered their wives or family members citing that since mine is a 'sociological' study; I should only interview prisoners who were sentenced for murders of their family members. This 'method' was decided by the prison authorities themselves and was one of the conditions imposed in order to conduct the study.

### **3.8.2.2. THE RISK OF BEING 'INCARCERATED' QUITE HIGH IN A PRISON STUDY**

I was asked to write on a sheet of paper that I will keep the data secure and that no personal information about the prisoners will be made public. However, in one of the prisons I was asked to sign a piece of document already prepared by the prison official which said that if I 'violate' any rules (the document did not specify rules) the state could take legal actions against me - very much implying that I could be arrested and imprisoned. I refused to sign such an undertaking and wrote a letter instead stating that it is my principle as a researcher to protect the research participants and not to do them any harm. The officer was annoyed with me for not signing the document that he had already prepared. I at the same time felt violated and felt pressured by the officer when I was asked to sign a document which I did not write myself instead the officer wrote it on my behalf as if I had written it. At this point, I could relate to what prisoners narrated to me during the interviews about being pressurised to sign 'confession letters'.

### **3.8.2.3. NO RECORDERS DURING INTERVIEWS**

Not being able to use a recorder was one of the other limitations. At the same time, it was an advantage because transcribing 111 interviews would have taken more time than expected especially with the language barriers I had, thus increasing the time for data analysis and report writing. Again prisoners would not be happy to have their voices recorded as they already feel vulnerable in such situations and recording their experiences about being tortured by particular police officers or treated badly by a certain judge could lead them to distrust me in case the recording is available to anyone other than me.

#### **3.8.2.4. LONGITUDINAL EFFECTS**

Like any other empirical study, this study also required a lot of time and the time was simply insufficient to collect the data as planned. I had to skip going to two prisons in a certain state because they were too far away and I was not able to contact prison officials in that state due to lack of time. I had to be back in Vienna because of the visa regulations which did not let an individual remain out of the country for more than six months. I underestimated the time that one would need in each prison. This was also interrelated with the fact that the existing data claimed certain number of prisoners while in the actual situation, it was either high or low. When I realised this, while fixing an appointment on the phone, I asked prison officials about the number of prisoners on death row so that I could plan my stay in that particular state. Some officers gave me this information because they understood my rationale behind this question but most of them refused to give me this information citing 'security' reasons.

Hence planning my stay in a certain state for a number of days relied on the existing data that was available which was as inaccurate as it could be. Hence the time-plan of data collection in studies such as these should have a buffer of at least a month. Apart from this, I often fell sick during my fieldwork due to the extensive travel, staying in prison for the whole day and working at night to transcribe the data. I was exhausted and distressed with all the information I would hear from the prisoners about their lives. It is often said that one should not emotionally attach oneself to the data and be away from it but it is simply impossible to do that. Like Liebling says that research in any human environment without subjective feeling is almost impossible – particularly in a prison. The pains of imprisonment are tragically underestimated by the conventional methodological approaches to prison life. Prison is all about pain – the pain of separation and loss, the wrench of restricted contact in the context of often fragile relationships, of human failings and struggles. David Garland has argued that imprisonment has an expressive or an emotional function and Liebling questions here asking “Why is this emotional function of prison so

invisible in most empirical research?"<sup>415</sup> Finally, this study should be seen as work in progress which can be updated by other studies in future.

### **3.8.2.5. BEING A 'WOMAN' RESEARCHER**

As a single woman in Indian towns and cities, I have been refused accommodation in hotels as it is 'dangerous' to give rooms to 'single' women. It is natural to book a hotel in advance to avoid this problem but there were circumstances where I could not book a hotel in advance. In a particular state, I reached at night in the airport and I could not book a hotel in advance. I went to hotels near the city centre and each one of them refused to let me stay. I was out on the streets at night which was not known to be a safe city with reference to crimes or violence against women. I finally had to take an accommodation in a five star hotel and they agreed to give me an accommodation on the condition that I paid the full amount before I stayed. I refused to this condition in spite of knowing the fact that I could be on the street that night. However, we negotiated and I was allowed to stay there paying an advance that one normally pays. Also I was always asked by prison officers why was I not married and why does such a 'nice' girl from a 'good family' want to go to the prison to do a research with 'murders and rapists and terrorists'? There was also an instance where a certain prisoner officer had my cell phone number because I had to write down information at the security-desk, send me 'friendship' messages late in the night. In one of the prisons the jailor was very rude to me and my translator and when I got up to stretch my legs after an hour's interview, he yelled at me and said that I am not allowed to walk there. I said that I had to stretch my legs after an hour's interview. He did not say anything but he shouted at all the prisoners who came for the interview thereafter.

At the same time, there were also many positive experiences with prison officers where I was treated with utmost respect and I felt their way of dealing with me very dignified. There were also prison officials who were in charge of my 'security' inside the death row yard who treated me to lunch from their

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<sup>415</sup> Liebling, Alison. "Doing research in prison: breaking the silence?." *Theoretical Criminology* 3, no. 2 (1999): 147-173.

homes. Also prisoners have treated me always with much love, affection and respect. Since I stayed from morning till evening in the prison, they were very kind to me and offered me biscuits, juice or even prison food sometimes. Also another problem that I as a woman researcher faced in an Indian prison setting was going to the toilet in the prison especially when I conducted interviews in the high security yard which is isolated from the rest of the prison. I used to be inside the prison from morning till evening; with a break in the afternoon but it was quite natural to go to the toilet at least once. This might seem as a light problem but I, for one feel that this should be spoken about so that one can take care of one's health better while on field work. There had to be a prison officer or a warder<sup>416</sup> who is a trusted prisoner accompanying me to the women's prison or to the main gate where the toilets for the personnel would be. This again is a reason for loss of time because one has to walk for at least 10 minutes to reach the other side, at the same time, it is an additional 'job' for the prison officer when s/he has to take care of hundreds of prisoners in that yard. It was often a surprise for the male officers that I even told them that I wanted to go to the toilet because it is not common for Indian women to say 'this' aloud especially to an unknown male. However, it is imperative that one should take care of one's health and not be shy in these situations especially during fieldwork.

#### **3.8.2.6. AXIOLOGY**

An axiological assumption is one of the research paradigms. These are assumptions regarding the role of values. Every researcher has certain axiological assumptions, for me it was being a trained social worker and also having this value that death penalty should not exist anymore in the world for any crime. While conducting the research, I tried to be away from this value while asking questions to understand about the lives of prisoners but this value could not be taken away from me. This has been discussed in chapter four of this study. I borrow heavily from Scheper-Hughes who was drawn to the people and places she studied not by their exoticism and their "otherness" but by the pursuit of those small spaces of convergence, recognition, and empathy

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<sup>416</sup> Note: A trusted convict incharge of certain duties in the prison.

that one shared with the people. She further says that seeing, listening, touching, recording can be, if done with care and sensitivity, acts of solidarity. Above all, they are the work of recognition. Not to look, not to touch, not to record can be hostile acts, acts of indifference and of turning away. Ethnography (or I would say any research with human participants) could be used as a tool for critical reflection and for human liberation.<sup>417</sup> I have observed that prisoners are not the “others” in the whole study instead, their lives converged with mine in more than one way and these convergences have been discussed in the further chapters.

### **3.8.2.7. FLUENCY IN A LANGUAGE**

There were problems related to language and translators in this study. Though some of the concerns using translations and translators were discussed, some problems simply occurred directly in the field and I had to tackle them at that moment. The interview guide was translated in the local language of the state when I went to each state. The interview guides were translated by the translator who accompanied me to the prison in states where I did not speak the local language. The data was written in the local language that I could speak and write but the ones I could not write, I noted them down directly in English. The essence of the sentence would have been lost immediately and that is one of the limitations of the study. It was also normal for translators to carry their own biases and values and hence the chances are high that there could have been misrepresentation of the answers given by the prisoners. However, I would say that in all, the data gathered in the field through interviews is very rich and gave the prisoners an opportunity to voice their opinion, concerns and share their lives.

### **3.8.2.8. BUDGET**

Before going for the field work, I was under the assumption that we would be given a part of the money before launching the study. However, this assumption was not correct and hence I applied for the *Kurzfristige*

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<sup>417</sup> Scheper-Hughes, Nancy. "The primacy of the ethical: propositions for a militant anthropology." *Current Anthropology* 36, no. 3 (1995): 409-440.

*wissenschaftliche Arbeiten im Ausland* (KWA) fellowship which was a grant for short term research abroad. I received this fellowship which was insufficient most of the time. Hence I had to mostly rely on the scholarship that I received every month from the *Initiative Kollege* and then heavily borrow from my parents for the rest of the time. Costs included paying the translators, photocopying consent notes, documents that prisoners gave me so that I could return the originals to them, interview guides and letters for prison officials. Also accommodation and travelling were quite expensive while food was relatively cheaper. In the end, however, I was reimbursed most of the expenses that was spent during the fieldwork. Also books related to death penalty were not available at the library in the University of Vienna and I have spent a considerable amount of money buying these books from Amazon or other internet book sites. The above details were some of the limitations that I faced, however, these could be used as pointers for researchers in similar settings to avoid these problems or overcome these limitations.

### **3.9. SUMMARY**

This chapter has broadly delineated the research phase which informs about the time-frame of the study. Further, it describes the research design by elaborating upon the qualitative research paradigm, the sampling, the final selection of samples and the circumstances behind selecting the sample and finally the instruments used in the study. In particular, this chapter also describes the data collection procedure by describing the field work locations, the methodological concerns with translators and the interview setting which is the prison. The chapter also describes the data analysis for the study in addition to the methodological interpretation and framework of the study. It very briefly mentions the ethical concerns, however, describes in detail about the limitations of the methods with specific reference to the methodological limitations and my limitations as a researcher. The following chapter discusses the ethical concerns of the study.

## **CHAPTER FOUR: ETHICAL 'ARTICULATION'**

### **4.1. INTRODUCTION**

*So am I a criminologist? Yes, I am also a human being, and any methodological approach which asks for separation between these two features of our lives or work is deeply flawed.*<sup>418</sup>

This chapter attempts to reflect the discourse and debates on various ethical issues generated during the field work. It also attempts to assess the appropriateness and applicability of the strategies in the field; to review if things went 'wrong' with respect to the ethical aspects; to examine if there is any need to take corrective measures. Finally, it also attempts to document ethical practices and problems faced while doing so for the benefit of others and for my own learning. For the purpose of this chapter, I use a definition by Gilbert that ethics is a matter of principled sensitivity to the rights of others and that being 'ethical' limits the choice we can make in the pursuit of truth. 419

Scheper-Hughes, one of the prominent anthropologists notes that anthropologists are privileged to witness human events close up and over time, are privy to community secrets that are generally hidden from the view of outsiders or from historical scrutiny until much later. In this context, she says that if anthropologists deny themselves the power (because it implies a privileged position) to identify an ill or a wrong and choose to ignore (because it is not pretty) the extent to which dominated people sometimes play the role of their own executioners, they collaborate with the relations of power and silence that allow the destruction to continue. She says that "primacy of the ethical" is to suggest certain transcendent, transparent, and essential, if not "precultural" first principles. Historically, anthropologists have understood morality as contingent on and embedded within specific cultural assumptions

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<sup>418</sup> Liebling, Alison. "Doing research in prison: breaking the silence?." *Theoretical Criminology* 3, no. 2 (1999): 147-173.

<sup>419</sup> Gilbert, Nigel, ed. *Researching social life*. Sage Publications Limited, 2008.



about human life. She suggests that responsibility, accountability, answerability to “the other” is precultural to the extent that our human existence as social beings presupposes the presence of the other.<sup>420</sup>

I, as a sociologist witnessed prisoners’ lives at close proximity - men and women exposing their human-side and I was privy to their confidential lives which are otherwise hidden in the society. Prisoners are thus highly vulnerable as research participants. First, the voluntariness of consent may be compromised in prisons. Prisoners have severely curtailed freedom and choices. Furthermore, they are subject to additional discipline and sanctions by prison guards and officials. Hence prisoners may feel that declining to participate in research is not a feasible option. Moreover, overcrowding and poor access to healthcare may make participation in research seem attractive, without regard to the risks. Second, privacy and confidentiality are compromised in prisons. It is likely to be common knowledge who is interviewed in a research project. In this particular study, the group was very clear - death row prisoners. There is information which may lead to embarrassment, stigmatisation, retaliation, or additional punishment. Third, it is difficult to monitor adverse events in research conducted in prisons because they are closed institutions. Participants may find it difficult to call attention to problems that arise as a research project is carried out. Monitoring whether the study is actually carried out in accordance with the protocol is also difficult. Finally, prisoners often have other characteristics that make them vulnerable, such as poor education, mental health problems, and substance abuse problems, which may impair decision-making.<sup>421</sup>

Before going to the field, I had a discussion on ethical concerns in the “PhD Seminar on Global Sociology” held by one of my supervisors - Prof. Dr. Christoph Reinprecht in December-January 2010. This led to a discussion on many points mentioned in this chapter. One of the questions that I was concerned with was, “What do I do in situations where prisoners ask me a

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<sup>420</sup> Scheper-Hughes, Nancy. "The primacy of the ethical: propositions for a militant anthropology." *Current Anthropology* 36, no. 3 (1995): 409-440.

<sup>421</sup> Lo, Bernard. *Resolving ethical dilemmas: a guide for clinicians*. Lippincott Williams & Wilkins, 2009.

favour?” Generally the doctrine of ‘academic’ research ‘prohibits’ any manner of favour because this might bias the findings. Prof. Reinprecht’s response was, “Reena, you are a professional and when you are in such a situation, you would know what to do and respond according to the situation”. The prisoners have asked me for lawyer’s contact details or contact details of Non-Government Organisations (NGOs) working for rehabilitation of prisoners or to contact their families. I have provided these details and also have contacted family members. Contacting family members also gave me an opportunity to understand the social situation of prisoners and her/his family after incarceration.

I was also conscious of the fact that I was a middle class woman researcher in a setting mainly dominated by men. My relationship with the research participants and gatekeepers was diagonally opposite yet intersected at some point. My query in relationship with research participants was that, would they trust me as a person when I did not even speak their language? My relationship with the State (gatekeepers) was a trickier one where I had to tackle questions such as, “Why do you want to talk to the garbage of the society?”, “You are from a ‘good’ family; why do you want to talk to rapists and murders?” Another statement voiced in a different mode by most of the gatekeepers was, “It is because of human rights activists like you that we lose power over them [prisoners] and people like you cause all problems.” My entry into the prisons as an outsider (it was irrelevant whether I was an academician or a human rights activist) was perceived as a threat or inconvenience.

Reflexivity that combines subjective emotional feelings with ‘objective’ data is often seen as unscientific—a premise of positivism roundly criticized by many methodologists. Feminist critics have maintained that feelings, beliefs, and values shape research and are a natural part of inquiry. Emotions influence our research, and our research can affect us emotionally. Consequently, feminist researchers explore their own research experience, including feelings and

emotions, rather than dismissing these as unscientific and irrelevant.<sup>422</sup> Similarly, Devereux argues that any investigation of other human beings is necessarily a self-investigation as well, because the beliefs and behaviour of one's subjects arouse in the investigator one's own unconscious (and usually infantile) fears, wishes, and fantasies. This countertransference phenomenon, a term borrowed from psychoanalytic therapy evokes much anxiety and is extremely painful. For a variety of reasons, related both to the selective recruitment of anthropologists and to the nature of their data, countertransference and its attendant anxieties is especially characteristic of anthropological research or I would even add to sociological research.<sup>423</sup>

Gilbert states that there are no cut-and-dried answers to many ethical issues which face the social researcher. Very often, the issues involved are multifaceted and there are contradictory considerations at play. There is not necessarily one right and one wrong answer, but this indeterminacy does not mean that ethical issues can be ignored. He suggests that the best counsel for the social researcher is to be ethically aware constantly.<sup>424</sup>

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<sup>422</sup> Huggins, Martha K., and Marie-Louise Glebbeek. "Women studying violent male institutions: Cross-gendered dynamics in police research on secrecy and danger." *Theoretical Criminology* 7, no. 3 (2003): 363-387.

<sup>423</sup> Devereux, George, and Weston La Barre. *From anxiety to method in the behavioural sciences*. Vol. 3. The Hague: Mouton, 1967.

<sup>424</sup> Gilbert, Nigel, ed. *Researching social life*. Sage Publications Limited, 2008.

## **4.2. ETHICAL PRINCIPLES**

The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research is a statement of basic ethical principles and guidelines intended to assist in resolving ethical problems associated with research involving human 'subjects'. The Report referred to earlier approaches to ethics, most notably the Nuremberg Code noting that codes often provide rules intended to guide investigators' appropriate conduct. However, 'such rules are often inadequate to cover complex situations; at times they come into conflict, and they are frequently difficult to interpret or apply'.<sup>425</sup> The expression "basic ethical principles" refers to those general judgments that serve as a basic justification for the many particular ethical prescriptions and evaluations of human actions. Three basic principles particularly relevant to the ethics of research involving human subjects are: the principles of respect of persons, beneficence and justice.

### **4.2.1. RESPECT FOR PERSONS**

Respect for persons incorporates at least two ethical convictions: first, those individuals should be treated as autonomous agents, and second, that persons with diminished autonomy are entitled to protection. The involvement of prisoners as subjects of research provides an instructive example. On the one hand, it would seem that the principle of respect for persons requires that prisoners not be deprived of the opportunity to volunteer for research. On the other hand, under prison conditions they may be subtly coerced or unduly influenced to engage in research activities for which they would not otherwise volunteer. Respect for persons would then dictate that prisoners be protected. Whether to allow prisoners to "volunteer" or to "protect" them presents a

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<sup>425</sup> National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research (NCPHSBBR) (1979) Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Department of Health, Education and Welfare, Office of the Secretary, Protection of Human Subjects, [http://videocast.nih.gov/pdf/ohrp\\_appendix\\_belmont\\_report\\_vol\\_2.pdf](http://videocast.nih.gov/pdf/ohrp_appendix_belmont_report_vol_2.pdf) [accessed on 10th November 2012]

dilemma. Respecting persons, in most hard cases, is often a matter of balancing competing claims urged by the principle of respect itself.

#### **4.2.2. BENEFICENCE**

Persons are treated in an ethical manner not only by respecting their decisions and protecting them from harm, but also by making efforts to secure their well-being. Such treatment falls under the principle of beneficence. Two general rules have been formulated as complementary expressions of beneficent actions: (1) do not harm and (2) maximize possible benefits and minimize possible harms. The Hippocratic maxim "do no harm" has long been a fundamental principle of medical ethics. It was extended to the realm of research that one should not injure any person regardless of the benefits that might come to others. However, even avoiding harm requires learning what is harmful and, in the process of obtaining this information, persons may be exposed to risk of harm. Further, the Hippocratic Oath requires physicians to benefit their patients "according to their best judgment." Learning what will in fact benefit may require exposing persons to risk. The problem posed by these imperatives is to decide when it is justifiable to seek certain benefits despite the risks involved, and when the benefits should be foregone because of the risks. In the case of scientific research in general, members of the larger society are obliged to recognize the long term benefits and risks that may result from the improvement of knowledge and from the development of social procedures.

#### **4.2.3. JUSTICE**

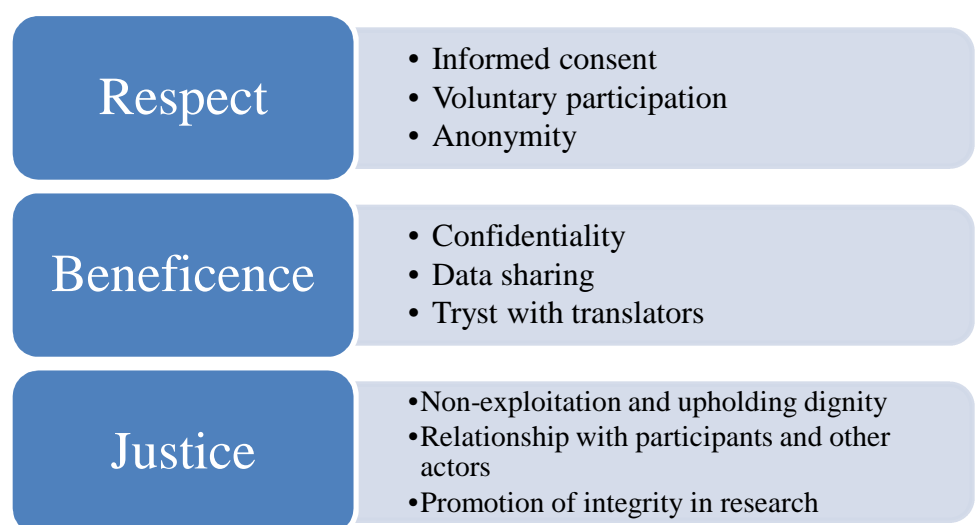
An injustice occurs when some benefit to which a person is entitled to is denied without good reason or when some burden is imposed unduly. Another way of conceiving the principle of justice is that equals ought to be treated equally. However, this statement requires explication. Who is equal and who is unequal? What considerations justify departure from equal distribution? Almost all commentators allow that distinctions based on experience, age, deprivation, competence, merit and position do sometimes constitute criteria justifying differential treatment for certain purposes. It is necessary, then, to explain in what respects people should be treated equally. There are several

widely accepted formulations of just ways to distribute burdens and benefits. Each formulation mentions some relevant property on the basis of which burdens and benefits should be distributed. These formulations are (1) to each person an equal share, (2) to each person according to individual need, (3) to each person according to individual effort, (4) to each person according to societal contribution, and (5) to each person according to merit. The selection of research subjects needs to be scrutinized in order to determine whether some classes (e.g., welfare patients, particular racial and ethnic minorities, or persons confined to institutions) are being systematically selected simply because of their easy availability, their compromised position, or their manipulability, rather than for reasons directly related to the problem being studied.

### **4.3. APPLICATION OF THE ETHICAL PRINCIPLES**

The three principles of ethics namely respect, beneficence and justice have to be rightly applied in order to make it operational. These are divided into (i) rights of the research participants and (ii) rights and responsibility of the researcher. However, all these applications irrespective of whether they are the rights of participants or the responsibilities of researchers play a key role in applying the ethical principles. Further, the rights of participants and the responsibility of the researcher lie on the crossroad of these ethical principles. This has been explained in the figure (Figure 5) below. The section is a compilation of the actual field situation while applying the ethical principles. Participants were only asked to share that information which contained the scope of the study. As a researcher it was my responsibility towards the interests of those involved in this study to have made all efforts to anticipate and to guard against possible misuse and undesirable or harmful consequences of research. Additionally, it is also my responsibility to make all necessary efforts to bring the research and its findings to the public domain in an appropriate manner.

**Figure 5: Application of ethical principles**



#### **4.3.1. INFORMED CONSENT**

A very important principle, which is a linchpin of ethical behaviour in research, is the doctrine of informed consent. This provides that persons who are invited to participate in social research activities should be free to choose to take part or refuse, having been given the fullest information concerning the nature and purpose of the research, including any risks to which they personally would be exposed, the arrangements for maintaining the confidentiality of the data, and so on.<sup>426</sup> Further the permission from the gatekeepers (in this case prison officers or State officials) also has to be on the basis of informed consent.

Informed consent is taken so that those who are researched have the right to know what they are being researched about and that they should actively give their consent. The participants were informed about the objectives of the study, the names of other prisons where this study was conducted, how their names were selected, why was this prison chosen, that participation is purely voluntary, there is no payment associated with it, that they can talk to the researcher for as long as they wanted to and can stop the interview at any time. In addition, they were free to refuse to discuss anything that they did not want to. They were also informed that the information they would give would be confidential and the report will not reveal names or identities of the participants. These were explained to the participants in the language they understood i.e. English, Hindi, Marathi, Malayalam, Kannada, Tamil and Punjabi. The prisoners who participated in the interviews gave their oral consent. With previous research experiences, I knew that prisoners were reluctant to give written consent i.e. to sign any documents. Hence oral consent was sought from all the 111 prisoners who participated in the study. I also documented the interactions with the prison officials, other convicts, prison doctors, journalists, and social workers. Apart from this, I also have documented the observation of the prison environment.

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<sup>426</sup> Gilbert, Nigel, ed. *Researching social life*. Sage Publications Limited, 2008.



However what I term as the ‘Irony of informed consent’ is that are prisoners really in a position to give their consent? Informed consent by a captive population is a very tricky situation. There were prisoners who were coerced by prison officials to be part of the study. I have given prisoners the choice to leave the interview if they feel coerced. Two of the research participants have refused to be interviewed. Mostly, all of them were eager to talk to me, to see what I could ‘offer’ them. In the end it was also more of a ‘venting’ out for the prisoners who wanted to get these emotional baggages out of their system.

At an early stage (April 2010) of this study, Prof. Dr. Manfred Nowak, University of Vienna wrote to the Central Government of India at the Ministry of Home Affairs. Prisons fall under their jurisdiction. While making a follow-up call to the Ministry, the official asked me, “Why do you want to spoil India’s name in the international arena by doing such a study? This is unconstitutional”. The Central Government official asked me to write to individual states. The State Government officials from the Home Ministry Department, Inspector General Prisons (Head of prisons), Director General Prisons, Superintendents and Jailors were the gatekeepers in this study. I wanted to write to only those states in India which I had initially sampled for permission but I was advised by a colleague (Adv. Vijay Hiremath) from Mumbai that I should send letters to all the states in India because, “Reena, you never know who will give the permission and who will not”. Hence I sent letters asking for permission in all the states in India.

Out of the 21 States which housed prisoners on death row according to the latest statistics that was available when the permission was sent, only Eight States replied asking for more details and eventually six of them gave me permission with conditions attached to the letter.<sup>427</sup> Prof. Nowak actively assisted me in sending out these letters from his office. However, the letters were just the formal process. I had to follow up by making phone calls to their respective offices. Due to the time difference between India and Vienna, I started making calls at 5:00 a.m. or 6:00 a.m. in the morning to reach the

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<sup>427</sup> Appendix 6: Permission letters

officials first thing in the morning. I received the permissions only after submitting the objectives of the study and the questionnaire to the prison department. They were also assured that the information the prisoners would reveal would be completely confidential and the report will neither reveal the names or identities of participants nor of the prisons.

Even though I received official permission from the State or the Inspector General in each prison, I had to negotiate with the superintendents for an actual entry into the prison. In many prisons, I was asked to come at a certain time and I was asked to wait outside the prison gates for hours. Below are some examples of the situation in the field work.

**Prison 1:** In one of the prisons where I travelled, I was made to wait for over two hours and then when I was called ‘inside’, I was asked to come again the next day. I then went outside the gate and called the higher prison official who is the Inspector General (IG) Prisons, on phone to explain that I am there in India only for a few months and I have to go to other prisons too. If I am asked to come on a day and not allowed inside, then it certainly is not good for the research. The officer was kind and asked me to call in ten minutes. When I called back, he asked me to go back to the prison. When I entered the prison again in the Superintendent’s office, he told me, “So, you are now telling the IG Sir that I am harassing you.” I reacted very calmly and explained my situation that I did not say harassing but I wanted to interview prisoners without wasting their time or mine. He was not so friendly to me during the entire process but I managed to interview three prisoners on that day.

**Prison 2:** The constant question asked by officials after the interviews in most of the prisons were, “So tell me, what they told you?” “Did they tell you about their crime? Do you even know what crime this person has done? He is a murderer and a rapist. Why do you even want to work with these people? Why don't you work for the poor on the streets? One of the other comments which shocked me was, “It’s people like you who spoil the society. You want to interview goons and dons who are a menace to the society but you don't want to help the poor out on the streets”

**Prison 3:** While seeking permission in one of the states in India which was primarily a tribal belt and a stronghold of *Naxal* groups, I was asked, “So why are you so interested in this region? You will have to explain in the letter why you have chosen a region which has a high per centage of *naxalites*?” I explained to the officer that it was not just this state that is chosen but also other states in India. I also had to send them permission letters from other states.

Thus informed consent is an irony in itself with a captive population and even bigger irony while having to deal with the gatekeepers to conduct the study.

#### **4.3.2. VOLUNTARY PARTICIPATION**

I chose every prisoner on death row in a particular prison where I was given the permission to conduct the study. Each of the prisoners was asked if s/he wanted to participate in the study. Two prisoners refused consent and they returned to their cells. However, in one of the prisons, the prison personnel brought the prisoner back to me and asked me to interview him. I said that if the prisoner does not wish to be interviewed, I would not force him. The prisoner was happy that he did not have to talk to me. He was the only prisoner on death row in that prison. All he told me was, “You cannot do anything regarding my case hence I do not wish to talk to you.” It was difficult to obtain trust in the short period and it was even more difficult to explain the study in that short time and obtain this voluntary participation from the prisoners. This was especially difficult because they have no liberty, are controlled, scrutinized and held responsible by the system for everything they say.

#### **4.3.3. ANONYMITY**

Anonymisation is a procedure to offer some protection of privacy and confidentiality. Though helpful in the attempt not to identify people, anonymisation cannot guarantee that harm may not occur. How people will react to a research report cannot be foreseen in advance. The context, unless massively disguised, often reveals clues to identify even when names and

places are changed.<sup>428</sup> It was decided that names of the prisons or the prisoners will not be mentioned while describing an issue. However, a prison in concern could be revealed with a minute detail such as having gallows which has to be manually erected. Also, if I mentioned the details about prisoners who claim to be on death row because of their religious or ethnic background, it can reveal identities even though I anonymise names. There was no scope to provide physical anonymity to the participants because everyone knew death row prisoners in a particular prison and all prisoners on death row were interviewed.

#### **4.3.4. CONFIDENTIALITY**

The common assumption in ethical social science practice is confidentiality during the process of conducting the research and the anonymisation of individuals in report writing. These are often linked as though the second, that is to say using pseudonyms in reporting, justifies the reporting of information obtained in confidence. However, the two concepts require separate consideration. Confidentiality is a principle that allows people not only to talk in confidence, but also to refuse to allow the publication of any material that they think might harm them in any way.<sup>429</sup> The interviews were to happen in private. However, all the prison manuals state that a prison officer should be present while the interview is conducted. I negotiated with *hearing-seeing distance* principle - that a prison officer can be at a seeing distance but not a hearing distance.

In one of the prisons, a welfare officer sat right next to me and the prisoner. It was a very small room filled with benches. I told the welfare officer that I cannot interview the prisoner in such a situation where he is overhearing the whole conversation. He said, "It is the Superintendent's order." I said, "No, I cannot continue with the interview." He said, "Let us go to the superintendent". The superintendent gave me the most typical answer I have heard in all the prison, "You are a woman. These are dangerous men. It is for your security

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<sup>428</sup> Gilbert, Nigel, ed. *Researching social life*. Sage Publications Limited, 2008.

<sup>429</sup> Gilbert, Nigel, ed. *Researching social life*. Sage Publications Limited, 2008.

that the officer is sitting next to you.” I replied, “If it is question of security put me in a bigger room and not in a small room because if the prisoner attacks me or wants to hit me, I cannot run or escape because of the size of the room and this kind officer (pointing to the welfare officer) here will not be able to do a thing to protect me and. So if you really want my security, put me in a bigger room.” They asked me to wait outside for a while and then I was shifted to a bigger room. The officer sat at a ‘seeing’ distance and not on the same table as me and the prisoner. Nevertheless, I must admit there were interviews where I could not negotiate this ‘*hearting-seeing distant*’ principle. The interview happened in the superintendent’s office where superintendent heard the conversation between me and the prisoner. In these cases, I did not ask too many questions. The prisoner spoke themselves about their lives but they knew what information to filter. These interviews were less than 15 minutes.

#### **4.3.5. DATA-SHARING**

The raw data has the identity of each individual. Raw data of the study will not be shared with anyone under any circumstances. This is one of my responsibilities as a researcher to protect and promote the interests and rights of participants. There was also a considerable amount of sensitive information such as experiences of being tortured; names of police officers who tortured; cases of sexual exploitation of their family members and themselves in many cases; and diaries and letters written by prisoners. It is again one of my responsibilities to protect these data so that no harm is caused to the participants.

#### **4.3.6. TRYST WITH THE TRANSLATORS**

Jacobsen and Landau argue that the most significant part of using translators from an academic standpoint is the risk of biased responses resulting from the use of translators or local research assistants. Second, using research assistants or translators from the same country or area as the respondent risks transgressing political, social or economic fault-lines of which the researcher

may not be aware.<sup>430</sup> Before going to the field these two issues were discussed, additionally, I raised the question whether or not the prisoners would trust me if I do not speak their language. Even though I gave a thorough orientation about the study and in spite of having discussions on the ethical aspects of the study after the completion of the field work, I assessed that the discussions were not adequate.

Out of the six states I went to, I required the help of translators in three states. The translators were from the particular state (born, raised and residing in the State) and were referred to me by my professional and personal contacts. Hence both the concerns mentioned by Jacobsen and Landau of biased responses and risks transgressing political, social or economic fault-lines that the translator came from were evident. Here are some examples which compel me to reconsider that the orientation and discussions were not enough. There were four translators in all - three men and one woman. I chose a woman translator to interview the only woman on death row in this particular study. This woman was a contact person of the male translator in that particular state. Below are the examples in my tryst with the translators.

**Example 1:** The prisoner was narrating about the torture in the police lock-up. I wanted to compare the kind of torture practiced in different states in India. Hence I asked the translator to ask, “Could you please ask if the prison knew of incidences of torture where objects were inserted into private parts?” It was within the flow the interview. The translator looked at me and said, “How can I ask such a question?” I asked other questions and in the later part of the interview came to this question again in a different manner. This time he asked.

**Example 2:** This was a woman prisoner narrating about torture in detention. I asked my translator to ask if she was ever raped or molested in custody. This time again the translator asked, “How can I ask such a question?”

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<sup>430</sup> Jacobsen, Karen, and Loren B. Landau. "The dual imperative in refugee research: some methodological and ethical considerations in social science research on forced migration." *Disasters* 27, no. 3 (2003): 185-206.

**Example 3:** On another occasion, the translator started asking questions to the prisoners on his own without translating it to me. The translator forgot that he was supposed to translate and not conduct the interview on his own. And when I asked him, so what did he say, he only told me one word from a 10 minute conversation.

**Example 4:** This is about an issue the translator was dealing within himself. We conducted an interview where the prisoners were on death row for murdering a group of people. I saw that the translator was restless during the interview. After the interview, the translator told me, I grew up reading about this case and whenever I read the newspaper, I told myself, “If I meet this person, I will murder him”. He told me that it was very difficult for him to talk to this prisoner and translate the interview.

**Example 5:** In another case, the prisoner informed that his mother was alcoholic. The translator had his/her own bias about women drinking alcohol because he came from a class of society where women are forbidden to drink alcohol or it is considered a taboo that women should drink alcohol. And he sarcastically asked this prisoner, “Your mother drinks alcohol?”

**Example 6:** The male translator wanted to translate the woman prisoner’s interview also. I refused saying that he cannot. He asked me, “Are you objecting my translating on your own or are these prison rules?” I said, “Prison rules do not allow men in a woman’s prison but even if they make an exception in our case, I will prefer a woman translator to respect the woman prisoner whom we are going to interview”.

#### **4.3.7. NON-EXPLOITATION AND UPHOLDING OF DIGNITY**

It is important that as a researcher I do not take unfair advantage of my relationship with the prisoners by asking them questions which cause discomfort to the prisoners or violate their dignity in any manner. During the interviews, none of the prisoners were asked to describe their case. Some of them shared their cases but I have never explicitly asked them to share about the same. Documenting details about their cases was not the objective of the

study. Also during the interview, asking them questions about torture could have given them mental stress. But mostly all of them spoke about the torture they faced in police custody. The response was that they felt better to have a visitor and talk about their lives in the prison as a person sentenced to death. I have tried my best to respect each prisoner and tried to maintain our dignities while listening and speaking about these sensitive topics.

#### **4.3.8. RELATIONSHIP WITH PARTICIPANTS AND OTHER ACTORS**

Prisoners on death row were the indispensable partners in this research. The rights of the prisoners were made intrinsic at every stage of the research. The prisoners trusted me; an unknown person and talked about their lives. My relationship with the participants is/was very good. Many of them write to me; call me from prisons where there is a phone facility. They inform me about the latest judgments, being on death row, so on and so forth. All the correspondence has been documented. Apart from the prisoners themselves, I also have a relationship with the family members of some of the prisoners. These members are an indispensable part of the research as well where they have opened up about their lives and homes to me. I am still in touch with some of them, who ask me to gather information about the cases involving their loved ones; to check on the Supreme Court website or to call their lawyers in order to enquire about the case.

#### **4.3.9. PROMOTION OF INTEGRITY IN RESEARCH**

By showing care and concern about ethics and by acting upon that concern, we promote the integrity of research. Since much of what we do occurs without anyone else 'watching', there is ample scope to conduct ourselves in improper ways.<sup>431</sup> It will reflect the principle of justice when the information which contains the scope of the study is shared on a wide platform. Also the responsibility of making all efforts to bring the research and its findings to the public domain in an appropriate manner lies with me. In addition to that, it is

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<sup>431</sup> Israel, Mark, and Iain Hay. *Research ethics for social scientists*. Sage Publications Limited, 2006.



also my responsibility to anticipate and to guard against possible misuse and undesirable or harmful consequences of research and to ensure protection and promotion of rights of the participants.

#### **4.4. VALUE CONFLICTS AND EMOTIONS**

There were instances of conflict between me as a researcher, translators and the research participants because of the gaps in our values. They were mainly issues related to trust, proving their innocence or wanting me to tell a higher authority that they are innocent. Some prisoners considered the study as a complete waste of their time and mine too however, finally they decided to trust and talk to me. Below are some of the examples which describe the conflicts because of the gaps in the values that we carried.

**Prison 1:** One of the prisoners told me, “How can we tell you about our lives and you say that it will remain confidential? I know that nothing goes out of the prison without the prison official looking at the thing”. I stated clearly, ‘No. That is not the case with us’. Other prisoners must have thought the same and would not have told me everything they wanted to.

**Prison 2:** The other value conflict that I had in the field was when prisoners asked me, “What is the point in just collecting information if you are not helping us with the case or doing anything about it. Can’t you tell the President or others that we are innocent?”

**Prison 3:** One of the prisoners also told me that, “What you are doing is a complete waste of time and it is total crap.” Sometimes I did answer explaining them more about the study and at times I just remained silent and talked about other things or I talked to other prisoners who were willing to talk.

**Prison 4:** In a particular prison one of the prisoners came and told me, “Madam, please go away, none of us want to talk to you.” Somehow I managed to talk to two of the prisoners on death row. Eventually all of them came and spoke to me. This prison had 50% of my sample.

Apart from these value conflicts, one thing I did not foresee before conducting the field work is the amount of emotional stress that I would have to go through. I was aware from my previous research that it was an emotionally stressful journey but I did not expect this magnitude of emotional stress. There was adequate support in terms of emergency backup, infrastructural facilities and monetary compensations. Also while dealing with the data for the data analysis chapter; I have had nightmares, bloody dreams and heard voices of prisoners when I closed my eyes. I was especially disturbed to hear experiences such as prisoner's wives being electrocuted when five months pregnant and later dying in a hospital. Also the execution of two death row convicts in the recent months (November 2012 and February 2013) and the death of a prisoner who was part of this study due to illness caused me much emotional turmoil. The distress, I faced during the writing process was immense. I had the support of my fellow colleagues who helped me to debrief my research and listened to my stories.

Liebling deliberates about research and emotion, between the criminological lives and human lives that they have never been separate yet many behave, read and write as though they are separate. She says that research in any human environment without subjective feeling is almost impossible – particularly in a prison. The pains of imprisonment are tragically underestimated by conventional methodological approaches to prison life. Prison is all about pain – the pain of separation and loss, the wrench of restricted contact in the context of often fragile relationships, of human failings and struggles. David Garland has argued that imprisonment has an expressive or an emotional function – Liebling questions here “Why is this emotional function of prison so invisible in most empirical research?”<sup>432</sup>

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<sup>432</sup> Liebling, Alison. "Doing research in prison: breaking the silence?." *Theoretical Criminology* 3, no. 2 (1999): 147-173.

#### **4.5. BEING A COMPANHEIRA**<sup>433</sup>

Scheper-Hughes takes the position of combining an academician and *companheira*. Just like me, she was in her field to observe, to document, to understand and later to write about their lives and their pain as fully, as truthfully, and as sensitively as she could. At the same time, she questions academicians asking what exempts us from the human responsibility to take an ethical and even a political stand on the working out of historical events as we are privileged to witness them. I also compare my research participants – death row prisoners to what Scheper Hughes claims - what draws her to back these people and places is not the exoticism and their “otherness” but the pursuit of those small spaces of convergence, recognition, and empathy that they share and that they are not so radically “other” to each other. I do not want to be a passive spectator in this research. Witnessing an anthropologist [here sociologist] as *companheira*, is in the active voice, and it positions the anthropologist inside human events as a responsive, reflexive, and morally committed being, one who will “take sides” and make judgements, though this flies in the face of anthropological non-engagement with either ethics or politics. I also take Scheper-Hughes position that we can make ourselves available not just as friends or as “patrons” in the old colonialist sense but as *comrades* (with all the demands and responsibilities that this word implies) to the people who are the subjects of our writings, whose lives and miseries provide us with a livelihood.<sup>434</sup>

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<sup>433</sup> Note: Comrade

<sup>434</sup> Scheper-Hughes, Nancy. "The primacy of the ethical: propositions for a militant anthropology." *Current Anthropology* 36, no. 3 (1995): 409-440.

## **CHAPTER FIVE: ‘SKIPPING A BEAT’: VOCALS OF PRISONERS ON DEATH ROW**

### **5.1. INTRODUCTION**

It was hard to ignore the ethical aspect of the study owing to its very sensitive nature. Moving from ethical concerns, the current chapter presents the findings of the study. I, as a researcher and the prisoners themselves *skipped a beat* of our hearts when the prisoners voiced out their experiences and perceptions. The data was collected over a period of five months. The theoretical basis of the study has been mentioned in detail in the previous chapters but to locate the study once again, the study is underpinned in the synthesis of two theories namely phenomenology and symbolic interactionism. This synthesis has been termed as ‘*experie-ception*’. Phenomenology describes the experiences and perception of prisoners while symbolic interactionism tackles the interaction between the prisoners and me.

Underpinned in these two theories, the raw data was analysed using the adapted version of Tesch's<sup>435</sup> proposed steps in data analysis. This chapter is divided into three parts. It begins with understanding the prisoners who are on death row with reference to their demographic profile. This includes their gender, age, education, occupation, ethnicity, religion, language and their present stage of appeal. In addition to this there is also a description of the impact of death sentence on the families of these prisoners. Cumulatively it forms a profile of a group of individuals sharing similar situation from different parts of India.

Secondly, this chapter elaborates upon the process leading to death penalty. It begins with their arrest till the time they are on death row i.e. the day of the interview. This includes seven processes which is arrest, lock-up, production before the Magistrate, sent back to lock-up or judicial custody, trial and being sentenced to death. This section also discusses their experiences with various ‘actors’ in this field such as media, lawyers, judges, prison officials, police

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<sup>435</sup> Tesch, Renata. *Qualitative research: Analysis types and software tools*. Routledge, 1990.

visitors, doctors and their family members. Thirdly, this chapter presents the '*double jeopardy*' of prisoners being incarcerated as prisoners on death row. It begins with the description of the physical structure of the prison and the death row, secondly the routine life of the prisoner and the rules they have to follow being on death row and finally it culminates to what we know as the death row phenomenon.

## **5.2. DEATH ROW PRISONERS IN THE STUDY**

It does not seem redundant to refer to Justice Hosbet Suresh<sup>436</sup> while introducing prisoners on death row that we do not know anything about the prisoner except for the crime s/he has been alleged with or convicted for. Some of the tags that the research participants have acquired over the years are ‘danger man/woman’, ‘hard-core criminal’, ‘fundamentalists’, ‘face of evil’, ‘rapists’, ‘sex maniac’, ‘cruel’, ‘monkey’, ‘beast’, ‘mad man’, ‘Pakistani’ --- the list is never ending. In an endeavour to quantify the qualitative data, there is an attempt to sketch a profile of the research participants minus these tags. When I entered the field in February 2011, I relied on the data from 2007 which was published in October 2010. The next prison statistics of 2008 was published in July 2011 after I finished my data collection. A total of 1,25,789 convicts were reported under various terms of sentences in the country at the end of 2010. 402 of these were awarded death penalty accounting for 0.3% of the total convicts.<sup>437</sup>

### **5.2.1. DEMOGRAPHIC PROFILE OF THE PRISONERS**

The demographic profile of prisoners on death row describes the age, gender, religion, ethnic background, language, education, occupation and finally the stage of their appeals. This is done with an aim of understanding the socio-economic background of the prisoners on death row.

#### **5.2.1.1. AGE**

The age group of prisoners ranged from 18 years to 60 upwards. Maximum number of prisoners (44 %) was in the age group of 30 – 40 years. The longest trial went on for 12 years while the shortest for 1 year and 2 months. This means that the average number of years a person spent as an undertrial is six years. When the prisoners were arrested, they were very young; most of them

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<sup>436</sup> Ghormode, Vijay *Death sentence: A struggle for abolition* Hind Law Publications, Pune 2008

<sup>437</sup> National Crime Records Bureau. Prison Statistics India 2007 available <http://ncrb.nic.in/PSI2007/prison2007.htm> accessed on 2nd February 2013

in their twenties which is also a productive age group. While they were undertrials, they were not allowed to work as only convicts are employed. After being on death row, they are left waiting for death in their high security yard and are not allowed to work. All of them expressed their discontent over not being allowed to work. Age group 18-40 years amounts to 65 % of prisoners which implies that a rather large group of young adults are on death row. The table (Table 8) given below indicates the age composition of death row prisoners.

**Table 8: Age of participants**

Age		
Years	Number	Percentage
18-29	23	21
30-40	49	44
41-50	28	25
51-60	8	7
60 above	3	3
Total	111	100

#### **5.2.1.2. GENDER**

99% of the research participants were men. There was one woman whom I interviewed. However apart from the one woman participant there are other women on death row in India. I was not allowed to interview them in certain states where I had the permission or they are in states which were not in my sample. This has been explained in the research methodology chapter. The table (Table 9) below indicates the gender composition of death row prisoners.

**Table 9: Gender of participants**

Gender		
Type	Number	Percentage
Women	1	1
Men	110	99
Total	110	100

### **5.2.1.3. RELIGION**

Classification of death row prisoners professing different faiths revealed that 67 % of them adhered to Hindu religion while 14 % adhered to Islam. The rest were a minority of Christians, Sikhs, and Buddhist (6 %, 5 % and 2% respectively). A few refused to disclose their religion while two insisted on putting down their religions as Marxist and Atheist. There was also a small percentage (4 %) of prisoners who refused to disclose their religious identity. The table (Table 10) below indicates the religion practiced by death row prisoners.

**Table 10: Religion of participants**

Religion	Number	Percentage
Hindu	74	67
Islam	17	14
Christian	7	6
Sikh	5	5
Buddhist	2	2
Marxist	1	1
Atheist	1	1
Refused to disclose	4	4
Total	111	100

### **5.2.1.4. ETHNIC BACKGROUND**

Indian caste system has been quite predominant in its diverse culture. Mines describes that *Caste* is derived from a Portuguese term meaning "colour." The phrase "*sistemas de castas*" was widely used in the Spanish colonies of the Americas to refer to the different categories of people under the colonial government and their ranking relative to ideas of nobility: Spaniards, those of mixed descent, indigenous peoples, and those of African descent. In Sanskrit, the term *Varna* also means "colour" and refers to the textual division of persons into four categories: *Brahman*, *Ksatriya*, *Vaisya*, and *Sudra*. The



'untouchables' or the 'dalits' are below these categories. These names are still used by many Indians to designate their general place in a caste-defined society. *Jati*, a pan-Indian term meaning birth group or genus, is the common term for what we think of as caste. A person inherits *jati* from their parents. Of these there are thousands.<sup>438</sup> Almost 37% of the prisoners on death row belonged to the scheduled castes/scheduled tribes or other backward castes. These castes include the *dalits* and certain caste based on occupation (e.g. oil pressers). Also a large per cent (44%) refused to identify the caste they belonged to. While 19% of the prisoners belonged to upper castes. The table (Table 11) below indicates the caste/ethnic identity of death row prisoners.

**Table 11: Ethnic background of the participants**

Ethnic background			
Type	Details	Number	Percentage
Scheduled Caste/Scheduled Tribes/Other backward caste	(Wadari, Nadar, Jat, JaiBhim, Bahunjan, Banjara Wijai, Ezhava, Lingayatha, Bhovi, Balegera, Ganinga, Kabbariga, Helavagowda, Gowda)	41	37
Upper caste	(Karnik, Maratha, Nair, Shafi, Reddy, Shetty, Pujari, Nayak, Kammarareddy, Sunni)	21	19
Refused to disclose		49	44
Total		111	100

<sup>438</sup> Mines, Diane P. *Caste in India*. Association for Asian Studies, 2009.

### **5.2.1.5. LANGUAGE**

India has been a crucible for the drama of language conflict. Some 1500 languages and dialects are spoken by India's 800 million people<sup>439</sup>. Contrary to the state-building efforts in other empires, India remains a linguistic mosaic. No single language stands as the authorized medium for official exchange. Citizens develop complex language repertoires in order to interact with servants, family, merchants, colleagues and officials.<sup>440</sup> In this study, there were prisoners speaking 14 languages. Each of these 14 languages had different dialects. Of these 25 % spoke Kannada as most number of prisoners on death row in this study are from the State of Karnataka. This was followed by almost 15% of prisoners speaking Tamil followed by almost 13% speaking Marathi. The other languages were Telugu, Malayalam, Urdu, Punjabi, Assamese, Hindi, Marwadi, Rajasthani and Gujrati. Two of the prisoners also spoke Wadari and Banjara-Gormati. The Wadar of Maharashtra migrated from Andhra Pradesh in the early historical period. They speak among themselves in Telugu and with others in Marathi. The traditional occupation of Wadars is stone-crushing and making stone chips of various forms and sizes.<sup>441</sup> The Banjaras are a class described as nomadic people from the Indian state of Rajasthan, North-West Gujarat, and Western Madhya Pradesh and Eastern Sindh province of pre-independence Pakistan. They are also sometimes called the "gypsies of India". In Maharashtra, they are called Banjara-Gormati.<sup>442</sup> This Banjara class speaks a language spoken in this community. The table (Table 12) below indicates the languages spoken by death row prisoners.

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<sup>439</sup> Note: World Bank 2011 *Present* 1,241,491,960

<sup>440</sup> Harrison, Selig S., and Karl Wolfgang Deutsch. *The most dangerous decades: an introduction to the comparative study of language policy in multi-lingual states*. Language and Communication Research Center, Columbia University, 1957. cited in Laitin, David D. "Language policy and political strategy in India." *Policy Sciences* 22, no. 3 (1989): 415-436.

<sup>441</sup> Singh, Kumar Suresh. *People of India: Maharashtra*. Vol. 30. Popular Prakashan, 2004.

<sup>442</sup> Halbar, B. G. "Lamani Economy and Society in Change." *Delhi, Mittal Publication* (1986).

**Table 12: Language of participants**

Language	Number	Percentage
Kannada	28	25
Tamil	16	14
Marathi	14	13
Telugu	11	10
Malayalam	9	8
Urdu	9	8
Punjabi	7	6
Wadari	6	5
Assamese	4	4
Hindi	2	2
Marwardi	2	2
Banjara- Gormati	1	1
Gujarati	1	1
Rajasthani	1	1
Total	111	100

### **5.2.1.6.EDUCATION**

The data indicated that almost 53 % of the prisoners have studied till the 10<sup>th</sup> grade which is relatively a low level of education. Of all prisoners on death row, 17 % of them are illiterate and have never been to a school or even registered as a child in a school. A relatively small proportion (12%) of prisoners reported that they had completed bachelors, masters, professional degree or vocational training. Again almost 15 % of the prisoners refused to disclose their educational level. Some of the prisoners even received part of their education in the prison as under trials or still continue their education on death row. The table (Table 13) indicates the education of death row prisoners.

**Table 13: Education of participants**

Education	Number	Percentage
Illiterate	19	17
1st grade to 4th Grade	11	10
5th Grade to 7th Grade	23	20
8th to 10th Grade	25	23
11th Grade - 12th Grade	4	4
Bachelors	6	5
Masters	1	1
Professional Degree	2	2
Vocational training	4	4
Refused to disclose	16	14
Total	111	100

### **5.2.1.7.OCCUPATION**

The data indicates that 53 % of the prisoners worked as daily wage workers or casual labourers. It reveals that around 15 % of the prisoners were unemployed. There were 5 % of prisoners who were professionals like engineers, chartered accountants or computer professionals. Around 13% of the prisoners had their own business such as owning shops or having upholstery or electronic shops. Again 14 % of the prisoners refused to disclose their occupation. The table (Table 14) indicates the occupation of death row prisoners before their arrest.

**Table 14: Occupation of participants**

Occupation	Number	Per cent
Daily wage worker/ casual labourers	59	53
Business/Own shop	15	13
Professional work	5	5
Unemployed	17	15
Refused to disclose	15	14
Total	111	100

#### **5.2.1.8. PRESENT STAGE OF APPEAL AGAINST DEATH SENTENCE**

There are the different stages of appeal against the death penalty that were awarded to the prisoners. The lowest court hands in the punishment for death and the next stage is the High Court which either confirms the verdict of the lower court or commutes it to life or sometimes even acquits the prisoner. More than half of the prisoners' (55%) appeal was in the High Court. The next stage is the Supreme Court which follows the same procedure as the High Court. Around 16% of the prisoners were in this stage of appeal. Once the Supreme Court confirms their death sentence, the next stage is to ask for mercy or clemency or pardon. The Governor of particular states and the President of India are the ones who pardon or give mercy. First it goes to the Governor of the particular state and when the petition is rejected by the Governor, the prisoner has the final gamble to obtain mercy from the President of India. Around 23% of prisoners had their mercy petition before the President of India. The table (Table 15) indicates the stage of appeal of prisoners on death row while data was collected. This has changed in the due course of time.

**Table 15: Stage of appeal**

Present Stage	Number	Percentage
High Court	61	55
Supreme Court	18	16
Governor	2	2
President	25	23
Refused to disclose	5	4
Total	111	100

### **5.3. THE IMPACT OF DEATH SENTENCE ON THE FAMILIES OF DEATH ROW PRISONERS**

Several research studies show that incarceration has an impact on the families of prisoners.<sup>443</sup> This is doubled in the case of prisoners on death row. A prisoner on death row said that other convicted prisoners know when they will leave the prison but prisoners on death row do not know when or if at all they will leave the prison. Some of the impact of death sentence on the families of prisoners has emerged as a result of the interaction between the prisoner and me and also with a few home visits that I made as a part of this study. This section discusses the impact of death sentence on the families of death row prisoners. Though it is very similar to the impact of incarceration of individuals, the impact of death sentence has a peculiar effect on the families of these prisoners.

#### **5.3.1. FAMILY IS IMPOVERISHED DUE TO THE PROLONGED PERIOD OF INCARCERATION**

The prisoners said that often their families had to sell land, house or gold to pay the lawyer's fees or to provide for the daily needs. All the prisoners in this study (except one woman who was a homemaker) were bread winners of the family. Hence they left their families behind to fend for themselves. One of the prisoners said that his mother comes very rarely to visit him in the prison because she does not have the money to travel from the village to the prison. The prisoner said he does not know how his mother feeds herself. He often wonders if his mother has resorted to begging for her survival.

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<sup>443</sup> For example: Western, Bruce, and Sara McLanahan. "Fathers behind bars: The impact of incarceration on family formation." *Contemporary Perspectives in Family Research* 2 (2000): 309-24.; King, Anthony E. "The impact of incarceration on African American families: Implications for practice." *Families in Society* (1993).; Arditti, Joyce A., Jennifer Lambert-Shute, and Karen Joest. "Saturday Morning at the Jail: Implications of Incarceration for Families and Children." *Family Relations* 52, no. 3 (2004): 195-204.

Additionally, prisons are located in areas that are far away from the cities. Prisons are built in 'locally unwanted/undesirable land use' (LULU)<sup>444</sup>. LULUs can include prisons, dumps, factories, hospitals or asylums. Though LULUs provide community needs it is on the periphery of cities.<sup>445</sup> The distance makes it difficult for families of prisoners to visit them. The prison manual<sup>446</sup> stipulates 20 minutes visiting time. The families take more than 20 hours to reach the prison. Hence they often bypass the judicial system by paying bribes to the guard in order to spend 10 minutes more with the prisoner. A prisoner said that the family has to spend two to three thousand rupees (34 – 51 Euros approximately) to meet him. This prisoner used a very powerful concept to describe the transition period or the time that has passed by while he was incarcerated on death row. He said that "The children are no more half ticket" indicating that they would need more money to buy a ticket for a fully-grown child. This is a problem with most of the prisoners because it is very expensive to travel to the prison. Hence visits from the family become infrequent as time passes thus deepening the divide in the already broken-relationships.

I visited a prisoner's family in Assam. The house that the family lived in could have been demolished by a heavy rain. The family had a hand-to-mouth existence. They informed me that they often had to take loan from neighbours to go to the High Court which was three hours away from their village. The mother who spoke only Assamese asked me when her son was going to be released. His sister translated it for me in Hindi. I did not have an answer. The sister then asked if his sentence would be commuted to life or have they found a hangman<sup>447</sup> who will execute him. I could not bring myself to lie to them because I had the information from the prison officer that they had found a hangman from another city.

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<sup>444</sup> Martin, R. "Community Perceptions about Prison Construction: Why Not in My Backyard?" *The Prison Journal* September 2000 80: 265-294,

<sup>445</sup> Popper, Frank J. *Siting LULUs*. National Emergency Training Center, 1981.

<sup>446</sup> Note: Maharashtra Prison Manual, 1978. Though this is an example from the State of Maharashtra, all state prison manuals only provide 20 minutes for family visits to death penalty prisoners.

<sup>447</sup> Note: The person who carries out the execution by pulling the lever to hang the person



### **5.3.2. OLD PARENTS OR RELATIVES DYING AND/OR LIVING IN ABJECT POVERTY**

Most of the prisoners who were interviewed lost at least one of their parents or relatives during their incarceration. In cases where they knew of the death immediately and wanted to attend the funeral, their bails were rejected because they were the 'dangerous ones' and in a few cases they could not be informed about the death of the relative because the surviving relatives simply did not have money to come to the prison to inform them. According to a very young death row prisoner, the most difficult part of being on death row is that he constantly thinks about his parents. Another prisoner who was on the death row for 10-12 years was crying bitterly and said that it was the first time that someone was talking to him and enquired about his family and so all his hidden grief emerged all of a sudden.

Yet another prisoner mentioned that his mother is 60 years old and father much older than the latter. He used to write letters regularly but there were no replies to the letters so he stopped writing to them. He said that he has not talked to or met his family members for the last two and half years. I also conducted a home visit in *Bhokardan* District, Aurangabad, and Maharashtra. The day I visited the family, the sister of one of the death row prisoners had died. When asked about the cause of the death, the relatives said that she was ill for a long time but they did not have the money to treat her or admit her in a hospital. The sister who died was survived by a one year old child and an alcoholic husband. I stayed behind for the cremation. The houses that they lived in were in the border of the village. It thus once again proves the social theory of marginalisation that it is the poor and the *dalits* who live in the border of any village or society as they are ghettoised or socially excluded.<sup>448</sup>

One of the other prisoners told me that his mother died and he was informed several days after her death because his relatives did not have the means to

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<sup>448</sup> Wacquant, Loic. "Deadly symbiosis when ghetto and prison meet and mesh." *Punishment & Society* 3, no. 1 (2001): 95-133.

travel to the far away prison. According to him, she died of the burden of his impending death sentence. Yet another prisoner narrated that when his death sentence was confirmed, his father died of grief. His mother was very sick. The frequency of the family visits lessens as years pass by because of abject poverty or deteriorating health. Besides, some of the other reasons for families losing contact with the incarcerated are when the latter has murdered their children or wife or when the family feels the stigma of visiting a prison. One of the prisoners said that, “Reena, families visit in the beginning of our incarceration, however as time passes, they get used to the fact that we are not there and in the maximum period of seven years, we lose all contacts.” This was narrated by a prisoner who has been on death row for 16 years.

### **5.3.3. PARTNERS FORCED TO RE-MARRY OR ABANDON THEM**

Prisoners on death row have a trial which is ‘quite sensational’ in the print and the visual media. Hence all the proceedings and stages of the trial are often found in the media which then becomes a point of discussion among the relatives according to the prisoners. One of the prisoners said that he was married for three months when he was arrested. After he was given death sentence, his wife’s family started forcing her to re-marry telling her that her husband will not come back. He said that she wrote a letter to him saying that she will kill herself if she is forced to re-marry. However the prisoner is now clueless whether his wife is dead or alive because she has not been coming to the prison for months. Another prisoner on death row had his wife in the women’s prison. During a meeting I had with her, she cried inconsolably. She kept saying that her husband was innocent and that the system could keep him in the prison life-long if they wanted to but they should commute his death sentence to life imprisonment.

### **5.3.4. SMALLER CHILDREN OFTEN FORGET THE INCARCERATED PARENT AND/OR BIGGER ONES NEVER MANAGE TO FINISH THEIR EDUCATION**

The children of prisoners, though, form a vulnerable group of individuals are not recognised as a different group by any of the international or national agencies. In this scenario, there has to be an in-depth study on the lives of the

children of prisoners. One of the prisoners said, “I have missed the family for an entire generation. It has been over 14 years that I have been in prison and on death row. My daughter shows me photographs during visits. The ones who were babies when I was a free man have babies of their own in their arms. They do not remember me; I do not remember them.”

Another prisoner said that when he was arrested, his wife was pregnant with their third child. He continued that when children come for *mulaquat* (visit), they do not recognize him, especially the younger two, and seem to have forgotten him. They are of ages - five, six and three. He said that his wife works in the field as a casual labourer or daily wage worker and earns Rs.25/- per day (40 cents) and because of financial burden they come very rarely for *mulaquat* (visit). In another case, the prisoner said that when he was arrested he told his father to send his wife away so that she could re-marry and his father informed him that she was pregnant. The prisoner said that he was dumbfounded. This particular prisoner’s death sentence was commuted to life and he saw his son when the child was 8 years old.

In cases when children are a bit older, they are often unable to continue with their education. Prisoners often feel very disappointed that it is because of them that their children’s lives/future is spoilt. Additionally, the woman prisoner in the study said that the media took photographs of their children and published them in the newspapers. She continued that it was already very difficult for them to live without us and the media went a step ahead to publish photographs of their children.

Some prisoners’ families lived in the city where the prison was located. I visited three such homes which were in close proximity to the prison. The families lived in abject poverty. They earned Rs. 150/- (3 Euros approximately) as daily wages. The wife of the prisoner told me that if they did not work for a day they would go hungry that particular day. During the home visit the prisoner’s sons asked me, “When is our father going to be released?” These children did not have a photograph of their father and did not know for a long time what he looked like because they were two years and four years

respectively when he was arrested. Hence the prisoner asked one of his fellow prisoners (an Austrian who was accused of drug offense) to draw a portrait of him so that he could send it to his sons.

One of the greatest disappointments for both the prisoner and the partner is when children blame them for the incarceration and the crime. A prisoner's wife told me that she tells her children that their father is innocent but now when the children are grown up, they ask that if their father has not done anything why is he in prison and that he must have certainly done something. She said that when the children were younger, she sometimes begged to keep them alive and provide food and that it breaks her heart when they question her husband's innocence.

This section has talked about the profile of the prisoners on death row which included age, gender, religion, ethnic background, language, education, occupation and finally the stage of their appeals. Further this section discusses the impact of the incarceration on the families of prisoners. The next section discusses the various processes leading to death penalty.

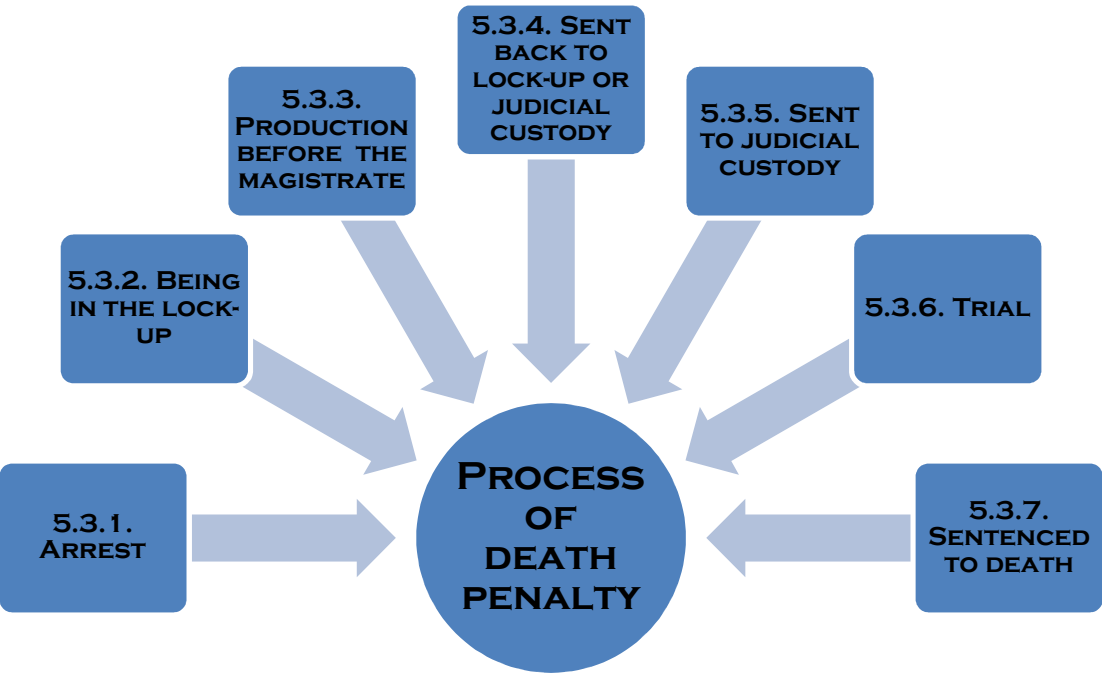
#### **5.4. THE PROCESS OF DEATH PENALTY**

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 that a prisoner has to go through while being sentenced to death. It begins with their arrest, being in the lock-up, production 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 death sentence. In this process, prisoners meet various actors like media personnel, doctors, lawyers, Magistrates and family members. These actors play a significant role in the process of prisoners being sentenced to death. This will be elaborated in various processes. While these actors play a role in the sentencing of prisoners, they do not necessarily stick to one process but are woven in the process of being sentenced to death.

This section has to be read bearing in mind the laws and safeguards which are mentioned in chapter two. To brief the seven processes, it begins with the arrest of a prisoner. The prisoner is then housed in the police lock-up. Within 24 hours of the arrest, the prisoner has to be produced before the Magistrate of that jurisdiction. The Magistrate either sends the prisoner back to the lock-up or sends the prisoner to judicial custody which is the prison. If the prisoner is sent back to the lock-up, s/he is again produced before a Magistrate after a week or so and then sent to judicial custody of that particular jurisdiction. The next process is when the trial begins. The trial usually should begin within two months of the arrest - after the chargesheet is produced. A chargesheet is a formal document of accusation prepared by the police. During this period the prisoner also has a lawyer either provided by the state or a private lawyer. The last process is pronouncing the death sentence. This is after the cross - examination of the witness and the final arguments in the case are presented during the trial. In the court, the magistrates usually asks the prisoner for their opinion before the sentence is pronounced and once the sentence is pronounced the prisoner is taken back to the prison. Usually on the same day or the next day the prisoner is transferred to a singular cell confinement in a special yard where prisoners on death row are housed. Below figure (Figure 6) represents

the seven processes that lead to death penalty which has been narrated by the prisoners who are currently on the death row.

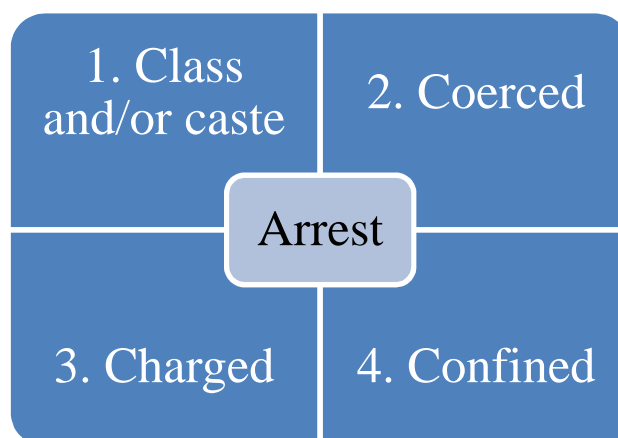
**Figure 6: The process of death penalty**



### **5.4.1. ARREST**

The prisoners started their narration or rather I asked for their narration from the time of their arrest. I found it unethical to ask them the crime they were convicted for during the stage of this interview where I did not know them 'well'. However after I established rapport with them, they themselves talked about the crime or it was easier to ask them about it. Hence 'arrest' is the first process of death penalty. The findings for being arrested are narrated below. Each prisoner perceived or/and experienced certain phenomenon while being arrested. The data revealed certain characteristics which are the four C's that a prisoner perceived or experienced during the process of arrest. An arrest is defined as depriving of 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.<sup>449</sup> The overarching characteristic of being arrested is the 'class and/or caste'. It is followed by being 'coerced' into taking one in custody, followed by being 'charged' for the crime and finally the 'confinement' of an individual. The figure (Figure 7) below depicts the four C's of arrest:

**Figure 7: Four C's of arrest**



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<sup>449</sup> Gifis, Steven H. *Barron's Law Dictionary*. Barron's Educational Series, 2010.

#### **5.4.1.1.CLASS AND/OR CASTE**

The study retreats on Wacquant's argument that prisoners belong to a marginalised and socially excluded category. It is the poor, marginalised and socially excluded who often end up in the prison.<sup>450</sup> Education is an indicator of their chances of getting a high salaried employment. Most of the prisoners - 70% of the prisoners had education till 10<sup>th</sup> grade of which 17% were complete illiterates. This indicates the low level of education which further pushes them to take up menial jobs which do not provide adequate income to sustain a family. Thus most of the prisoners in this study (53%) were daily wage workers or casual labourers who earned Rs. 120/- (2 Euros) or less per day. This is not sufficient for a family to survive. A large number of prisoners (around 15%) were also unemployed when they were arrested. Hence it proves that most of these prisoners came from economically poor backgrounds.

Concurrently, 41% of the prisoners belong to lower caste or ethnic minority. People from the lower castes often are trapped in the circle of poverty because of their social and spatial exclusion. Prisoners themselves said that they were arrested because they belonged to an oppressed class or caste. Also prisoners from religious minority claimed that they were arrested because of their religion. In caste violence where prisoners are arrested, they claim that in spite of the fact that there was a mob attacking the victims; they were arrested because of their caste identity.

#### **5.4.1.2.COERCED**

Coerced is the characteristic where individuals are arrested by informing them a different reason for the arrest. In most cases, prisoners were taken to a police station by telling them that they will be sent back home immediately. However in reality, they are never let out even on bail and finally ended up serving a death sentence. For instance, one prisoner who was arrested in the evening was told that, '*We will do an enquiry and send you in the morning.*' In another case,

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<sup>450</sup> Wacquant, Loic. "Deadly symbiosis when ghetto and prison meet and mesh." *Punishment & Society* 3, no. 1 (2001): 95-133.



the prisoner said that he was with his family and at 7:30 a.m. a guard came and told him that the Circle Inspector has summoned him to the police station. The guard also informed him that there was no complaint lodged or a First Report Information (FIR) reported. So this prisoner went to the police station alone and he was taken to a completely different district. He said that he was kept in the lock-up in this district for 17 days without being produced in the court even once.

It is also a common practice to arrest the family members along with the so called 'main or prime' accused. Thus there are a lot of auxiliary arrests along with the main accused who is arrested. In some cases, the family members are released but in most cases where family members were arrested, they spend time on death row together. According to the prisoners, this is a tactic by the police to get the 'main' accused 'confess' her/his crime. Once the accused signs a 'confessional statement', the family members are released. Also in another instance, the police uses strategies such as, "Your brother has accepted the crime, what is your problem? Just sign the paper." When family members are arrested, they are either arrested from their homes or at times when they come to visit the prisoner in the judicial custody (prison). According to the prisoners, it is the prison officials who inform the police about these visits. Thus there exists a nexus between the prison officials and the police officers. It was most evident in the recent Arun Ferreira<sup>451</sup> case where he was abducted outside the prison in front of his family members by the police in another case. The family saw him being taken away in a van by persons in civil clothes. The police knew the date and time of his release through the prison officials.

In a similar case of nexus between police and prison officials in the process of arrest, a particular prisoner who was accused of 45 murders had a visit from his wife. This prisoner told his wife that, "My grandfather said, whenever we are in trouble go to Indira Gandhi (ex-Prime Minister of India) and now that she is no more please go and meet Sonia Gandhi (Daughter-in-law). She will

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<sup>451</sup> Maitra, Pradeep Kumar *After four years, 'Naxalite' Arun Ferreira walks free* Hindustan Times Nagpur, January 04, 2012

definitely help us.” This woman set out to the capital city – Delhi to meet Sonia Gandhi. According to this prisoner, she could not meet Sonia Gandhi but she met Margaret Alwa, the then head of Women and Child Welfare. The wife told Margaret Alwa that if they do not stop the injustice, she and her children will commit suicide. Margaret Alwa according to him assured his wife that they will look into the matter. He said that since the government had given an assurance that they will look into the matter, the wife came back. As promised, this minister issued a letter to the state informing them about the situation and making an enquiry. The next time when the prisoners’ wife came to the prison to meet him; she was arrested in the meeting room. The prisoner said that he felt helpless watching her being arrested on his account. He did not know about her custody for a long time and had to put a fight with the Magistrate to know the whereabouts of his wife. This has been recorded in the trial section.

Another aspect of coercion in the process of arrest is that even though the prisoners are arrested by ‘force’, the police record it as ‘the individual surrendered’. Another prisoner said that when the crime occurred he was not in his village but saw his photo and news in the daily newspaper. He was afraid to go back to his village yet he went back and when he was there, he was immediately arrested. Prisoners are coerced to speak in front of the Magistrate to fit the ‘police version’ of the arrest. One of the prisoners was asked to tell that he was arrested in a particular state and not the other state where he was originally arrested. This has been recorded in detail in the coming section.

#### **5.4.1.3.CHARGED**

Charged is a characteristic in the process of the arrest where a prisoner is arrested for a certain crime but charged with some other crime. Many prisoners reported that they were involved in petty crimes such as theft earlier, but they clearly were not involved in the crime they were charged for. For instance, one prisoner said, “Madam, we had a criminal record earlier for theft or dacoity. However, when there was an unsolved murder in a particular jurisdiction we were arrested and charged for those unsolved murders.” In a particular case, a whole family was arrested. A prisoner from that family said that a young boy

from the family stole a silver article from a house. In order to get 'rid' of it they sold it. However the shop owner intimated the police and the whole family was arrested. According to the prisoner, they were later shown as a big gang and all those cases which were 'unsolved' in that jurisdiction were charged on this family. Similarly another prisoner said that he was involved in ganja (drug) cases earlier but he was charged with murder.

#### **5.4.1.4.CONFINED**

The last characteristic of the process of the arrest is 'confined'. This simply means that they were 'confined' in another location instead of the police lock-up where an accused is housed. Many of the prisoners were taken to lodges or bungalows or secluded construction sites or empty houses. All these places served a 'perfect atmosphere' to intimidate or torture or extract confessions from the ones who were arrested or detained. Prisoners who were 'confined' in these different locations were not produced before the Magistrates within 24 hours of arrest as the law prescribes. Some of the prisoners said that they were produced after 45 or 22 or 17 or 14 days of confinement. For instance, one prisoner said that two of them were arrested together and housed in a particular police station for 15 days. Thereafter they were taken to a new building and were 'confined' in this new building for over three and a half months. Another one said, "I was arrested on so and so date from my house. I was first taken to a police station but later to a lodge and from there to a bungalow." This prisoner even remembers the name and room number of the lodge that he was taken. Later he was taken to the Magistrate but was told that he should not speak there.

When prisoners are confined in other places than a police lock-up, the family members are not informed about this. Even when the family members enquire with the police, they are not given any information. In one particular case, the prisoner narrated how his father ran from pillar to post to enquire about him. He said that his father even went to the Tehsil [district] office to lodge a complaint but the Tehesildar [district collector] did not take the complaint and drove him away. He said that if the District Collector would have enquired, the police would have been forced to take him to the court the next day. He said

that his father also went to the police station with a written complaint that the son is missing but the officers refused to take this complaint.

These were the four characteristics which have been termed as four C's of the process of arrest. The next process is the description of 'being in the lock-up' once an individual is arrested.

#### **5.4.2. BEING IN THE LOCK-UP**

Strictly speaking, the word 'prisoner' includes persons confined in both police and prison custody. A cell inside a police station, or a secured and guarded rooms attached to it, is usually referred to as the 'lock-up'. Here persons detained on suspicion, or arrested, are kept by the police for purposes of interrogation.<sup>452</sup> Foucault says that there are no longer any of those executions in which the condemned man would be dragged along on a hurdle to prevent his head from smashing against the cobble-stones, in which the belly was opened up or his entrails quickly ripped out. The condemned man had time to see the entrails with his own eyes that he was thrown on the fire where he was finally decapitated and his body quartered. Foucault adds that the reduction of these 'thousand deaths' to a strict capital punishment defines a whole new morality concerning the act of punishing."<sup>453</sup>

However, although the participants of this study were given this 'strict punishment', they described it as receiving 'a thousand deaths' during the process of receiving this sentence. The second process after the arrest is being held in a lock-up or any other place of detention such as a lodge or bungalow or construction sites instead of the police station. The narration by the prisoners about the lock-up can be exemplified in three phenomena which have been termed as the three T's one faces in custody.

##### **5.4.2.1. THREE T'S OF LOCK-UP**

They are tortured, threatened and tutored. Relating to one of the three T's i.e. torture, prisoners narrated the instruments used for and the procedure of torture. In addition to this, they also narrated the phenomenon of being threatened and tutored in custody which forms the politics of being in a lock-up. All the three T's are inter-related in this process of being held in the lock-

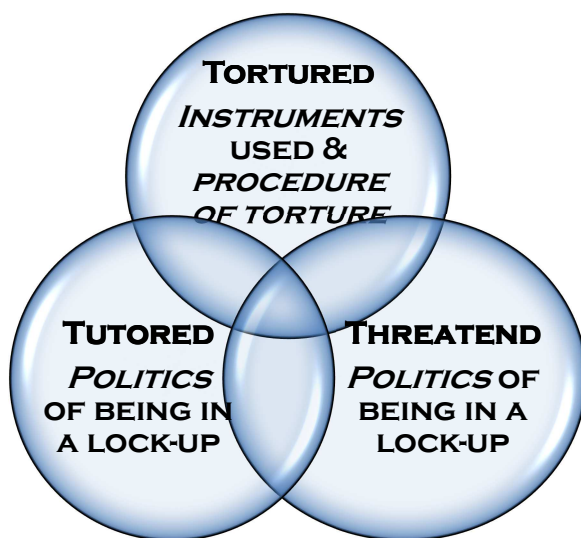
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<sup>452</sup> \_\_\_\_\_ *Forced Separation : Children of Imprisoned Mothers (An Exploration in Two Indian Cities)*, Prayas Publications, Mumbai 2002.

<sup>453</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

up. The figure (Figure 8) given below describes the three T's where all prisoners have gone through at least one of these phenomenon or two or all the three while in police custody. This is also a process which has been described in depth by almost all the prisoners. Even after many years of being in the prison and spending time on the death row, this process burdens the prisoners both physically and emotionally till today and this process has been linked to the concept of dignity by many prisoners.

**Figure 8: Three T's of lock-up**



#### **5.4.2.2. TORTURED**

I remember a joke that was told widely, while I was a teenager. I found the joke very funny and always shared it. Now I call it morbid humour. Three countries [USA, Russia and India] were given the task to investigate a murder. USA started investigation and arrested the accused in one day; Russia took three days and also found and arrested the accused. Indian police seemed to vanish for a month and finally they were found in a jungle with a monkey tied to the tree; hitting it and telling it, "Tell how have you murdered, confess that you have done it." This joke became morbid humour for me because some prisoners narrated a similar experience.

The most widely accepted definition of torture is the one used in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, 1987<sup>454</sup> which defines torture as “Any act by which severe pain, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

When prisoners were asked to describe their experiences in the police lock-up, one of the words used by them was ‘torture’. The primary reason an accused was tortured, was to extract ‘confessions’ from her/him. According to the narration of prisoners, the term ‘torture’ was used in the context of any physical, verbal, sexual and mental abuse they faced in police custody. The descriptions of torture faced in police custody by prisoners on death row were in two extremes. This was done by breaking them down – physically, mentally and emotionally which caused extreme pain, shame and fear. When prisoners were first brought into custody, they lost their orientation about the place they were taken to. It is not uncommon that this happens.<sup>455</sup> While some described their experiences in precise detail, even to the extent of documenting it and handing over the narration to me in written format, some chose to be brief about it saying that, “It is very common for people to be slapped while arrested and it is very common for officers to abuse and swear at us.” The prisoners also describe these incidences saying that the police did ‘regular work’ on them. When prisoners insisted on reading their ‘own’ confessional statement, the police officers told them that they need it urgently or why do they want to read,

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<sup>454</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> [accessed 2 February 2013]

<sup>455</sup> Benvenisti, Meron. *Abu Ghraib: the politics of torture*. North Atlantic Books, 2004.

it is the same as the rough copy that they showed them or they say that they have to just sign it and there is no need for them to read it.

Sections 25 and 26 of the Indian Evidence Act, 1872<sup>456</sup> makes it clear that confessions made to a police officer are not admissible as evidence. However, Section 27 of the Indian Evidence Act, 1872 where confessions leading to finding of corroborating evidence means that confessions are still of use to police. If a crime is 'solved' on the basis of illegal extraction of evidence, that evidence is still admissible. Section 162 of the CrPC prohibits the use of a statement of an accused recorded by a police officer and prohibits the police officer from obtaining the signature of a person on the statement made by the accused. Despite this, it is common practice for the police to force detainees to sign statements or blank sheets of paper. However, in some criminal cases such as a 'waging a war against the country' an executive Magistrate present or a senior ranking police officer could be present and this confession is admissible in the court of law. A very small percentage of the prisoners in this study belonged to this 'waging war against the country' section.

One of the prisoners arrested for crimes where confessional statements could be obtained in custody said that he was not physically tortured however he was mentally harassed at every point of time when he was in the Central Bureau Investigation (CBI) custody. The officers interrogated him 24x7 and he was not allowed to sleep. He said that the Indian government like the Bush Administration would dismiss this kind of mental torture calling it an 'enhanced interrogation technique'. At one point in time, he was so fed up with the continuous interrogation that he was ready to sign anything and everything they asked him to. The officers wrote a confessional statement and asked him to sign it. The latter told them that he was literate and insisted on reading it. They were very reluctant to give him the statement but they eventually gave it to him. He made some changes in that statement and after that an officer came with a fair copy and asked him to sign it. This time he was forced to sign it

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<sup>456</sup> Indian Evidence Act, 1872  
<http://chddistrictcourts.gov.in/THE%20INDIAN%20EVIDENCE%20ACT.pdf> [accessed on 1<sup>st</sup> December 2011]



without reading the fair copy and said that he was not sure what changes they had made in that copy. There were only few prisoners (13%) who belonged to this 'waging war against the country' category where confessional statements could be obtained in custody. Rest of the prisoners were arrested in sections where a confessional statement obtained in custody would not be admissible in the court of law. However all prisoners were asked to sign blank documents.

The prisoners' narratives interplayed with the fact that the power is exercised through the body. Thus narratives surrounding torture in lock-up was not only about creation of shame, fear and extreme pain but also a part of the general discourse of torture that contributes to the fact that body is used as a means to exercise power. Till today it is the shame that lingers in the minds of these prisoners. Foucault says that the body is also directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs. This political investment of the body is bound up, in accordance with complex reciprocal relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination; but, on the other hand, its constitution as labour power is possible only if it is caught up in a system of subjection (in which 'need' is also a political instrument meticulously prepared, calculated and used); the body becomes a useful force only if it is both a productive body and a subjected body. This subjection is not only obtained by the instruments of violence or ideology; it can also be direct, physical, pitting force against force, bearing on material elements, and yet without involving violence; it may be calculated, organised, technically thought out; it may be subtle, make use neither of weapons nor of terror and yet remain of a physical order.<sup>457</sup>

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<sup>457</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

#### **5.4.2.3. 'INSTRUMENTS' USED AND 'PROCEDURES' OF TORTURE**

There were various 'instruments' used to torture an individual. Some of these included wooden logs, electric current, rods used by police officers, petrol, kerosene, snakes, salt, urine, faeces and so on and so forth. There were also different 'procedures' used to torture an individual. Some of them were '*Bombay cut*', stripping, rolling of wooden logs on thighs, hitting with a rod, inserting objects into private parts etc. . . . The experience of extreme pain, fear, shame and humiliation is executed through 'instruments' of torture and the 'procedure' used for torture. The definition of torture describes the phenomenon of extreme pain.

Foucault while talking about the age of Enlightenment describes public torture and execution as an 'atrocities'. This according to Foucault was a term used by jurists. He goes on to describe that atrocity is a characteristic of some of the great crimes: it refers to the number of natural or positive, divine or human laws that they attack, to the scandalous openness or, on the contrary, to the secret cunning with which they have been committed, to the rank and status of those who are their authors and victims, to the disorder that they presuppose or bring with them, to the horror they arouse. In so far as it must bring the crime before everyone's eyes, in all severity, the punishment must take responsibility for this atrocity: it must bring it to light by confessions, statements, inscriptions that make it public; it must reproduce it in ceremonies that apply to the body of the guilty person in the form of humiliation and pain. Atrocity is that part of the crime that the punishment turns back as torture in order to display it in the full light of day: it is a figure inherent in the mechanism that produces the visible truth of the crime at the very heart of the punishment itself.<sup>458</sup>

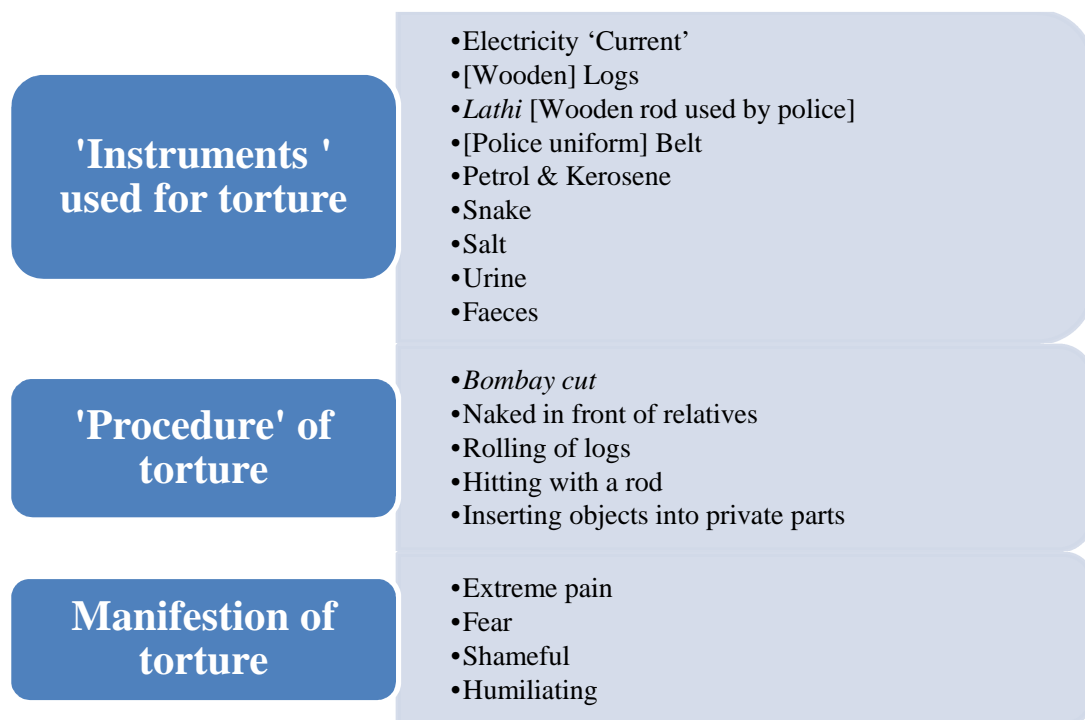
This is the logic that was used centuries ago in other parts of the world, however, in India we still reproduce the 'ceremonies' that apply to the body of the guilty person in the form of humiliation and pain but further extends it to

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<sup>458</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

threatening and tutoring. Prisoners accounted to their experiences with great pain. Most of them broke down narrating these experiences. The figure (Figure 9) below explains the ‘instruments’ used for and the ‘procedure’ of torture and finally how the ‘manifestation’ of torture emerges.

**Figure 9: ‘Instruments’ used for, ‘procedure’ and manifestation of torture**



#### **5.4.2.4. MANIFESTATION OF TORTURE**

This section discusses the manifestation of torture through the narration of death row prisoners. The experiences of extreme pain, shame, fear and humiliation though clubbed under different sub-headings and have to be read bearing in mind that all of these are interrelated.

**Extreme pain:** All the prisoners echoed one statement - “I have no idea how I survived that pain.” In custody, according to the prisoners, it always began with terrorizing and intimidating the accused which broke them down. A large number of prisoners talked about ‘*regular work*’ in the police custody. It took a while for me to comprehend that ‘regular work’ meant torture. Also the other word prisoners used while describing extreme pain was ‘*Bombay cut*’, third degree torture and *maar-peet* [hitting]. When an officer does a ‘*Bombay cut*’ on

the prisoner it meant that one is asked to sit on a chair, a rod is placed under the knee, hands are tied behind the back joining the thumb with a cloth and one is hit on the back. Another kind of '*Bombay cut*' also was when one's hands was tied back joining the thumb with a piece of cloth, one is pulled up with another cloth to a hook on the ceiling thus suspending the body in the air and hitting on the feet. Another prisoner said that hands were tied with a rope and he was suspended in the air and he was hit with the butt of the gun. Yet another prisoner said that he was suspended to a fan and was hit on the toe; the toe nails came off. He could not eat properly for 10 days because of the pain. Later a tablet was administered to him following which he did not remember anything and said 'yes' to everything the police asked for.

This prisoner still suffers a lower back pain because of the torture in custody. When prisoners described torture as '*regular work*' one of them said that he was hit with a belt because of which his tooth -cap fell off. He said that the police hit them with a belt which leaves no marks on the body but they sure do beat everyone in custody. Another prisoner was asked to kneel and a big rod was rolled on his thighs. His ankles were twisted and one officer stood on his feet with his boots. Many prisoners said that they were chained to their cells while in police lock-up which sometimes was a period of one month. As an example of extreme pain, one of the prisoners said that his legs were pierced with sharp nails and that it took three months to heal and during this time he could not turn properly while sleeping or walk without limping. He said that he had lost count of how many times his feet were pierced with sharp nails by a certain police officer.

Like Foucault says, torture is often calculated, organised, technically thought out; it may be subtle, may neither make use of weapons nor of terror and yet remain of a physical order.<sup>459</sup> This kind of torture indeed used 'instruments' but it was subtle and did not show any external injuries. For instance, a prisoner was made to eat huge quantities of salt as much as a whole cup. In

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<sup>459</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

addition to this his urethra was blocked with a stick and this prisoner had to undergo this treatment thrice a day and 'all he had to do' was to 'accept' that he committed the murder. The police officer told him that if he accepted the murder he will be released immediately. Another form of torture which did not leave any injuries was when a ball pen was inserted between nails and skin and then hammered and lemon juice was squeezed on it. A similar way of inducing pain without marks was electrocuting the prisoner. Many reported experiences of 'electric-current' being used as a form of torture. The most common method in this strategy was to place a clip on the ears, lips, nipples and penis and administer electric current. A similar way of inducing pain without marks was when a prisoner was stripped and pushed into a five feet tub filled with water and ice blocks. There were four fans in the corners and he was made to stand there from 8:30 p.m. to 5:45 a.m. Similarly, another prisoner accounted that he was given electric shock and was drowned in water. When he went for the medical check-up, the doctor gave a 'normal' certificate. Some prisoners were not only electrocuted but also poked with rods into their knees. I could see the injury marks on his knees even on the day of the interview.

The next form of torture included causing pain in private parts of the body. Again these are places where injuries cannot be immediately seen. For instance a prisoner was asked to confess. He was handcuffed and his legs were spread in "V" shape; a brick was suspended on a string on one end and the other end was tied to his penis while he was on the table. In another case, a rod covered with salt was inserted into a prisoner's anus. They did this to him every half-an-hour and the police officer told him that he must admit that he committed the murder or else they would keep repeating it. Another prisoner was similarly tortured but the police inserted his anus with a rod covered with lemon juice and chilly powder. He said that he passed blood in his stools for several days after this incident. One of the prisoners said that when he asked for water, the police officer did not give him water but instead urinated on him. This prisoner said that when he was really very thirsty he drank his own urine to survive. Another prisoner said that the police applied chilly powder to his private parts after removing his pubic hair one by one and this prisoner said that he could not stand up on his own for more than 10-15 minutes. He also said that till today he

cannot sleep because only incidences of torture come to his mind whenever he tried to sleep.

The police not only used petrol for their vans but also made some use of it on the prisoners in custody. A number of prisoners narrated their experiences about being tortured with petrol. One of them said that he was handcuffed, stripped, electrocuted and petrol was poured into his private parts. He said that all of these happened in front of his wife which was very humiliating for him. Another prisoner said that he was given 'current' (electrocuted) in his private parts at regular intervals throughout the day and then the police officer put salt and pepper into his private parts which were again electrocuted. One prisoner said that he was ashamed of telling me, a woman, of the torture that he had to face in custody. However he still narrated and said that he was stripped in the lock-up and petrol was poured in his anus and all over his body and he was beaten up the whole night. He was asked to sign blank papers and confess his crime. He said that for over three months he could not walk because of the torture and when he thinks about the torture in police custody his heart sinks and '*skips a beat*'. He also said that this incident was just an ounce of what he actually had to face in custody.

**Fear:** There were various ways in which fear was instigated in prisoners through torture. In one instance, a prisoner said that he was stripped down, handcuffed, both his legs were spread and two snakes were left in the cell. The prisoner said that when the snake came near him, he was scared and completely terrified. The police first dropped in a small snake and then a bigger one. He said that both the snakes crawled towards him and one even bit him and he thought that he would die soon. He said that he was left with the snakes for almost three hours. Another prisoner was told that he should confess his crime because no one knew of his arrest. Therefore they threatened, they would kill him and dispose his body in the forest and tell that he was murdered by one of his enemies because he was in the real estate business. This prisoner was afraid that he would be killed and hence confessed the 'crime' out of fear.

Yet another prisoner was arrested for his alleged connection with a dacoit along with 10-12 other people. He said that this dacoit attacked a police jeep

and killed six police officers. That same day, police officers came, randomly blindfolded a few persons who were held in the bungalow with him, took them to the forest and shot them. The second time the police came and took six more members from among the people, and shot them too. He said that the police guard informed him about this incident and told him that he was 'lucky' that he was not picked up. He said that he was in fear for his life and prayed that he should be soon taken to jail. His explanation to this random shooting of people (taken from detention) was that when the dacoit attacked the police van, the police also wanted to show the outside world that they too killed the dacoit's men in an encounter. Another prisoner who was allegedly a 'terrorist' said that he was given no sleep, no clothes and terrorized and intimidated by the police because the police wanted to know what other 'plans' he knew about possible attacks on India.

**Shameful and humiliating:** The only woman who participated in this study told me that, the police took her to a rented house. The officer told her that she has to do whatever they said. She further said that the police gave her electric current and put chilly powder in her vagina. She was stripped naked in front of her male relatives. This was very humiliating and shameful for her. She was also threatened that she would be raped. Her husband was also in the same detention place and told her to accept whatever the police asked her to. Another prisoner talked about his wife who was arrested but later released. He said that she was five months pregnant with their second child. She was given electric shock on her breast, ears and fingers in front of him and she had to be hospitalized for three to four months after she was released.

Another prisoner who was arrested for rape and murder said that one day, in custody; he was given faeces to eat one day. He said he was kept naked all the time in the police lock-up and one night around five to six women came to the police station at night. He realised that they were vaishayas (sex workers). He said that the officer present there pulled his penis so hard that it started bleeding and told him 'Now come on, rape these women'. Later he was also dressed up as a woman. Another prisoner who said that the police did 'regular work' on him but what was shameful and humiliating was when his family was

‘called’ to the police station to see this. He was made to lie down, a big log was rolled on his thighs, chilly powder was put on his penis and eyes. The police officer said that if he does not accept the crime, they will also ‘work’ on him again and rape his mother and wife. He said that he was completely naked in front of them and that all of them cried and he accepted all the crime he was asked to confess. Similarly another prisoner said that his parents were arrested with him. The police put a rod into his anus and asked him to sign blank papers in front of his parents. He was given food twice a day and he said that “When they gave me food, I knew they will hit me”. He eventually signed all the blank papers he was asked to.

Lombroso may have been the most prominent practitioner applying Social Darwinism to criminality. He may also have taken the approach to its most extreme, but the implications he explored are very revealing. Gould notes that Lombroso concluded that about 40% of criminals followed hereditary compulsion; others acted from passion, rage, or desperation. At first glance, this distinction of occasional from born criminals has the appearance of a compromise or retreat, but Lombroso used it in an opposite way - as a claim that rendered his system immune to disproof. No longer could wo/men be characterized by their acts. Murder might be a deed of the lowest ape in the human body or of the most upright cuckold overcome by justified rage.<sup>460</sup> In connection with this a prisoner said that a police officer told him, “Sign the confessional statement. I know you have murdered because we have learned in our training session that criminals have facial features like yours.” Most likely this police officer was referring to the ‘Lombroso theory’. The prisoner said that he felt humiliated to hear that he looked like a criminal or murderer to the police officer.

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<sup>460</sup> Gould, Stephen. "198 1. The Mismeasure of Man." cited in Freitag, Sandria B. "Crime in the social order of colonial north India." *Modern Asian Studies* 25, no. 2 (1991): 227-61.



#### **5.4.2.5.THREATENED AND TUTORED – POLITICS OF TORTURE**

Criminal justice system plays theatre and there is interplay between threatening and tutoring while in the police lock-up. Both these phenomena ‘complement’ each other. If one is threatened in the lock-up, one is also tutored concurrently. There are actors<sup>461</sup> and directors while performing theatre, likewise, the present death row prisoners; the then accused was actors and were ‘tutored’ to ‘deliver’ dialogues which were scripted by the directors (criminal justice system). The medium used for this ‘performance’ was by means of threatening the accused. Further, the use of language in this phenomenon caused fear and pain. Consequently, these phenomena form the very politics of being in custody which leads to death penalty. Foucault talks about the ‘self-evident’ characteristic of prisons which is based on ‘deprivation of liberty’.<sup>462</sup> Nevertheless, the process of ‘deprivation of liberty’ begins with arrest and continues in the lock-up and only then it further percolates to the prison. So in these two previous processes, it is explicit that the same principle used in prison is also used in the lock-up or I dare to say that it is used on a higher echelon.

While in lock-up, the phenomenon of the first T which is torture begins, the process of being threatened and tutored begins concurrently. Almost all of them before being taken to the Magistrate were tutored to tell the Magistrate that they were not beaten in custody. They were threatened that if they did not say the same they will be killed citing the reason that they were trying to ‘escape’ or their female relatives would be raped. The most instances where the prisoners were threatened and tutored were prior to production before a Magistrate. According the Criminal Procedure Code, 1973, an accused arrested has to be produced within 24 hours of custody before a Magistrate. Section 164 of the CrPC states that Magistrates are required to ensure that a confession is made voluntarily. The police became directors and tutored the prisoners telling

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<sup>461</sup> Schechner, Richard, and Mady Schuman, eds. *Ritual, play, and performance: Readings in the social sciences/theatre*. Seabury Press, 1976.

<sup>462</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

that they should not tell the judge anything. The extent to which the criminal justice system plays theatre is when they coerce the prisoners by making them believe that if they reproduce what they are tutored; they will be sent back home. For instance, one of the prisoners said that the police officer told him that if he says he was tortured in custody, they would take his custody for another 15 days and would torture him even more. Further the police told him that if he does not open his mouth, he will be sent home immediately. The prisoner said that he really believed that he will be sent home and so he did not speak in front of the Magistrate.

Again prisoners were always tutored to say that they were arrested a day before they were produced before the Magistrates. The threat which always worked with the prisoners was that if they did not tell exactly like the officers asked them to; they would be brought back to police lock-up and would be killed. In addition to that, the use of language also played a very important role in the threatening-tutoring phenomenon. The police officers used the word, “work” instead of torture. For example, before being taken to the Magistrate, this prisoner was told, “Do not tell anything to the Magistrate or we will further ‘work’ on you. If the Magistrate asks you ‘How did this happen?’ [His legs were blue with all the beatings in custody], you have to say that the public beat you outside’. In the court this prisoner said exactly as he was asked to because he was scared that he would be beaten again.

The prisoners confirm to the fact that each police officer knows exactly which Magistrate would ask what question. The accused are tutored accordingly before they are taken to the Magistrate. The officer tutored this prisoner that the Magistrate would ask “*Taklif diya kya?*” (Were you given trouble?). The officer tutored him to say ““*nahi diya’ bolna*” (Say you were not given any trouble). This was exactly what the Magistrate asked and he responded like he was tutored. Threatening-tutoring also worked in cases where the prisoners’ family members were in danger. The police told this particular prisoner that if he did not tell exactly as they asked him, they will burn his parents down. He said that when he went to court, he just signed the file and did not open his mouth because he was scared for his parents’ lives.

The only woman prisoner was also tutored before being taken to the Magistrate. She claims to be in an illegal detention for three months before being produced in a court. Before she was taken to the Magistrate, the police officer told her that she should not mention the three months she was in detention but must tell that she was arrested two days ago. They threatened her that if she did not say as she was told, she would be taken back to the same detention place and would be raped.

Another prisoner was threatened that he would be tied up in a gunny bag and placed on the railway track. He reasoned with himself that he would confess the crime instead of dying this way. He said that he had committed one theft but he would just believe that he has committed 50 more thefts and will take the punishment than die in a gruesome manner. He ultimately confessed and signed the blank sheet.

Tutoring not only worked prior to producing them before the Magistrates but also before senior police inspectors and media. Apart from this, witnesses who were present for the identification parade of the accused were also tutored. In many instances, the witnesses said that they did not know the accused, but then they were taken to a separate room and according to the prisoner; the witnesses were tutored by the police to say that they were the same boys. Another prisoner accounts that the main witness in his case was under pressure to give a false witness as her husband was arrested. The police threatened her that if she does not give the witness he will also be prosecuted. So she gave a 'false' witness to protect her husband. After her witness, her husband was released. In another instance, the inspector took a prisoner to the spot where the crime had occurred and tutored him to tell this is how he committed the crime. The police then showed him pictures and told them, "You have to tell that this is where you entered from and this is how you committed the crime."

Angela Davis while mentioning the Attica Rebellion, 1971 said that it began when prisoners demanded better living conditions in the prison. The triggering factor of the rebellion was also the fact that Jackson David was killed in custody while he was 'trying to escape' prison. No black leader till today

believes that it is true.<sup>463</sup> United States and India are not much different when it comes to exercising power. One of the prisoner's narrations reminded me of Jackson David. This prisoner said that while he was in police custody, the officer had threatened that if he did not confess his crime, they would kill him and throw his body into a lake and no one would know about it. The other option the officer suggested was, "We will take you outside the jail road and shoot you down. We'll say that you were trying to escape the prison."

#### **5.4.2.6. 'NO CONCLUSION'**

The longest time a prisoner spent in prison was/ is 22 years while the shortest is three years. Nevertheless when they narrated about the torture they had to go through in custody it as if it happened yesterday. Most of them said that they still have pain in various parts of their bodies because of the torture. The day I visited a certain prison, a prisoner was eating bread dipped in milk because he was unable to open his mouth. He said that when he was in the lock-up his mouth was shut with a clip and therefore he could not open his jaws. One of the prisoners said that on most of the days, he woke up in the middle of the night and yelled "Please do not beat me" just as he had cried out while he was in the police lock-up.

All of them said that it was better to die than to go through this kind of torture. When they were asked to sign the blank sheets for confession, they reasoned with themselves "Why should I die here? Let me just sign whatever they ask me to. At least I will have my life." When asked if these incidents were reported, all the prisoners echoed in the same voice that it is futile to raise any complaint. The ones who complained said that action against torture only exists on paper and that in reality nothing happens. He also said that no one believes the kind of torture prisoners faced in custody and hence they feel helpless. Many prisoners have written to the Ministers of Law and Justice and also to both the State and National Human Rights Commissions. All of them showed

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<sup>463</sup> Davis, Angela Y. *Are prisons obsolete?*. Open Media, 2003.

me the copies of their complaints and petitions. Almost all of them said that they did not receive any reply from anyone.

The only reason the police officers stopped beating the prisoners was when another officer told that the prisoner might die in custody and it will be a 'bigger headache'. One of the prisoners said that his head tore open because he was hit with a rod. He was taken under a false name to a private doctor who gave him medicines. He was however, not allowed to talk to anyone. Here the prisoners came in contact with doctors who are agents outside the field of criminal justice system yet are fundamental actors to sustain the system. Another prisoner said that he was taken to a Civil Hospital but there were no case papers, he was just given medicines for his wounds.

Foucault says that punishment like imprisonment where there is mere loss of liberty has never functioned without a certain additional element of punishment that certainly concerns the body itself; rationing of food, sexual deprivation, corporal punishment, solitary confinement. He says that imprisonment has always involved a certain degree of physical pain. A criticism often levelled at the penitentiary system in the early nineteenth century was that a condemned wo/man should suffer physically more than other wo/men. There remains, therefore, a trace of 'torture' in the modern mechanisms of criminal justice – a trace that has not been entirely overcome, but which is enveloped, increasingly, by the non-corporal nature of the penal system.<sup>464</sup> Prisoners on death row talked about this 'trace' of torture that they had to face when they lost their liberty.

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<sup>464</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

### **5.4.3. PRODUCTION BEFORE THE MAGISTRATE FOR THE FIRST TIME**

This is a process that occurs after the person is arrested and is in the lock-up or any other place of detention. A person who is arrested has to be produced before the Magistrate within 24 hours of arrest.<sup>465</sup> There are two parts where prisoners are produced before the Magistrate. One is for the first time and consecutively every two weeks once their trial begins. This process records the first time they are produced before a Magistrate while the other times they are produced before the Magistrate is recorded in the “Trial” process later in this section. The phenomenon of the three T’s – tortured, threatened and tutored discussed in the lock-up process occurs before being taken to the Magistrate.

A large number of prisoners were taken to the Magistrate’s house at night. This made it easy for the police to get back the custody of the prisoner. Also the marks on a human body would have been less visible at night. No matter when the prisoner was arrested, s/he was always ‘tutored’ to say that s/he was arrested a day before. Also the police officer ‘tutored’ prisoners telling them that ‘*Magistrate ke saamne kuch nahi bolneka*’ (do not say anything in front of the Magistrate). They were then threatened that if they speak before the Magistrate, the police officials will anyway get them in custody again and that they will repeat all the ‘torture’. In one instance, a prisoner did not follow this ‘tutoring’ instead he removed his clothes and showed his injuries to the Magistrate. However, the Magistrate did not make a note of it sent him back to police custody for another 15 days. He was beaten even more for ‘telling’ the Magistrate when he was ‘tutored’ to do otherwise.

A few prisoners reported that they were given sedatives before being taken to the Magistrate. One reported that before taking him to the Magistrate he was taken to the Deputy Superintendent of Police’ office and was given a tablet to eat. According to him this tablet made him drowsy and he could not speak in the court. In another instance, a prisoner said that before taking him to the

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<sup>465</sup> The Criminal Procedure Code, 1973 See at <http://mha.nic.in/pdfs/ccp1973.pdf> [accessed on 18th January 2012]

court, he was given *biryani* [meat cooked with rice], alcohol and *ganja* [weed] which made him drowsy.

According to the prisoners, some Magistrates do not even look at the accused or even worse do not ask them anything. A prisoner said, “I was produced before the Magistrate, but he did not look at me or ask me anything, I was sent to a sub-jail immediately.” Talking about the Magistrate’s indifference towards them, one said, “When I was arrested, I was remanded for two days. Then I was taken to the Magistrate’s house. The Magistrate was on the roof top. He did not listen to me - he just talked to the police officer and thereafter we were asked to leave.” Another prisoner narrated a similar account, “When I was taken to the Magistrate, he did not ask me anything and I was given back to police custody for a month.” Another prisoner said that he was badly injured and hospitalized for six months and he was deliberately not taken to the Magistrate for six months. According to him, if the police would have taken him to the court, the Magistrate would have given him a bail based on his medical condition. But there were also instances where Magistrates have asked prisoners, “*Mara Kya? Takleef diya kya?*” (Did they beat you? Did they give you any trouble?). The prisoners were compelled to say as per their tutoring. “*Nahi diya*” (Did not give) was a typical answer.

#### **5.4.4. EITHER SENT BACK TO THE LOCK-UP OR SENT TO JUDICIAL CUSTODY**

The next process is a transition phase where prisoners were either sent back to lock-up or to judicial custody (prison). If the prisoner was sent back to the lock-up, they had to undergo the same phenomenon of lock-up process explained above. The ones who were sent back to lock-up, were produced before the Magistrate after a day or two or maximum after a period of 14 days. After this they were transferred to judicial custody i.e. the prison. However there were certain exceptions in this process as well. In one instance, a prisoner reported that he was held in police custody for ‘enquiry’ for a period of 30 days. In another case, a prisoner narrated that after he was transferred to the judicial custody; he was not produced in the court for the next four months because he was a ‘terrorist’ and according to the state special escorts<sup>466</sup> was needed to take him to the court.

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<sup>466</sup> Note: Police men who take prisoners to court.



#### **5.4.5. SENT TO JUDICIAL CUSTODY**

Subsequently the prisoner is transferred to what is termed as 'judicial custody' or 'prison'. While continuing to remain in prison (also referred to as 'jail') during the period of trial, the individual's legal status is that of an 'accused person'. To distinguish this category of prisoners from sentenced prisoners, the term commonly used by the administration is 'undertrial'.<sup>467</sup> Judicial custody is the phase in the process of death penalty where the accused is eventually entrusted in the hands of the Magistrate. Wacquant, however, puts it more radically saying that the ones who should not be seen outside in the society are the ones sent to the prison.<sup>468</sup> This is also the phase where the accused receives the chargesheet which is a document that records all the criminal sections that the person is booked under. Once the chargesheet is filed, the case is committed to a Sessions Court or Lower Court or District Court.

##### **5.4.5.1. PRISONS**

There are different categories of prison. The three main ones are: Central Prison, District Prison and Sub-jail. Central prisons are intended for prisoners with long sentences while the district prisons are for those with short sentences. Central prisons house prisoners who have been sentenced for over three years, and some central prisons have adjoining but separate areas for female undertrials or convicts. The long term prisoners are usually employed in organized industries. District prisons house prisoners sent to less than three years detention and also general undertrial prisoners. District prisons are of various categories, differentiated according to their capacity (prison population). Prisoners in district prisons are made to do skilled work such as tailoring or carpentry or other work which does not require much skill, viz., cooking, farming, gardening, scavenging, etc. The reason for giving prisoners such kind of unskilled labour is that during their short stay in prison it is

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<sup>467</sup> \_\_\_\_\_ *Forced Separation : Children of Imprisoned Mothers (An Exploration in Two Indian Cities)*, Prayas Publications, Mumbai 2002.

<sup>468</sup> Wacquant, Loic. "Deadly symbiosis when ghetto and prison meet and mesh." *Punishment & Society* 3, no. 1 (2001): 95-133.

neither profitable nor possible to teach them any trade or industry. But if there are among them men who are already skilled in some industry or other, they are usually put on work they are best qualified to do.<sup>469</sup> In some states, the smaller district prisons are also known as sub-jails. The three types of prisons vary in terms of their capacity, facilities and location. District prison is a larger prison but smaller than central prison while the sub-jail is the smallest in terms of capacity and facilities. Central prison is usually located outside a city. In addition to this broad structure are the special institutions, i.e. women's prison, prisons for young offenders and institutions for mentally disturbed and diseased prisoners.<sup>470</sup>

When prisoners are given death sentence, they are transferred to a central prison because these prisons have the gallows and the high security yard where death sentence prisoners are housed. The experiences or perceptions mentioned in this section account from the time when the current prisoners on death row were undertrial prisoners. As an undertrial, the accused have to adapt to the 'working' of the prison. They have to follow certain discipline; they belong to the category of individuals who have lost their agency.<sup>471</sup> They interact or come in touch with various 'actors' such as the journalists, doctors, lawyers, fellow undertrials, convicted prisoners, prison officials, prison visitors and their own family. These actors play a role in shaping the further process of their incarceration.

When the prisoner is first transferred to a judicial custody, s/he has to undergo a medical check-up. This is in accordance with the rules that govern the prison that whenever an accused is taken from the police custody into judicial custody, there has to be a health ticket issued and stored in the files of the particular prisoner. A prison officer said that it is mainly done so that in case the prisoner has undergone torture in police custody and dies in judicial

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<sup>469</sup> Durai, J. Chinna. "Indian Prisons." *J. Comp. Legis. & Int'l L.* 3d ser. 11 (1929): 245.

<sup>470</sup> Singh, Hira 'Prison Administration in India: Contemporary Issues' in Shankardass, Rani Dhavan. *Punishment and the prison: Indian and international perspectives*. Sage, 2000.

<sup>471</sup> Goffman, Erving. "On the characteristics of total institutions." *Symposium on preventive and social psychiatry*. 1961.

custody, the prison does not want to take the responsibility of the death of this person. Hence this medical check-up is an 'anticipatory bail' in case of death due to torture. According to prisoners, this medical check-up is just a formality because in reality, the prison doctor does not record any injuries sustained from torture. However, one prisoner reported that he was thoroughly checked because his co-accused consumed cyanide capsule and died.

#### **5.4.5.2.PRISON OFFICIALS**

While the prisoner is an undertrial, s/he is taken to the court for the trial. A court date comes after every 14 days in Indian courts. However, there are always problems with escorts. The police remain the escorts of prisoners. The prison hands over the accused to the police, they take them and bring them back after their court dates. According to the law an undertrial should be treated as 'innocent till proven guilty'. However, the reality was a bit different for these prisoners. Prisoners narrated their experiences of being humiliated by the prison officials, prison visitors, fellow prisoners and their families as well. Prison visitors and officials discriminated them on the basis of the crime they were accused of for the concept of "innocent till proven guilty" according to prisoners only exists in legal documents and texts.

Another process that takes place while in judicial custody is an 'identification parade'. Identification parade is the process where witnesses [cases where there are eye-witnesses] try to identify the accused. Prisoners describe this process as a very humiliating experience one reason was that police or prison officials influenced the witnesses. For instance, the police or prison officials ask the witnesses, 'Isn't this the same person that you saw?' In instances where the witnesses say that it was not the same person, the witnesses would be taken to another room and after a while they would say, 'Yes, it is the same person we saw.'

Prisoners also said that their photos were already published in the newspaper which did not help them. These photographs are given to the media by the police. One of the prisoners said that the police and the media are hand-in-glove and the police tell the journalist that they will give them 'juicy' crime

stories for their newspaper but they should turn a blind eye to the torture in custody. During the identification parade, prisoners also reported that they were called various names based on their crime especially the ones who were accused of rape and murder. Most of the prisoners who are on death row were involved in cases which were already hyped in the media. A lot of them were hence already considered 'dangerous' even in the prison and were placed in maximum security prison even as an undertrial. Hence there was not much interaction with co-prisoners. In addition to this, there is also a very peculiar process as they are in judicial custody which is called 'body warrant'. Prisoners reported that the court issues a 'body warrant' against them and thus they are taken out of the judicial custody, once again to the lock-up. This makes their situation vulnerable. This is done in order to 'investigate' the crime, however the ones against whom the body warrant is issued becomes vulnerable to torture or threatened and/or tutored.

A few prisoners had resorted to hunger strike while they were in prison as undertrials. This was mainly to awaken the officials to meet their demands. The prisoner told that they had to go to 15 different courts for their cases. Hence they organised a hunger strike to club all the cases together and also to seek a CBI enquiry. He said that their demand for clubbing all the cases together worked out but the CBI enquiry never happened. He added that none wanted to listen to the poor. Prison officials interacted with them on a daily basis. Many reported that they were beaten by prison officers while they came to judicial custody. While beating one of the prisoners who was arrested for murder, the prisoner officer told, "You have a big body. Why do you have to come to the prison? Why did you make this mistake?" In another case of caste violence, the prison officer who belonged to the same caste as the victim beat the accused who belonged to a different caste and said, "How dare you kill a person belonging to my caste? We will make sure that you get the harshest punishments even death penalty."

Prison officials are also aware that prisoners are intimidated by the 'prison' itself. One of the prison officers told me that when prisoners come to the prison, they lose half their smartness. Prisoners also perceived that the prison

officers did not act in the interest of the prisoners; instead they supported the police officers in 'handling' the prisoner. Prisoners who were Muslims and were arrested for 'terrorist' activities narrated experiences of how they felt discriminated against because of their religious identity. One of them said that while he was an undertrial, the Superintendent of the prison was so angry with them (him and his co-accused) that the officer burned their 'Holy Koran' (Holy Scriptures of the Muslims). He also said that they were placed in an '*anda* cell' (egg cell) which can accommodate only one person at a time. However they were five in that cell. This prisoner said, "We must be given animal rights and not human rights because animals are treated better than us". Besides this, the Muslim prisoners narrated that whenever they asked for an Urdu newspaper, they were called *Pakistanis*.

In another case, a high ranking police officer came to the prison and interrogated the accused whereas by law this would not be possible. This prisoner was accused of kidnapping for ransom and murder. The officer asked the prisoner if the victim he had kidnapped was still alive. This prisoner said that if the officer brings back his sister's dignity which was lost when police officers molested her or if the officer would bring back the days his old mother spend in police lock-up, or take away the false charges of the brother who is accused of the same crime or bring back the other accused whom the police killed calling it an encounter; then he will tell the officer if the victim is alive or dead."

#### **5.4.5.3. PRISON VISITORS**

Another set of actors that prisoners interact with while in custody are the prison visitors. In India, prisons are a state subject. The prison visiting system in all Indian states has two types of visitors - The Official Visitors (OVs) and the Non-official Visitors (NOVs). The official visitors include the Inspector General, Director of Health Services, District and Sessions Judge, Additional District and Sessions Judge, District Magistrate, Deputy Inspector General of Police, Additional District Magistrate, Sub Divisional Magistrate and Civil Surgeon or Medical Officer. NOVs include members of civil society or human

rights commission.<sup>472</sup> One of the prisoners said that the State Human Rights Commission's President who was a retired judge came and told, "I can only listen to you but do not have any powers to change anything."

Another prisoner who was arrested for rape and murder accounted that the prison visitor who was an executive Magistrate asked him, "Mr. Z tum hai? (Are you Mr. Z?) How many more people have you murdered? How many more rapes have you committed?" This prisoner said that at least five Magistrates have asked him questions like these. He blames it on the media which portrayed him as a beast. The prisoners also said that they sometimes do not know who visits them. One of them said that they do not know that Human Rights Commissions come to the prison or not. He said that they are not introduced to them. If they are introduced, they are prepared in advance about what to tell the visitors. One of the prisoners who belonged to a case where the trial was delayed for four years complained to the prison visitor about the delay of four years. The visitor asked him regarding the stage of the case. When he heard that the cross-examination was going on he told the prisoner, "Oh in four years, 66 witnesses were examined, it is a great thing. So be happy and don't complain."

However, one of the positive accounts of judicial custody from a prisoner was that judicial custody was not as intimidating as the police lock-up. This prisoner said that if he had known that he was going to be sent to judicial custody, he would have told the Magistrate about his actual experiences in the lock-up. He now knows that the judicial custody is different from the police lock-up and that he should not have been afraid to tell the Magistrate about his plight in the police custody. At the same time, he said that there was no assurance that one would not be sent back to the same police against whom one complains.

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<sup>472</sup> Jain, Neha and Sreekumar, R. *Behind bars: A closer look at prison visiting system* The Commonwealth Human Rights Initiative, Madhya Pradesh, \_\_\_\_\_

#### **5.4.6. TRIAL**

The next process leading up to death penalty is the ‘trial’ process. The trials of death row prisoners have sometimes taken over seven years or sometimes it has finished in two years. In this process they also meet various ‘actors’. Some of them are government/state lawyers, public prosecutors, media personnel, Magistrates or judges, police and escorts. Prisoners narrated their interplay at various junctures with all these actors at some point in time. Further to set this process in context, it is imperative to comprehend their experiences and perceptions of court proceedings while they were undertrials. This section begins with a narration on the escorts following their experience and perception on court proceedings. This process discusses the experience and perception of prisoners about lawyers, Judges/Magistrates and finally the media too.

##### **5.4.6.1. ESCORTS**

Escorts are the police who take the prisoners to the court. As mentioned earlier, a court date typically occurs after every 14 days. Prisoners have reported that they were not taken to courts regularly. One of the reasons for not being taken to courts was lack of police escorts. As a student social worker in the prison, I have observed the absence of escorts which was due to ‘*bandobast*’ or ‘*nakabandi*’. *Bandobast* literally means ‘preparation’ which is providing security and preparing the ground for a politician. *Nakabandi* literally means ‘stopping at the junction’. *Naka* (junction) *bandi* (stop) is conducted at junctions to stop vehicles and check them because the police receive information about criminal activities. First, priority is usually given to *bandobast* or *nakabandi* and hence there are no more police left to escort the undertrials to the prison thus cancelling the court hearing. This is one of the reasons that prolongs the undertrial period. Prisoners often resort to hunger strike if they are not taken to court regularly over a period of time.

The prisoners have shared the experiences that they had with the police while being taken to the court. A police escort takes all the prisoners who have their court-dates on a particular day. So, that could mean around 50 prisoners or

more. The escort comes at 10 a.m. The court timings or the case hearing for prisoners are in different court rooms although in the same location. Hence once they are taken out, they remain in the court the whole day and they remain hungry because food was not provided to them by the police until very recently. A recent judgment said that prisoners have to be provided dry food if they are in the court the whole day.<sup>473</sup> However, most of the prisoners on death row were undertrials before this judgment was passed and have remained hungry on their court dates. They also did not eat food in the evening because food is distributed at 4 p.m. and prisoners are not physically present to collect their food. Generally their co-prisoners take food for them but that is not the case always. Families of prisoners also bring some food to the court but they generally have to pay bribes to the escorts for this food to be given to the prisoner.

Another occurrence reported by some prisoners was being chained while being taken to the courts. These prisoners already were known to be ‘dangerous’ criminals because of the crime they were arrested for. Hence the police ‘justified’ themselves when they chained these prisoners. For instance, one of the prisoners said that he was chained the whole day from morning till evening because he was a ‘dangerous’ prisoner according to the police. He said that his sister wiped sweat off his brow. He said that it was difficult for him to climb into the police van. This went on for a year as his case was in a fast-track Trial Court. One of the other methods used by police escort while taking undertrials to court was to tie hands of undertrials with a rope – two prisoners tied on one rope thus forming a human chain of approximately 4-6 prisoners. This is done to prevent them from ‘escaping’ and I have seen this when I was in the field and prisoners perceived that the cattle are treated with much more dignity than them in this situation.

#### **5.4.6.2. COURT ROOM EXPERIENCES**

While describing courts, one of the prisoners said, ‘A Court is like a machine. It could be very well a computer instead of being a human being. No one wants

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<sup>473</sup> Appendix 7: Judgment on taking dry food to prison during trial



to listen to you.’ Prisoners said that in the court they were mute spectators and did not understand most of the proceedings. English seemed to be a major trouble-maker for the prisoners. For instance, a prisoner said that when the death sentence was pronounced he did not understand as it was in English. Another one said that the proceedings in High Court were in English and he did not understand anything and a guard translated it to him at the end of the proceeding. Yet another prisoner said that when he was brought to the court, 14 witnesses were already examined. The proceedings were in English and it was very difficult for him to follow that. According to him, his case went to seven different judges.

Prisoners felt there was a loss of agency and autonomy in courts and at the same time they also called themselves ‘invisible’ in court rooms. For instance one of the prisoners said that no one asked for my opinion about the case in the High Court, not even the judge before pronouncing the judgment. Prisoners said that they were present but they remained invisible because no one asked them their opinion. Prisoner’s opinion about Lower/Sessions Court is different. One of them said that the proceedings in lower courts took place in the local language. One is able to follow it most of the time but they are not asked anything. Besides that the lawyers ask them to be quiet. At the end of the trial, the prisoners are asked if they have anything to say. One of the prisoners on this aspect of the court said that there is no point in giving them a chance to speak in the end while during the whole proceedings one is invisible and mute.

One of the other actors is the public prosecutors (PP) who according to the prisoners leaves no chance to humiliate them in the court room. It was generally in the last argument that death penalty was demanded. One has to bear in mind that the prisoners who are on death row belonged to the category of ‘rarest of the rare’ crimes. Their crime ‘stories’ were gruesome and have been published vastly in the media. According to the prisoners this was exactly what the PP picked up during the last argument. For instance, one PP said that the prisoner should not be left or acquitted or given life imprisonment or else he will kill many more people. In another case, two prisoners argued their case themselves because their lawyer failed to appear in the court on important

dates. In this case the PP said when two of them can actually defend themselves so brilliantly what is the guarantee that they cannot kill someone thus demanding capital punishment for both of them. They said that they were given death penalty based on other evidence but this was one of the arguments made by the PP. Another very ‘common strategy’ used by PPs, according to the prisoners is to convince one of the accused to become a ‘pardon witness’ which means that this particular accused would witness against the other accused and therefore would be pardoned and given a lesser punishment. One of the prisoners said that pardon witness has to be produced within 90 days of the arrest, however, in most of the cases, this time period is not observed and sometimes a pardon witness is used even after three years of the trial. Also prisoners have mentioned about PPs being present while they were interrogated by the police/CBI for the first time. In some cases PPs also ask the Magistrate to include certain Indian Penal Code sections in the middle of the trial and the Magistrates agree to it. These newly inserted Penal Codes are the ones which could give them death sentence. According to the prisoner on such important dates, their lawyer was ‘missing’ from the proceedings.

#### **5.4.6.3. LAWYERS**

This leads me to the next section which is about lawyers and the prisoners’ perception and experience of their interactions with the lawyers during the entire process. More often than not, the prisoners would have legal aid/state/government lawyers because hiring a private lawyer was beyond their financial capacity. One of the criteria for a good lawyer according to a prisoner was that the lawyer did not take any money from them but what the prisoner did not realize was that since he was a legal aid lawyer, s/he is not supposed to take money from the prisoner. Most of the prisoners said that the lawyer’s assistant would come instead of the lawyer for the hearing. One of the legal aid lawyers asked a prisoner for Ten Lakhs rupees (18,000 Euros approximately) but when the prisoner said that he or the family had no money, the lawyer agreed to a sum of Rs. 500/- (9 Euros approximately) per date he appeared. When the family could not bring this money, the lawyer did not appear for the hearing but his assistant came and took another date. Another prisoner narrated how he had to sell his property and his wife’s jewellery to pay the lawyer. Also

many prisoners said that their houses were sold during the trial period to pay the lawyer and their families either lived on the street or in some relative's houses. One of the prisoners informed that his lawyer suggested that he should pay the public prosecutor Five Lakes Rupees to dissuade him from arguing in favour of death sentence. . This prisoner informed the lawyer that he and his family were very poor and could not bring this huge amount of money from anywhere. There were prisoners who were arrested for dacoity and murder. The court did not verify if they really were dacoits or not. Had they possessed the money, they would have at least had good private lawyers.

Apart from being deliberately absent because of the non-payment of fees, lawyers also went to the extent of blaming the prisoners for signing blank papers as 'confessional statements' while in custody. One of the lawyers told the prisoner that he should not have signed those blank papers. The prisoner said that instead of arguing in the court that the statement was extracted from the prison under pressure and intense torture, the lawyer would make the prisoner feel guilty about signing the blank paper. Another classic behaviour of lawyers according to the prisoners is that most of them do not respond to the letters of prisoners or would lose important case-files or other documents. Prisoners said that they have written plenty of letters to their Supreme Court or High Court lawyers but they never respond to the letters. Additionally, lawyers have managed to lose crucial documents of prisoners which could have eventually even released them. They have evaded the responsibility of obtaining a duplicate copy of these documents.

Another experience of the prisoners with the lawyers was that the lawyers did not argue in their cases. For instance, one of the prisoners said that his lawyer did not argue the case in the end and conducted the cross -examination of witness for only ten minutes. Yet another prisoner said that the lawyer did not cross - examine the witnesses at all. While narrating about the absence of the lawyer, a prisoner said that during the court proceedings, the lawyer never listened to him and was absent during the argument and the judgment. Yet another prisoner accounted that he was taken to the court on the last day of the trial and when his death sentence was pronounced the lawyer did not come and

he was all alone there. Another prisoner said that just before lunch-time, the judge pronounced his sentence in English and left immediately. Since the judgement was pronounced in English, the prisoner could not comprehend the sentence. The lawyer was not present and it was the '*awaz lagane wala*' [court announcer] who came and asked him to sign the judgment copy and told him that he had received [*phasi saza*] death penalty.

Contrary to the above, some prisoners also reported about being satisfied with their legal aid lawyers. One of them said that the lawyer appeared for every hearing. Another prisoner said that the Supreme Court lawyer he had was extremely proactive and replied to letters that he wrote. In another case of private lawyer, the prisoner said that he was very happy with the lawyer but this lawyer was attacked by the family member of the victim and hence had to discontinue. The prisoner had to therefore take a legal aid lawyer because he could not afford to pay another private lawyer the second time.

#### **5.4.6.4. JUDGES/MAGISTRATES**

Judges/magistrates also play a crucial role in the process of the trial. Foucault says that the sentence that condemns or acquits is not simply a judgement of guilt or a legal decision that lays down punishment. This sentence bears within it an assessment of normality and a technical prescription for a possible normalisation and continues that today the judge – Magistrate or juror –does more than 'judge'.<sup>474</sup> This encounter with the one who is more than a 'judge' is for the second time after their initial production 'within 24 hours' of arrest. This second encounter is when they are committed to a Sessions Court and assigned a judge. This is also the judge who pronounces the sentence. In most cases, the judges do not speak to the accused asking for incidences of torture. For most of the prisoners, judges depicted 'authorities' who were on a higher platform both literally and figuratively. One of them said he never got a chance to speak to the judge even though he wanted to say something to the judge. Some prisoners were however given chances to speak in the end.

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<sup>474</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

Many a times these judges are transferred before they can pronounce the sentence because of the routine transfer. According to the prisoners, some cases are influenced by political parties and some judges are deliberately transferred out of certain cases. In one case of transfer, the prisoner narrated that the Magistrate wanted to talk to him alone but the police man told her, 'Madam he is a dangerous Muslim fundamentalist.' The Magistrate replied that he might be dangerous for the policeman but not for her and insisted that she wanted to talk to him alone. She enquired about his treatment in the police custody. This prisoner said that this incident restored his trust in the Judiciary again. He was not treated as a 'terrorist', 'someone to be scared of' just because he had a Muslim name or had a beard. In this case, the Magistrate was transferred to another court immediately after this incident. In another case a certain group of prisoners were acquitted in 45 cases due to lack of evidence, therefore this judge was transferred. His crime was he had acquitted the prisoners in 45 cases. The prisoner said that the next judge who came was 'not good'. This judge gave them death penalty in almost all the other cases. The lawyer even argued that they have already spent ten years in prison and could be released but the judge went on to give them death penalty.

While prisoners said that their lawyers were corrupt, this allegation also extended to the Magistrates. For instance, a prisoner said that everything in the court was pre-planned because before the case began; the Public Prosecutor, Magistrate and police met in the Magistrate's chamber and decided beforehand. Another prisoner said that the case was in their favour however in the end, the judge was bribed and hence the decision was not in his favour. Many prisoners said that there was political influence in the decision -making process. For instance one of them said that Kasab's 475 trial affected their cases negatively. These prisoners were also in the 'terrorist' groups and they claimed that their cases were dealt with strictly because of the pressure of the State's right-winged ruling party. Another prisoner who claimed that his

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<sup>475</sup> Note: Ajmal Kasab, the lone survivor of the Mumbai terror attacks in 2008 who became the last person to be executed in India in November 2012.

occupation was robbery said that he had robbed all his life and would not mind being imprisoned for robbery. However he has been imprisoned for a crime he has not committed. According to this prisoner, the court clerk informed him that the judge had taken a bribe therefore he was going to get a death sentence. According to him, he knew beforehand, that he was going to be given death penalty.

Prisoners have also been 'angry' with their judges. In one case a prisoner was very upset with the judge for not 'listening' to him. He beseeched the judge that he should finish their case at the earliest because he wished to go back to his family. According to him the judge did not listen to him which made him very upset. In that state he took his slippers and hurled it at the judge. The first slipper fell on the table and the second hit the judge's shoulders. An FIR [first information report] was registered but the judge recorded that the slippers hit the judge's clerk and not him (most probably to avoid the 'shame'). The next day he told the judge that he wanted to speak to him however, the judge told him that the court would not listen to him anymore instead he ought to listen to the court. This judge continued with the evidence and pronounced the verdict. The prisoner said that since he disrespected the person who was in the honourable chair, which is one reason why this judge should morally not continue to remain the judge in his case. When this prisoner went back to the prison after the slipper incident, he was not given food for a few days and was denied visits from his family. When he enquired with the superintendent of the prison the reason, the superintendent said that the Magistrate told him orally to punish him this way. The co-accused in this same case said that the judge was in an 'angry mood' when he wrote the sentence and if this incident had not happened, they would not have probably received death sentence.

Prisoners are allowed to speak in the end before the judgement is pronounced. In one instance where a group was arrested for murder case, they told the judge that they did not have any connection with these cases and that they were framed. According to them the judge did not pay any attention to that. Then one of them said that if the judge was going to book them for the 45 cases of murder and robbery and if they have really done it, they should at least have

the money. He said that they did not have money or ration cards or their names on the voters list. Again the judge did not pay any attention to this. Another prisoner said that during the court proceedings, the judge dozed off. He said that those who have money are not targeted because they bribe the system and are set free within a year or two. He lamented that it was the poverty-stricken ones like them who received the death penalty. In one case when the prisoner was given a chance to speak in the end. He appealed to the court that he should be given a chance to live a good life and be a good citizen, because he had an aged and widowed mother and a young wife to look after. However the judge pointed out that it was a shame that he had killed someone and wished to lead a normal family life with his wife and children. In another case, the judge asked the prisoner if he wanted life or death sentence. He said that he had a little daughter and hence the judge should give him a smaller penalty but he eventually received the death sentence.

The prisoners talked about unfair trials and one of the prisoners said that he asked for an in-camera trial so that it would be evidence later. It would have ensured transparent proceedings. Instead the court issued a ‘contempt of court’ notice because the prisoner had asked for an ‘on-camera-trial. According to the prisoner, the system did not want an on-camera trial. Another prisoner said that the Magistrate did not allow his lawyer to cross- question. Yet another prisoner asked for a Central Bureau of Investigation (CBI) enquiry into his case – 93 murder cases charged against this prisoner and his family. However the court rejected the demand for a CBI investigation into this prisoner’s case.

There were also instances where prisoners felt justice was restored. For instance, a prisoner’s wife was arrested along with her children when she came to visit him in the prison. He said that for one month and five days his wife was in police custody he did not know anything about her whereabouts. When this prisoner was taken to the court he told the Magistrate that he has not seen his wife after she was arrested and does not know where she was. The Magistrate told, “Take him back.” He was taken back to the prison and brought to the court 14 days later and it was the same Magistrate. He reported again that it was 14 days since heard from his wife and again the Magistrate said, “Take

him back”. This time he stood there and told the Magistrate, ‘This is the place where we can tell our sorrows and pain but nobody wants to listen to us.’ He banged his head on the wall. Then the Magistrate asked what was wrong and he told the incident. After this ‘drama’ the Magistrate immediately enquired with the police and found that they were indeed in police lock-up. He ordered them to be presented before the court and they were then transferred to judicial custody the next day. So even though the prisoner had to go to the extent of banging his head, he perceived that he finally found justice in that situation.

#### **5.4.6.5. MEDIA**

Media is another actor in the process of death penalty. Journalists, newspapers, TV channels, films all play a role in the trial of a prisoner. The cases of ‘high profile’ prisoners are often written or broadcasted widely in the media which makes it a biased-trial from the beginning. It often turns out to be a trial by the media. This is an experience which can be studied in detail again on how media influences the trial and finally nails the prisoner to death. However, the prisoners mentioned their experiences with the media very briefly. According to the prisoners, media is not independent of the ruling political government, the opposition or other state machineries like police and prison. Prisoners said that media never wrote anything ‘bad’ about judges or lawyers or the police. According to the prisoners, the media writes the police version of the ‘crime’ in the newspapers. Some prisoners narrated that their case was so sensationalised that there was a television series made of it. Some prisoners filed articles written about them while some did not bother to read it.

One of the prisoners said that the journalists wanted to take his photograph but did not want to listen to what he had to say. Another prisoner showed me a report about him in the newspaper which was his ‘daily routine’ in the prison. He said that he did not give the information to the journalist yet they had a version of what he did in the prison on a daily basis. He said that the prison official leaked his information to the journalists. He told the prison officer, “You did not do justice to me”. This prisoner further said that he was demoralized because of this incident and that this report further made it difficult for him to cope with the burden of death penalty.



Another prisoner had very many sleepless nights thanks to the way the media portrayed him. His photo was published in the newspaper the very next day of his 'shown' arrest-date. The media branded him as a 'rakshas' (a devil). He said that he feels restless about it and blames the media and the police for portraying him as a 'bad' person. The children of prisoners are susceptible to the impact of the parents' arrest as they are very vulnerable. The only woman on death row said that the journalist not only photographed her but also her children. Their photographs appeared in the newspaper and the television the next day. This act of publishing their photographs in the media created a huge stigma for them in their schools and the society they lived in. Similarly another prisoner said that the newspapers only wrote negative things about him – that he was fashion-conscious and showed interest only in wearing fashionable clothes instead of being bothered about the crime he had committed.

It was not just printed reports that did a lot of damage to the prisoners, it was the video coverage of the investigation as well that compounded their plight. They were forced to confess their crimes to the journalist. Similarly another prisoner said that he was forced to give an interview for a television. He said that everyone could have seen that he was beaten-up and injured however no one came to his rescue. In a similar case another prisoner who was held in detention for three months said that when the police wanted to go public with their case, there was a TV reporter who came to the police station. This reporter asked him 'Did you commit the murder?' The prisoner said that he wanted to touch the journalist's feet and tell her that he has not done anything and that she must help them. Then he looked at the inspector and the inspector showed a signal that he should say 'yes'. This prisoner was forced to admit to the journalist that he had committed the murder. According to the prisoner, then the inspector joined in and said, 'Pakka [For sure] he has done it, Madam'. This prisoner said that the inspector publicised about them as being wild lions hungry enough to kill and happy when they would hear the sound of blood trickling from the person's body whom they murder. In this particular case, I made a home -visit to this prisoner's house. They were extremely poor and did not earn enough even to afford two meals per day. The wife of this prisoner

looked into my eyes and asked me, ‘Do you think we are dangerous people wanting to kill other human beings?’ Another person from this same gang asked me, ‘Madam you sit with us and interact with us, do you think we are dangerous people ready to drink other people’s blood?’

Crimes are often committed in an act of rage but the media reports project such a gruesome picture about the prisoners that everyone forgets that the crime was an act of rage. Trial by media is always conducted in cases of prisoners on death penalty. Prisoners echoed this perception that if the media did not put so much pressure in their case may be they would have been free now. They said that most of them received the death sentence based on media pressure and circumstantial evidence. Further another prisoner said that media and IPC (Indian Penal Code) should be separate. The only positive account about the media was when one of the prisoners said that his family came to know through the newspapers that he was transferred to a central prison after the death sentence was pronounced. They could thus immediately come to the central prison to meet him.

#### **5.4.7. SENTENCED TO DEATH**

In the previous process of the trial there was an interplay with actors like the media, police, prison officials, lawyers, judges, and their families. The next process is the final process of being sentenced to death. Once prisoners are sentenced to death they are transferred to the high security yard. These high security yards only exist in central prison which typically would have the gallows. But some prisoners also reported that since they belonged to the 'rarest of the rare' category or are the so-called 'fundamentalist' or 'terrorists', they were housed in the high security yard from the time they were transferred to judicial custody.

During the trial, death penalty is usually 'demanded' or 'spoken out' in the final argument. For instance, a prosecutor in the final argument said, "These are wild beasts who cannot be reformed". Another prosecutor argued, "They are cold-blooded murderers and if let off free, they would commit murder and rape again." Some prisoners knew from the beginning that they would receive death penalty while some were caught unaware. One set of prisoners said that their lawyers advised them to 'demand' for death sentence on their own because it would be easier to acquit them from a death sentence than a life imprisonment in the High Court. Another prisoner said that the public prosecutor did not demand for death sentence but the judge handed over the punishment anyway. He said that death sentence should be eliminated from the Constitution because the law is biased against the minority in India. He said that the minority never gets justice and RSS<sup>476</sup>, BJP<sup>477</sup> think that every Muslim in India is a 'terrorist'. He continued that it is not only India that is so unjust but also USA where the Blacks are more likely to be convicted than a white person.

After the final arguments, the judge writes the judgment which takes a week or two and after that the judgment is pronounced. Some prisoners did not expect a

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<sup>476</sup> Note: RSS: *Rashtriya Seva Sangh* [Extreme Right winged political party]

<sup>477</sup> Note: BJP: *Bhartiya Jantha Party* [Right winged political party]

death sentence at all. In one instance, a prisoner said that if he knew that they were going to be given death sentence, he would have never gone to the court at all on that day and would have stayed in jail. Another prisoner said that he was completely shattered upon hearing of his death sentence because contrary to his expectations of a ten year imprisonment, he got death sentence. . The jailor consoled him in the evening saying that he need not worry and that he could appeal in the High Court.

After the judgment when the prisoners are brought back from the court, they are immediately transferred to a high security yard if they are already in a central prison. If they are in a district prison or sub-jail, then they are taken to the central prison the next day or sometimes even the same evening. The prisoners do not know the procedure after the death sentence is pronounced and many of them thought that when they were taken to the central prison, they were going to be hanged immediately. One of the prisoners, who was housed in a district prison where there were no singular cells, said that in order to place him in isolation he was placed in the kitchen because the prison did not have singular cells. He said that he was not allowed to meet any of the fellow prisoners however, when his father came to the prison, he was allowed to meet him in the superintendent's office.

The prisoners narrated the reasons they thought gave them death sentence. Some said it was a political case while some blamed it on their poverty and some others their religion or caste. One prisoner said that there is no justice in this country and that it is a shame to live in a country like this. There were prisoners who perceived that they were given a death sentence because they were illiterate and poor. One of them asked me if crime has reduced because the state has given death sentence to a number of people. He said that the criminal nature of people must be dealt with in the prison rather than giving everyone death sentence and legally killing them.

One prisoner said that he is not scared of death sentence but he is worried about his mother. He perceived that he received death sentence based on the media pressure and circumstantial evidence. He continued that he does not

want to run away from death but he is the only son in the family and wants to support his family. Many of them questioned the arbitrariness of death sentence because prisoners who have committed similar crimes were given life sentences and not death penalty. Another prisoner said that death sentence should be the same for everyone and not arbitrary and the terms of life sentence should be clearly mentioned as whether they have to be inside the prison for 14 or 20 years and be released after the completion of the term.

However there are also prisoners on the death row who opine that death penalty should not be removed from the law. This prisoner said that when someone plans and does a heinous crime like raping and murdering a person, then that person should be given death penalty. Another prisoner who opposes death sentence said that nobody has the power to kill another human being. He said that judges are not Gods and even they can make mistakes. He continued that the whole concept of death penalty is to frighten people and it is not practical. He says that there is a hope that he will live tomorrow and that is what keeps him going. He is just worried that the procedure would take too long. While there are conflicting opinions among death penalty prisoners themselves, let us move to the next section to see how they live on the death row.

### **5.5. 'Double-jeopardy': INCARCERATED ON THE DEATH ROW**

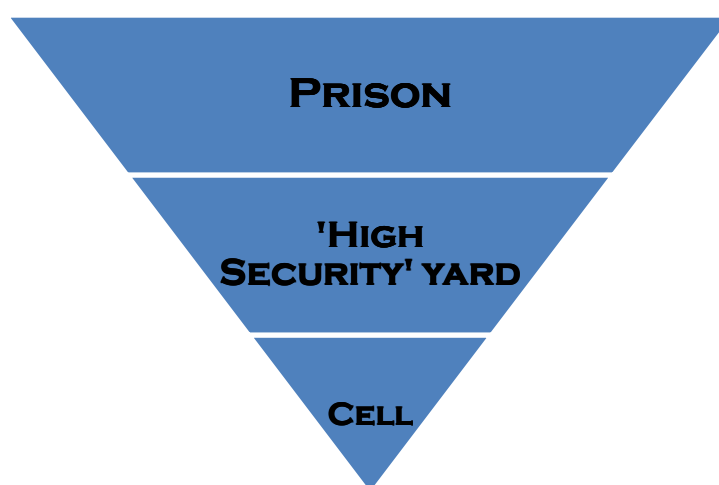
A certain prisoner from the study described being on death row as 'double jeopardy'. He says that being incarcerated in a prison is a pain but at the same time being on death row is a double pain and calls it a 'double jeopardy'. Being incarcerated in the prison has been well-expounded by sociologists like Sykes, Liebling, and Goffman. They have talked about the pains of imprisonment. In India, as a rule, death row prisoners cannot be held in solitary confinement till all their appeals are exhausted which means that till their mercy petition is rejected by the President of India. None of the prisoners, I interviewed had reached this stage of their petition being rejected by the President of India. Except 12 prisoners, the rest of the 111 prisoners were held in solitary confinement.

Considering the above description as a backdrop this section essentially describes three elements of being incarcerated on the death row. Firstly, I attempt to give a glimpse into the physical structure of the 'institution' the prisoners are housed in. This has been derived from my observation in the prison and the narration by death row prisoners in the 15 central prisons and one district prison I visited. Secondly, this section describes the everyday life of prisoners which includes their daily routine, the rules they have to follow, their perceptions about prison officials, prison visitors, prisons as an institution, co-prisoners, their relatives and finally the '*experie-ception*' of the treatment they receive as prisoners on death row. Finally, it concludes with the analysis of death row phenomenon where prisoners confirm to the facts stated in the existing literature on death row phenomenon/syndrome.

### **5.5.1. PHYSICAL STRUCTURE OF DEATH ROW**

This section begins with an overview of the physical structure of a typical prison in India. It further moves on to the 'High Security Yard' that a prisoner on death row is housed in. Finally it describes the cell in which a death row prisoner is placed. The figure (Figure 10) below represents the structure of this section.

**Figure 10: Physical structure of death row**



#### **5.5.1.1. PRISON**

When one reaches a prison, one cannot overlook the tri-colour (the Indian Flag) hanging in front of the prison which symbolises the State power over this institution as any government structure in India. In spite of wanting to be like Elizabeth Fry, the 19<sup>th</sup> century British prison reformer, who was not afraid to walk in the dungeons where even prison officials were afraid to walk; I must admit that the prisons intimidated me in the beginning. The fear eventually wore off but it is intimidating in the beginning. Most central prisons were built during the *Raj* (British Era). All the prisons that I visited were built in the early 20th century. Prisons are typically located in the LULUs which are 'land unacquired land unused'. This meant that they were far away from the city limits. It confirms Wacquant's argument that ghettos and prisons both belong

to the same class of organizations, namely, *institutions of forced confinement*: the ghetto is a manner of 'social prison' while the prison functions as a 'judicial ghetto.'

He says that both are entrusted with enclosing a stigmatized population so as to neutralize the material and/or the symbolic threat that it poses for the broader society from which it has been extruded. And, for that reason, ghetto and prison tend to evolve relational patterns and cultural forms that display striking similarities and intriguing parallels deserving of systematic study in diverse national and historical settings. He further notes that the structural and functional homologies with the prison conceptualized as a judicial ghetto: a jail or penitentiary is in effect a reserved space which serves to forcibly confine a legally denigrated population and wherein this latter evolves its distinctive institutions, culture, and sullied identity. It is thus formed of fundamental constituents of stigma, coercion, physical enclosure and organizational parallelism and insulation that make up a ghetto, and for similar purposes. Much as the ghetto protects the city's residents from the pollution of intercourse with the tainted but necessary bodies of an outcast group in the manner of an 'urban condom,' the prison cleanses the social body from the temporary blemish of those of its members who have committed crimes, that is, following Durkheim, individuals who have violated the socio-moral integrity of the collectivity by infringing on 'definite and strong states of the collective conscience.'<sup>478</sup>

Whenever I went to a prison for the first time; I have always requested to visit the whole prison with an objective to observe the structure and function of different units of the prison. I have been taken to all the places in a prison where 'normal' visitors are taken. So I have observed the kitchen, workshops, and barracks where undertrials or convicts are placed. The prison is also divided into various age groups and criminal background e.g. A hard-core criminal is never placed with a first time offender and that young offenders

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<sup>478</sup> Wacquant, Loïc. "The newpeculiar institution': On the prison as surrogate ghetto." *Theoretical criminology* 4, no. 3 (2000): 377-389.



between the age of 18-21 are placed in 'Baba' (baby) barrack and offenders who are older 55 + are housed in 'Buddha' (old) barrack. The following section describes the various parts of the prison which includes the main gate, cells, latrines; bathrooms so on and so forth.

**Main gate:** The minimum dimension of the main gate and the second gate of most of the prisons, I visited was approximately three meters in width and four metres in height. An officer informed me that the dimension of the main and rear gates should be wide so that in case of fire exigencies, a fire tender or a lorry for transporting raw materials/logs for factory and ration articles could pass through these gates. The gates are made up of strong steel frame with vertical round or square steel bars of 25mm. diameter or thickness. Each gate has a wicket-gate<sup>479</sup> which is 0.6 meter in width and 1.5 metres in height. The main gate and the wicket-gate have strong locking arrangements from within. Both gates have arrangements for easy opening and closing of shutters. The gates are usually covered with iron sheet from outside up to the height of 2.5 metres. The wicket-gate has peepholes covered with lead at eye -level. The main gate is usually painted with colours identical to that of the departmental flag if prescribed by the State Government. One has to bend to enter the prison through the wicket gate, yes even me. The main gate is opened only when an official of high rank enters the prison. Officials such as superintendents, magistrates, judges have the privilege of entering the prison without bending down. This has been a custom since the British Raj which exists till today. Guards told me that "officers cannot bend down because it is a dishonour to bend down; that is the reason the main gate is opened for them". This for me implies that everyone else can be dishonoured or made to bend to enter the prison. This further leads me to say, "Each time a prisoner enters the prison; s/he is dishonoured". Dishonouring begins with an entry into the prison. One of the prison officers told me, "No matter how smart a prisoner is, when s/he enters the prison, the prison kills half of his/her smartness." I was also informed by the guards that the wicket gates from the main gate and second

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<sup>479</sup> Note: A **wicket gate** is a personnel door or gate, particularly one built into a larger door or into a wall or fence.

gate are never opened at the same time. That is a rule that all prisons follow to prevent prisoners from 'escaping'. Entry into the prison is only through a single point, that is the main gate, and all other entry points, even if they exist are closed permanently.

Outside the main gate where one enters the prison; there is no guard. One has to knock on the main gate and the guard opens the peephole. I passed my identity card and told the purpose of my visit. The guard came back after a few minutes (in some cases half an hour or an hour even when you have a prior appointment). This could be because the prison superintendent has gone for 'rounds'<sup>480</sup> and the guard is unable to verify with the superintendent. Once when I was literally inside the gate, I was asked to write my name and address in the register which maintains the records of everyone going 'in' and 'out' of the prison. When I left the prison, I had to sign the same register against my 'in' timing. This shows the number of hours I was inside the prison and also to make sure that I 'left' the prison. One is also asked to leave mobile phones with the guard before meeting the superintendent.

Every prison has tall main gates and huge walls separating them from the normal population but especially made high so that no one can 'escape' the prison; yet when I visited the prisons, there was at least one person who had managed to physically escape the prison. In the front desk, there is a blackboard which records the prison population for each day which is called as 'counting' the number of prisoners each morning and each evening. The table below (Table 16) depicts a typical display board in a prison.

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<sup>480</sup> Note: 'Rounds' are regular visits conducted every morning by the Superintendent or the Senior Jailor of each prison. This is a time to inspect the barracks and cells of prisoners and it is usually done in the morning. During the rounds; the prisoners also have the opportunity to talk about their grievances and petitions to the officer.

**Table 16: Typical display board in a prison**

<b>Sr. No.</b>	<b>Male</b>	<b>Women</b>
IPC Section 302 (murder)		
Under trials		
Death sentence convicts		
Detainees		
Escaped		
Total		

The space between these two gates is usually around 12-14 metres in length and 5 metres in width to facilitate gate operations. In between the space there is a reception desk for the purpose of admission and tracking of prisoners and visitors who enter and leave the prison. On one side of the space are the offices of the prison officials. On the opposite or the adjacent side there is generally an administrative section called the 'judicial section' where the records of all prisoners are stored. It has office rooms, record rooms, enquiry cabins and control rooms for efficient functioning of the administration.

The sight that I often saw between these two gates were prisoners taken to the court or brought back from the court, or accused who were brought from police custody to the judicial custody. Prisoners who were taken to the court were checked before leaving the premises of the prison. Further to prevent them from escaping their hands were tied to each other – one prisoner's hand would be tied with a rope to the next prisoner's hand, thus forming a chain. It resembles animals being tied to a stable; however in this case these are human beings. When prisoners are brought back from the court, they are asked to squat on the floor in their underwear. This could also be the first – time - accused that are brought to the prison. They have to go through a security check without any privacy. Everyone walking in and out of the prison can see them. Women prisoners, if at all are housed in the same prison are checked in the women's section and never at the main gate. Some women prisoners whom I have interviewed reported about being stripped and searched inside the

women's section by women officers. They described it as one of the most humiliating experiences of their lives.

Once the accused is inside the prison, they are given certain articles. It contains an aluminium bowl for food, an aluminium glass for tea. Usually they are also given cups for taking a shower or for using it in the toilets. Some of the prisoners (not death row prisoners) have told me that they do not have separate cups or bowls for collecting food and going to the toilet. Convicts are given two set of clothes or what is known as 'prison uniform' and undertrials are allowed to wear their own clothes. All prisoners are also given a blanket, bed sheet and a pillow.

All prisons had mainly four types of housing. Barracks, high security yards or the death row, segregated confinement and a high security cell. Barracks had an accommodation capacity of more than 50 prisoners; high security yard housed prisoners on death row; separate confinement was for the purpose of security and contagious diseases and fourthly the high security cell where the so - called high profile undertrials are placed. This cell resembles an 'egg' from outside and it is called the 'anda' barrack or 'egg barrack'. A plate indicating the authorised accommodations is always placed outside each type of housing and also at the main gate. Ordinarily, the number of prisoners confined in a housing unit should not exceed its authorised accommodation however prisons are always overcrowded and exceed its accommodation capacity.

**Barracks:** The minimum height of roofs or ceilings in a barrack is not less than 10 feet from the floor. The floor of the barrack is made of impermeable material such as cement concrete. All barracks had verandas which were generally two meters in width. Though ventilation of the sleeping barracks is of the greatest importance, prisoners are not permitted to close the windows and ventilation openings with shutter or curtains at their discretion. The ventilation is however controlled according to the season whenever necessary; otherwise the barracks are too cold and damp during winter and rainy season. Where accommodation is overcrowded and does not meet the prescribed standards, secure corridors/verandas are used for accommodating short term prisoners and

undertrials involved in minor and petty offences during night. The lights in the barrack are not put out during the night for security purposes. On observing the barrack, one realises, its operation is similar to the society outside. In the centre of the barrack, are all the economically 'rich' and high profile prisoners. To the margins of the barrack, where the toilets are or where the floor is generally damp are the economically 'poor' or tribal or the lower caste prisoners. This is a feature, I observed during my visits. Also another record from a memo is that prisoners on death row have lived in these barracks as undertrials. Only when their sentences were pronounced were they sent to the separate yard. However, there were also prisoners on death row who were placed in the 'High Security Yard' from the time they were transferred to the prison due to the nature of their crime.

**Cells:** A cell is a single room with an iron gate. Hence it is well-ventilated and every cell has clerestory window at the back of the cell. The floor of the cell is made of impermeable material. Each cell is attached to a yard where the prisoners benefit from sufficient air and light. Each cell is provided with a flush latrine and sleeping berths.

**Latrines:** Each barrack has WCs, urinals and wash places attached to it. However the ratio of such WCs to the number of prisoners is always less. Latrines were of the sanitary type with arrangements for flushing. They were placed on an impermeable base which was higher than the surrounding ground. The partitions separating the latrines are high enough to provide a reasonable degree of privacy. The doors of the latrines are only half. This is to control prisoners and to avoid suicide or fights inside the toilets.

**Bathing places:** Every prison had covered cubicles for bathing with very less privacy. There were also prisons where there was a common tub made out of cement filled with water. Prisoners drew water from the tub and showered outside. This was the case for both men and women section. There was also a shortage of water supply in the prison during summer.

**Kitchen:** In most of the prisons, the kitchen was located at the central place inside the prison so that the distribution of food among the prisoners may be finished quickly. None of the kitchen was built close to the sleeping barracks. There were exhaust fans installed and artificial ventilation provided in some prisons. It had floors made of an impermeable material. The management of kitchen or cooking of food on caste or religious basis is not allowed in the prison. One can however study these practices. Some kitchens used firewood as the fuel to cook while most of the prison kitchen had cooking gas. The breakfast preparation began at 2:00 a.m. or 3:00 a.m. depending on the population of the prison. Lunch preparation began immediately after breakfast was served at 7:00 a.m. Lunch in every prison was served at 10:00 a.m. or 10:30 a.m. The evening tea and dinner preparation begins immediately and was served at 4:00 p.m.

**Hospital:** Every central prison had a hospital attached to it with a limited number of beds for indoor treatment with separate wards for men and women. The location of the hospital was far away from the barrack. Every hospital ward was constructed to allow sufficient light and air. The floors and walls were made of impermeable material. Latrines and baths were provided close to the wards so that sick prisoners would not have to walk far to use them. There was generally an arrangement for continuous supply of portable water in the hospitals. However the prisoners do not wish to go to the hospitals because they complained that for every illness the doctor gave the same medicine. Also according to the rules for the prisoners on death row; there has to be a doctor coming to their yard every day to check. This visit by the doctor at least once a week was done only in one prison that I visited. Doctors said that the prisoners generally do not have physical illness; most of their illnesses are psychological in nature.

**Work sheds:** In different states, the work sheds for prisoners had different activities. In the North-East where it is popular to work with canes, there were work sheds where prisoners made cane chairs and other products with canes. In the west, prisoners made prison uniforms and did carpentry. Carpentry was one of the main activities conducted in the prisons all over by male prisoners.

Again there was a gender disparity. Women were hardly given any work. Their tasks were reduced to cutting vegetables for the prison kitchen and it had to be done free of charge. There were also workshops such as handloom for women prisoners but these were not functional most of the time.

**Recreational facilities:** There were recreation facilities for prisoners in their yards. In some prisons, prisoners used the ground space to play volleyball or other outdoor games. All prisons had a library which the prisoners said had outdated books. There were also auditoriums in each prison for cultural programmes and yoga.

### **5.5.1.2.HIGH SECURITY YARD**

This section discusses the yard where death row prisoners are housed. Death row is the cell or block of cells in which prisoners condemned to death are held while awaiting execution. There may be within this death row one or more “death cells”, special units in which the condemned person is kept for a period of hours or a few days immediately prior to imposition of the sentence. Death row is a prison within a prison - physically and socially isolated from the prison community and the outside world.<sup>481</sup> Jackson who observed the prisoners on death row in Texas Prison says that he saw how the death row differs from the rest of the prison and that none of the usual prison counters of behaviour mattered there because the row was the single place where the rhetoric of rehabilitation was meaningless (one was there waiting to die, not trying to be improved) and where the rhetoric of punishment was inappropriate (the punishment was not time served on the row but execution). He calls the death row a prison within a prison, a place that is not covered in anyway of the usual set of rule. Wo/men lived here for years while the legal system decided whether they could be killed or re-sentenced to a prison term or set free. According to Jackson death row was a special city with a life of its own, one the outsiders knew nothing about.<sup>482</sup>

Death row prisoners are officially placed in high security yards which have singular cells within the yard. It is a separate yard or could be called a ‘separate prison’ with a gate. This yard has singular cells built on a raised platform. For instance in one of the prisons there are five cells in a row built on a raised platform and opposite to this row would be another row with five cells built similarly. There is usually a ground between these two rows of cells. Their segregated living quarters are officially known by different names in different states: *Andheri* (darkness) yard, separate yard, high security yard. Unofficially they are also known as ‘*phasi* (hanging) yard’ or ‘*phasiwale* (hanging people) yard’. Officially it is called *Andheri* (darkness) yard because it is a yard where

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<sup>481</sup> Schabas, William. *The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World's Courts*. Boston: Northeastern University Press, 1996.

<sup>482</sup> Jackson, Bruce. *Fieldwork*. University of Illinois Press, 1987.



condemned prisoners are housed; and the ones who should not see the light of the day because they are condemned to death. The name 'separate yard' originates because this yard is separate from the rest of the prisoners for security reasons or to differentiate between convicted, condemned and undertrial prisoners. It gets the name 'high security yard' because the place is highly secured for they are high profile prisoners such as death penalty prisoners or political prisoners or undertrials arrested in very serious criminal cases. Prisoners have expressed their discontent over the nomenclature for this yard. These have been explained further in the coming sections. High security yard is very similar to how '*supermax*' prisons are described in various kinds of literature. This is generally the typical style of description of the prison.

In India, though death penalty yards are not called as 'maximum security prisons' or 'super maximum custody' (colloquially known as *supermax* in the United States); death penalty yard are often termed as 'high security yards' and very many times parallels can be drawn between the both. Sykes describes that in the prison the obvious symbols of social status are largely stripped away and one finds new hierarchies with new symbols coming into play. But what he claims to be the most important is the fact that the maximum security prison represents a social system in which an attempt is made to create and maintain total or almost total social control.<sup>483</sup>

Prisoners in supermax facilities are usually held in single cell lock-down, commonly referred to as solitary confinement. Congregate activities with other prisoners are prohibited; other prisoners cannot even be seen from another prisoner's cell. Communication with other prisoners is prohibited or difficult (for example, shouting from one cell to the other cell is prohibited); visiting and telephone privileges are limited.<sup>484</sup> Kings spells out essential elements of supermax prisons. In a supermax custody, accommodation is physically separate, or at least separable, from other units or facilities, in which a

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<sup>483</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>484</sup> A Human Rights Watch Report *Cold Storage: Super-Maximum Security Confinement in Indiana*, (New York: Human Rights Watch, October 1997) 18-19

controlled environment emphasizing safety and security, via restricted movement and separation from staff and other prisoners is provided for. He says that it is also for prisoners who have been identified through an administrative rather than a disciplinary process as needing such control on the grounds of their violent or seriously disruptive behaviour in other high security facilities.<sup>485</sup>

A so-called 'terrorist' was placed in a high security prison in a cell called the '*Anda*' (Egg) Barrack. It is a barrack in the shape of an egg for the so-called 'high profile criminals'. According to him the *Anda* (Egg) Barrack is the most inconvenient thing built for human beings. He said, "These cells are meant for one person and usually there is an average of five persons in one cell. We must be given animal rights and not human rights because animals are treated better than us."

The only woman on death row whom I had interviewed for this study said that during the day she is out with other women but at night, she is in a separate cell and feels very scared. She said that she takes the name of God at night and tries to go to sleep. Every 15 days she meets her husband for 5-15 minutes in the death row where the men are housed. She also told that the lady officers asked me to remove my bangles<sup>486</sup>; but she did not. She told them that her husband was not dead and she would wear them as a symbol of her marriage. She said that they tried to stop her from wearing the bangles but they could not manage. This lady held my hands and asked me, "Do you think I can kill so many people? Do you think I am dangerous? After the interview with this woman prisoner, the lady officer told me her version, "This woman has killed so and so number of people, she is very dangerous and utterly stubborn".

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<sup>485</sup> King, Roy D. "The Rise and Rise of Supermax An American Solution in Search of a Problem?." *Punishment & Society* 1, no. 2 (1999): 163-186.

<sup>486</sup> Note: Wearing green glass bangles is a sign of married women

### **5.5.1.3. CELL OF A DEATH ROW PRISONER**

Death row prisoners are normally segregated from other convicts serving fixed terms of imprisonment. The reason for this is somewhat obscure. One of the reasons could be that the individual is already a “dead man” and thus no longer belongs with the living. Another explanation could be the threat to the security of other prisoners and prison guards, from desperate individuals who have literally nothing to lose.<sup>487</sup> But this also emerges from one of the principles of prisons which Foucault describes as isolation. He says that prisoners should be kept in isolation so that they can be reformed<sup>488</sup>; but it is an irony in itself when it comes to death row prisoners because they are given death penalty on the premise that they cannot be reformed or they are incapable of being reformed.

I would first describe the cell of death row prisoners with my observation in the yard. It has essentially three elements – toilet, bed made out of concrete, and a ventilator. There is no furniture whatsoever in the cell. The door is a barred door made of iron which can be locked. The prisoners informed me that the cell is lit at night. The toilets are in working condition according to them. Like any community outside, the ‘rich’ use the labour of the ‘poor’ in lieu of wages. Likewise in the prison, the ‘rich’ prisoners often ask the ‘poor’ prisoners to clean the cells and the toilets. There is a water closet and also a place to take a shower. Prisoners often have pictures of god/goddesses on their walls. The temperature in the cell is very hot during summer, wet during the monsoon and cold during winter. All the prisoners are allowed to listen to a common radio, read books and write letters to their families. There is often space in front of the singular cells where prisoners can exercise. There are no fans in any of the cells because there is a fear among the authorities that the prisoners might commit suicide if there is a fan in the cell. They also have a bag with their meagre belongings. The prisoners also have their files which are found in the

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<sup>487</sup> Schabas, William. *The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World's Courts*. Boston: Northeastern University Press, 1996.

<sup>488</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

cell usually. There are very few prisoners who leave their files with the prison authorities in the 'judicial department' at the main gate.

Sykes describes the cells as hot in the summer and cold in the winter, cramped and barren. He says that the stone and steel cellblock seemed to express the full nature of imprisonment as seen in the popular fancy and that if wo/men in prison were locked forever in their cells, shut off from all intercourse with each other, and deprived of all activities of normal life, the dimension of the cell would be the alpha and omega of life in prison. He further says that like so many animals in their cages, the prison population would be an aggregate rather than a social group, a mass of isolates rather than a society.<sup>489</sup>

While it is space of their own, they also reported feeling suffocated being locked 23 hours a day. They are brought out of their cells for half an hour in the morning and half an hour in the evening. This is the maximum period they are allowed to be out. Due to these rules many call this situation a '*jail ke andhar jail*' (Jail within a jail). Another prisoner said 'There are rules for sports, food, bathroom and toilet. We want freedom inside the jail. When we want to learn yoga; we are harassed. The moment we are given death sentence, we should be hanged; so that at least we don't face this harassment.' Nevertheless '*jail within a jail*' are the exact words that a prisoner from Texas described his experiences of being on death row.<sup>490</sup> This essentially draws parallels between experiences of prisoners in different continents and their experiences of being on death row reflect the same desperation.

It is very evident that overcrowding in prisons is very common but it is truly unheard of that death row is also overcrowded. In some prisons, a death row cell confined four people at a time. It is highly crowded and a prisoner told me, "*Madam, it is crowded but whom do we tell this to or who wants to listen to our overcrowding problems?*" According to a prison official, there are cases

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<sup>489</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>490</sup> Jackson, Bruce. *Fieldwork*. University of Illinois Press, 1987.

where prisoners from the same 'case/gang' are placed in different prisons in the same state to avoid fights between them or to divide them with the aim to 'split' their strength. Another prisoner said that the cell and the yard resemble a '*khandar*' (ruined fort) especially because once a rat came and took away his *roti* (Indian bread).

A prisoner from the 'Andheri' (darkness) yard while describing his difficulty in coping with the yard said that people are lost in darkness and distant from the world only when they are placed in the grave. However, the prisoner opined that the death row prisoners are kept alive in a grave. (Andheri mein gum, duniya se door tabhi hotha jab usko *kabar mein uthara jatha hai. Humko kabar mein zinda rakha hai*).

The segregation of one person from the others and to be all alone in a single cell is solitary confinement. The 'separate system', the 'silent system', 'the hole' and other variants possess the same vice. The separate confinement of a person with occasional access of other persons is also solitary confinement. In a general sense, it means the separate confinement of a prisoner, with only occasional access to any other person, and that would be only at the discretion of the jailor. In a stricter sense, the complete isolation of a prisoner from all human society and his confinement in a cell is so arranged that he has no direct intercourse with or sight of any human being, and no employment or instruction.<sup>491</sup> To test whether a certain type of segregation is, in Indian terms, solitary confinement, we have merely to verify whether interdiction on sight and communication with other prisoners is imposed. It is of no use to provide a view of or a conversation with jail visitors, jail officers or stray relations.

The crux of the matter is communication with other prisoners in full view. Confinement inside a prison does not necessarily import cellular isolation. Indeed, in a jail, cells are ordinarily occupied by more than one inmate and community life inside dormitories and cells is common. Therefore, 'to be confined in a cell' does not mean that the confinement should be in a solitary

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<sup>491</sup> Black, Henry Campbell. *Black's law dictionary*. West Publishing Company, 1957.

cell. A prisoner cannot be kept in a single cell or solitary confinement which itself is a separate punishment. Solitary confinement has the severest sting and is awarded only by Court. It is a separate punishment which the court alone can impose. It would be a subversion of this statutory provision (Section 73 and 74 of the IPC) to impart a meaning to Section 30 (2) of the Prisons Act, 1894 whereby a disciplinary variant of solitary confinement can be clamped down on a prisoner, although no court has awarded such punishment, by a mere construction, which clothes an executive officer, who happens to be the governor of the jail, with harsh judicial powers to be exercised by punitive restrictions and un-accountable to anyone, the power being discretionary and disciplinary.<sup>492</sup>

There was a certain prisoner who said that when he was initially brought on the death row, he was allowed outside his cell only for five minutes. Rest of the time, he used to sit and cry. Then finally the other prisoners told the officers that he might become mad if he is not allowed to move out freely. That is when, according to the prisoner, that the guards started taking him out for longer period out of the solitary confinement. However sometimes when he cried, the guards said, 'Oh well, he has started his daily drama.' There were prisoners who have been in a single cell for over 17 years.

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<sup>492</sup> *Sunil Batra v. Delhi Administration and other* 1978-(4)-SCC-494: 1978 – Cr.L.J – 1741 – SC

### **5.5.2. LIFE ON DEATH ROW**

This section describes the everyday life of prisoners which includes their daily routine, the rules they have to follow, their perceptions about prison officials, prison visitors, prisons as an institution, co-prisoners, their relatives and finally the 'experie-ception' of the treatment they receive as prisoners on death row.

#### **5.5.2.1. ROUTINE FOLLOWED BY PRISONERS ON DEATH ROW**

One of the characteristics of total institutions is that there is a strict discipline of how the institution functions.<sup>493</sup> As a part of total institutions, prisoners have to follow certain timings in the prison and follow a strict regime. Loss of agency forms an integral part of this process. Agency is 'the capacity, condition or state of acting or exerting power.'<sup>494</sup> Prisoners steadily lose their capacity to exert power and control their destiny as they serve time in prison. Prison life is completely routinised and restricted, with few opportunities to make decisions or exert choice in their daily routine.<sup>495</sup> Some prisoners elaborated upon common rules governing them while some spoke of exceptional rules followed in particular prisons.

The day begins with waking up at 5:30 a.m. After they are awake, the warden<sup>496</sup> on duty unlocks the cells in the presence of a jailor or an assistant jailor. This is followed by counting of prisoners. During this time the prisoners take out their beddings and place them at their sleeping place. They clean their cells and perform their morning ablutions. At around 6:30 a.m. breakfast is served. The food served depended on the region where the prison was located and the food is according to the typical breakfast of that region. For instance in Maharashtra, a typical breakfast would include flattened rice or *Sabudana*

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<sup>493</sup> Goffman, Erving. "On the characteristics of total institutions." In *Symposium on preventive and social psychiatry*, pp. 43-84. 1961.

<sup>494</sup> Babcock, Philip. "Webster's third new international dictionary." *Springfield: G & C Merriam Company* (1971).

<sup>495</sup> Irwin, John, and Barbara Owen. "Harm and the contemporary prison." *The effects of imprisonment* (2005): 94-117.

<sup>496</sup> Note: A trusted convict incharge of certain duties in the prison.

*khichadi* (sago). Convicted prisoners begin their daily work at around 9:00 a.m. but since death row prisoners are not allowed to work; they spend their time in their cells. At around 9:00 a.m. there is a 'round'<sup>497</sup> by a senior prison officer. This is the time where the officer checks if all prisoners are present and if prisoners have petitions or grievances. After the rounds, the prisoners are in the lock-up again. In some prisons they are unlocked separately for half an hour in the morning and are allowed to exercise outside their cells while in some prisons, prisoners are allowed outside their cells all day except during the *bandi* which literally means 'being closed' time which is 12:00 p.m. to 3:00 p.m. in all prisons across India. In the afternoon at 3.00 p.m. prisoners are again taken one at a time out of their cells for walks or are opened all at the same time in the yard.

At 5:30 p.m. a bell is rung. This is the bell for the closing hour of the cells. Prisoners are counted and are asked to go into their respective cells. If they are inside the cells like in some prisons; this ringing of bells is redundant and does not serve any purpose to these prisoners. After their lock-up; they are released the next morning at 5:30 a.m. and the same routine is continued.

#### **5.5.2.2. RULES FOLLOWED BY PRISONERS ON DEATH ROW**

Concurrently, there are certain rules that prisoners on death row have to follow. These rules are frequently arbitrary and vary from prison to prison. In all prisons, according to the rule of the law, prisoners on death row are not allowed to work like other convicted prisoners and do not have a concrete way to engage themselves in any other activity. Hence it totally depends on individuals on how they spend their time. Doing various activities revolves largely around the status of their case. The ones whose cases are in the High Court are restless and hardly find the motivation to do anything such as reading

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<sup>497</sup> Note: 'Rounds' are regular visits conducted every morning by the Superintendent or the Senior Jailor of each prison. This is a time to inspect the barracks and cells of prisoners and it is usually done in the morning. During the rounds; the prisoners also have the opportunity to talk about their grievances and petitions to the officer.



or writing. Prisoners' daily routine also includes walking, meeting other prisoners, breakfast and reading books. Some of them learn English from fellow prisoners but most of the time they sit idle or read their case-papers. Most prisoners said that their daily routine only had one activity apart from walking half an hour outside their cells- 'reading or listening to the daily newspaper read'. Some prisoners even wrote novels, stories and also diaries. There were prisoners who have even published their writings.

With regard to the dressing pattern, the prisoners sentenced to death had to follow certain norms. One of the prisoners mentioned that the authorities told them that prisoners on death row could not wear 'coloured-dress' after being sentenced to death but only white. Therefore only white was the norm. White is also a colour worn for mourning in India as opposed to black in other cultures. As undertrials they could wear civil clothes in the prison. Some other rules that were given to them upon arrival in the high security yard were that they could not come out of the gate of the high security yard or they should go to the lock-up when asked to and come out when the authorities leave them. Further, they were told that they could not move without the authority's permission. About visitors, they were told that only blood relatives could meet them and no one else. In some prisons they were told that they could eat 'as much as' they wanted. One of the death row prisoners told that, when he was brought to the death row from a different prison, he was told by the fellow prisoners that he would not be allowed to use his reading glasses on death row. He, therefore, did not bring his reading glasses with him. He suffers from constant headache because of that. In some prisons, they were allowed to listen to the radio. While some also said that prisoners on death row have 'no fundamental rights' in reality. This prisoner said that when he came to the prison first he did not know of any rules and when he and his co-accused asked, they were immediately transferred because they were 'trouble makers'. He continued that it was only the '*khaki*' (police-uniform) which could make and break rules.

Another phenomenon that occurred as a routine in their prison life was being branded or stigmatized. One of the prisoners said that the prosecution lawyer and judge called him a '*Muslim fundamentalist*' further adding that he is a

dangerous element for the society. (*Samaj ke liye khatharnak, Muslim fundamentalist*). Wo/men arrested for terrorist activities were often called by names such as '*desh drohi*' (traitors) or '*Pakistanis*'. Another prisoner said that he was nicknamed monkey. This prisoner said that he became slow in speech after the police arrested and tortured him. There was a guard on duty while I was interviewing this prisoner and this guard told me, "Madam his name is *monkey* and not Mr. A" and started laughing hysterically. To that, Mr. A immediately responded, "You (system) have given me this name *monkey*. I am not a *monkey*".

Facilities such as phone, television, radio and books are a privilege than a right for the prisoners on death row. In some prisons, death row prisoners are allowed to make phone calls to their families but this facility did not come to them easily. The prisoners had to go on a hunger strike to obtain these facilities. Some prisoners said that when they went on a hunger strike in the prison to get some facilities like watching TV or playing games, the prison authorities told them that, "You want to fast? Go ahead! You will die and we will say that you died on your way to the hospital. We do not care about your hunger strike".

Hunger strike has been used frequently by the prisoners to express their dissent. There are prisoners who are in the last stage of their mercy petition. They had to go on a hunger strike to hear from the President of India. One of the prisoners was disappointed with the fact that he had spent 15 years on the death row and there was no response to his mercy petition. He discontinued his hunger strike after four months. He was force-fed when he fasted for the first time but he refused to eat it. There was a second phase of hunger strike. This time the Inspector General of Prisons and the superintendent convinced him to abandon the hunger strike so that he could be alive and healthy to receive pardon for his death penalty, if it is granted. Another prisoner on death row had a kidney problem and the prison officials did not take him to the hospital even after he requested for it. One day this prisoner became seriously ill, but he was not taken to the hospital. All prisoners on death row in this particular prison

went on a hunger strike and in consequence to that the prisoner with the kidney problem was taken to the hospital immediately.

The prison is a social institution designed to meet a multiplicity of functions. Some of these functions are very explicitly expressed by legislators, court decisions and prison officials, whereas others must be inferred.<sup>498</sup> In this scenario there are various functions by prison officials. At the same time prison as an institution carries out various functions. Prisoners have shared their experience about prisons and prison officials while being on the death row.

### **5.5.2.3. PRISONS**

One of the prisoners said that prison does not give you any respect or dignity and that one needs to have dignity over oneself and no one else. Prisoners used the following words such as *shoshan*, *bigaad dethi hai*, *shaanti nahi dethi*, *disturb karthi hai*, *bhrashtachar*, *samaj ke layak nahi rahatha*. (Torture, destroys you, does not give you peace, disturbs you, full of corruption, does not leave you fit to be back in society). Another prisoner said that not even in one's dreams should one go to a place like a prison. He said that in prison, they are not human beings but just a number. Similarly another prisoner said that he did not know how to survive but he is still surviving each day. He said that nobody looks into their circumstances and as prisoners on death row they are not fighting with a single person but a whole community. Another prisoner added "*yaha rehena hi muskhil ho gaya hai*" (it has become difficult to survive in the prison). On being asked about his living on the death row a prisoner said, "Be locked inside for a month, get third class treatment, no medication, do not meet anyone – then you'll know how it is to survive the death row".

While describing about the food received in prison, all prisoners echoed this opinion that the food is 'ok' but only if their minds are 'ok' can they eat something. Most of them said that even when they are given good food they are not in a state of mind to eat it. Some said that they do not have an appetite because whenever they try to eat, they think about their families and wonder if

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<sup>498</sup> Galtung, Johan. "Social Functions of a Prison, The." *Soc. Probs.* 6 (1958): 127.

they have food to eat or do they go hungry. Another prisoner said that he has no appetite but he eats everything because everything is equally tasteless. He eats whatever is available. There were also prisoners who said that the food given to a mad dog is better food than what they are served on the death row. He said that food sometimes had maggots and worms in them.

Receiving education in the prison is a part of the rehabilitation and reformation process of prison. However this argument falls short of gravity in case of death row prisoners because according to the system, the prisoners on death row can neither be 'reformed' nor be 'rehabilitated'. The attempt to have access to education has been a struggle for some prisoners on the death row. One of the prison superintendents said, "You are prisoners waiting to be hanged - there is no need to study." There were also prisons where the death row prisoners while they were undertrials were not allowed to study. However, most of the prisons allow educational facilities to prisoners on death row. Some prisoners who are completely illiterate learn alphabets from their co-prisoners who are literate.

There is a prison canteen in every prison and all prisoners can have access to the canteen including prisoners on death row. They can buy various items from the canteen using their own money. In this context the maximum amount of money that the prisoners can receive is Rs. 200/- (Euro 3 or 4 approximately). However most of them do not receive any money because of their family's financial situation or because they have lost contact with their family.

One of the prisoners died on the death row during the research period and the reason for his death was 'natural causes' according to the prison. This prisoner had told me that he had a major heart ailment, was hypertensive and diabetic. He also had a spine disorder because of which he suffered severe backache. His eyesight was very poor due to diabetes. He showed me the reports from the Civil Hospital attached to the central prison which ratified his illnesses that he claimed he had. He said that outside a beggar is treated better than a prisoner on death row. He was also the prisoner who said that when a person comes to the prison with a death sentence, s/he should be hanged immediately and not made to wait for their death. Out of the 16 prisons I visited, only one prison

had a psychiatrist who visited the prisoners on death row every week. In one prison, a prisoner said that they were given sleeping tablets so that prison authorities are not 'disturbed' at night. This prisoner also told me that he stored all these tablets because according to him these tablets are administered to 'mad men' and he did not want to eat tablets given to 'mad men'. I asked him if there was no checking in his cell anytime because according to the prison rules, cells are checked on a regular basis. He said that there was no checking in the cells whatsoever and even if there was a checking he managed to hide them. Talking about fellow death row prisoners, one of the prisoners said that fellow prisoners understand each other very well. He further said that they all received more or less similar treatment from the criminal justice system, so there were hardly any fights between them. Furthermore, another prisoner added that since all of them are on death row they do not fight with each other because they do not know who dies or lives next and hence they are very cordial with each other.

#### **5.5.2.4. PRISON OFFICIALS**

One of the prisoners said that the way they are treated is not human. They often felt humiliated with the way the prison officials spoke to them. Prison officials had a different view about taking care of prisoners on the death row. One of the prison officials said that in his three years of service<sup>499</sup> in that particular prison, he hoped that he would not have to do anything that has to do with gallows and that he does not want blood on his hands. In contrast to this, another prison official said, "We once prepared everything for a prisoner to be hanged and then these *human rights people* intervened and stopped the execution. I was so sad that the execution did not take place." In another instance, after an interview with the prisoners, the superintendent asked me my opinion about the prisoners whom I had interviewed. I said that I could not assess them so quickly. The official told me, "Madam, they are hard-core criminals who are never going to change. You are blind not to see it." One of the prisoners said, 'Jail staff is like British times jailors (*British jamane ka jailors hai*). They keep us in the dark and do not inform us about our rights.'

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<sup>499</sup> Note: Prison officials are transferred within the state every three years

### **5.5.3. DEATH ROW PHENOMENON OR SYNDROME**

The “death row phenomenon” or “death row syndrome” is a combination of circumstances found on death row that produce severe mental trauma and physical deterioration in prisoners under those sentences. This phenomenon is a result of the harsh conditions experienced on death row, the length of time that they have experienced, and the anxiety of awaiting one’s own execution.<sup>500</sup> Classic studies from Camus’s *Reflections from guillotine*<sup>501</sup>, Foucault’s work on punish and discipline<sup>502</sup> and Jeremy Bentham’s<sup>503</sup> works demonstrate the experiences of being on the death row. They document the nature and problems of being on the death row. Although varied in their study approaches, each of these classical works offers a glimpse of the wider social structures within which death row prisoners are positioned. Apart from these classical studies there are numerous scholars who have documented this severe mental trauma, a result of the stress associated with death sentences.<sup>504</sup>

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<sup>500</sup> Hudson, Patrick. "Does the death row phenomenon violate a prisoner's human rights under international law?." *European Journal of International Law* 11, no. 4 (2000): 833-856.

<sup>501</sup> Camus, Albert. *Reflections on the Guillotine*. Fridtjof-Karla Publications, 1960.

<sup>502</sup> Foucault, Michel. "Discipline and Punish, trans." *Alan Sheridan*. New York: Pantheon 30 (1977).

<sup>503</sup> Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation (Collected Works of Jeremy Bentham)*. Clarendon Press, 1996.

<sup>504</sup> Some of the scholars who have written about death row phenomenon include Schabas, William A. "Developments in Criminal Law and Criminal Justice: Execution Delayed, Execution Denied." *Crim. LF* 5 (1994): 180-788.; Radelet, Michael. *Facing the death penalty: Essays on a cruel and unusual punishment*. Temple University Press, 1990.; Mello, Michael. "Facing death alone: The post-conviction attorney crisis on death row." *Am. UL Rev.* 37 (1987): 513.; Stafer, Richard. "Symposium on Death Penalty Issues: Volunteering for Execution." *J. Crim. L.* 74 (1983): 860-861.; Holland, Nancy. "Death Row Conditions: Progression Toward Constitutional Protections." *Akron L. Rev.* 19 (1985): 293.; Johnson, Robert. "Under sentence of death: The psychology of death row confinement." *Law & Psychol. Rev.* 5 (1979): 141.; Hussain, Abdul H., and Seymour Tozman. "Psychiatry on death row." *Journal of Clinical Psychiatry; Journal of Clinical Psychiatry* (1978).; West, Louis Jolyon. "Psychiatric reflections on the death penalty." *American journal of orthopsychiatry* 45, no. 4 (1975): 689-700.; Gallemore, Johnnie L., James H. Panton, and Edward Kaufman. "Inmate responses to lengthy death row confinement." *The American Journal of Psychiatry* (1972).;

Specific manifestations include an overwhelming sense of fear and helplessness, mental incompetence, fluctuating moods, recurrent depression, mental slowness, confusion, forgetfulness, lethargy, listlessness, drowsiness, symptoms of senility (in the form of rambling correspondence, misplacing objects within a small cell, and expressing disconnected thoughts), self-mutilation, and insanity.<sup>505</sup> Other associated factors that contribute to the mental trauma include a cramped environment of deprivation, arbitrary rules, harassment, and isolation from others.<sup>506</sup> The conditions of confinement also appear to aggravate existing mental disorders.<sup>507</sup> Jurists have also noted the debilitating mental effects of sentencing a person to death. A United States Court (California) stated the process of carrying out a verdict of death is frequently so degrading to the human spirit as to constitute "psychological torture."<sup>508</sup> 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.<sup>509</sup>

Death row phenomenon was first described internationally in the Soering<sup>510</sup> case. This is the case where death row syndrome or phenomenon has been discussed in depth. Very recently it was Abu - Jamal who described the death

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Bluestone, Harvey, and Carl L. McGahee. "Reaction to extreme stress: Impending death by execution." *The American Journal of Psychiatry; The American Journal of Psychiatry* (1962).

<sup>505</sup> Blank, Stephen. "Killing Time: The Process of Waiving Appeal-The Michael Ross Death Penalty Cases." *JL & Pol'y* 14 (2006): 735.; Cunningham, Mark D., and Mark P. Vigen. "Death row inmate characteristics, adjustment, and confinement: A critical review of the literature." *Behavioural sciences & the law* 20, no. 1-2 (2002): 191-210.; Strafer, G. Richard. "Volunteering for Execution: Competency, Voluntariness and the Propriety of Third Party Intervention." *Journal of Criminal Law and Criminology* (1983): 860-912.

<sup>506</sup> Cunningham, Mark D., and Mark P. Vigen. "Death row inmate characteristics, adjustment, and confinement: A critical review of the literature." *Behavioural sciences & the law* 20, no. 1-2 (2002): 191-210.

<sup>507</sup> Cunningham, Mark D., and Mark P. Vigen. "Death row inmate characteristics, adjustment, and confinement: A critical review of the literature." *Behavioural sciences & the law* 20, no. 1-2 (2002): 191-210.

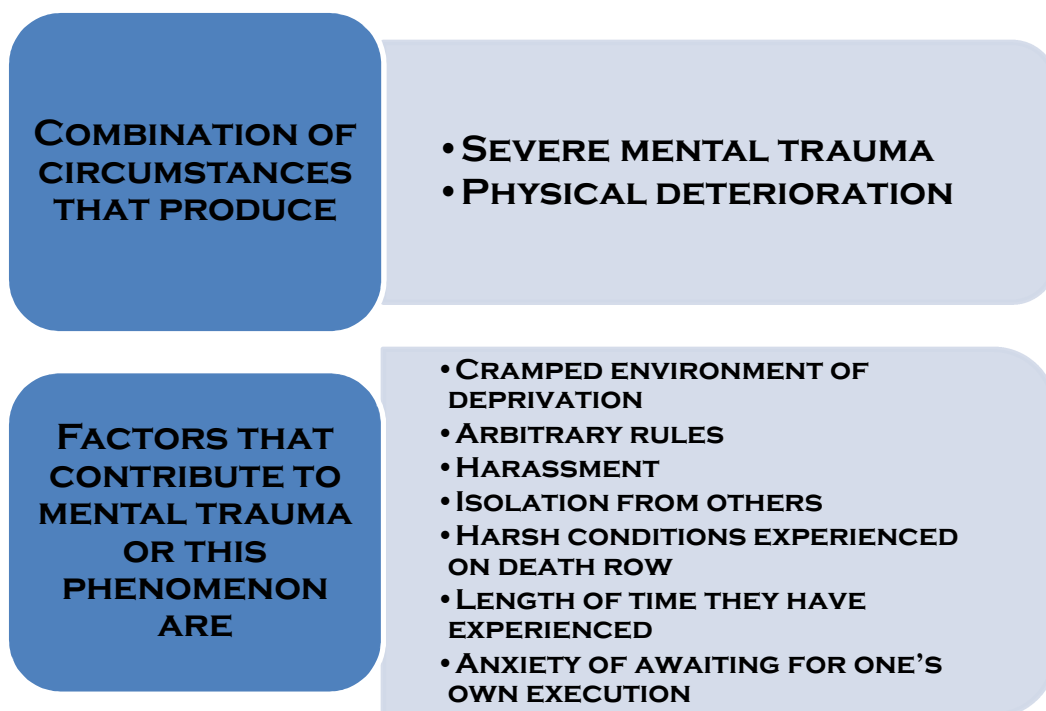
<sup>508</sup> *People v. Anderson*, 6 cal 3d 628, 649 (1971); see also *Soering v. United Kingdom*, 161 Eur. Ct. H.R. at 102 (1989).

<sup>509</sup> *Rajendra Prasad v. State of Uttar Pradesh* 1979 AIR 916, 1979 SCR (3) 78.

<sup>510</sup> *Soering v. United Kingdom*, 161 Eur. Ct. H.R. at 102 (1989).

row phenomenon.<sup>511</sup> Prisoners narrated their experiences of being on the death row and experiencing the death row phenomenon. In the above sections the prisoners have described the cramped environment of deprivation, arbitrary rules prisoners on death row have to follow, the harassment they face in custody, isolation from other prisoners and harsh conditions experienced on death row. The following section will add about the length of time they have experienced and anxiety of waiting for one's own execution and how these two factors contribute to severe mental trauma and physical deterioration. The mental agony of being on death row is manifested mainly in their sleeping patterns. Apart from this the emotions displayed among the prisoners on death row are the feelings of being sad, anxious, depressed, uncertain; guilty, uncomfortable, nervous, restless, panicking, confusion and fear. The figure (Figure 11) below is a representation of the definition of the death row phenomenon/syndrome.

**Figure 11: Death row phenomenon/syndrome**




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<sup>511</sup> Abu-Jamal, Mumia. *Live from death row*. Harper Perennial, 1996.



### **5.5.3.1. LENGTH OF TIME THEY HAVE EXPERIENCED**

The 111 prisoners interviewed in this study have been waiting from five years to 17 years on the death row. However they have been incarcerated for longer years – the longest was for over 22 years. One of the prisoners who has been incarcerated for 10-12 years and who has been on the death row for eight years says that he has been writing to the Government of India and the Human Rights Commission of India about his innocence. No one has responded and he feels as if he is being treated as garbage. He said that they should get a chance to prove their innocence and secure a chance to get justice. Another who has been in the prison for 20 years altogether and 15 years on the death row said that in the court nobody looked at him or asked him anything. He said that the law should be equal for all.

In order to further alleviate their situation, prisoners themselves come up with a very simple solution that they should be hanged immediately rather than be made to wait for their death. That is an easier solution than being made to wait for death. Another prisoner said that at every point his case got worse and his chargesheet was 15,000 pages long. He said that even if he appeals it would take him such a long time and there would be no end to his case. He further added that by then he will be old or rather feels already old and that his youth and family life was annihilated in the four walls of the prison because the system does not want to listen to the truth.

One of the other prisoners said that he never had a criminal record however crime is a 'good thing' for the police because they get promoted after 'solving' these 'gruesome' crimes. He also said that he is from a poor family and that he is mentally tortured on death row. He asked me rhetorically till when he has to be on death row adding that the uncertainty of being on death row kills them every day. Another prisoner who differentiates between life sentence prisoners and death row prisoners said that life sentence prisoners know when they will leave the prison or a person who has committed theft knows s/he is going to be out in five years but according to him death penalty prisoners do not know

when or if they are going to be released at all. He said that they feel as if there is no going forward from this sentence other than death.

Mercy petitions were written by prisoners who could write in English or an NGO representative who wrote on their behalf. One of the prisoners compared the system with a clogged latrine. He said that the system or the President of India is an inefficient scavenger because s/he is unable to clean the mess in the Indian Judicial System which is like a clogged latrine. Another prisoner questioned as to why the President takes such a long time to decide about death penalty cases. He continued that the waiting period is long and one worries about oneself and one's family adding to that if it took 10-14 years, a person dies a 1000 times a year. At the same time one is full of remorse about why they did such a heinous crime. Prisoners who have reached the mercy petition stage said that they have terrible panic problems, feel worn-out, suffer from acute depression and lose tremendous amount of weight in the prison. Prisoners have further added that they have felt suicidal. Besides that they also possess feelings of anger, confusion, sadness, restlessness and guilt. Finally a prisoner added that everyone has the capacity to change and that even prisoners on death row should be given a chance to prove oneself in the society.

#### **5.5.3.2. ANXIETY OF AWAITING ONE'S OWN EXECUTION**

When prisoners on death row were placed in solitary confinement, they felt very uncomfortable. Some said that they try to keep themselves calm by praying and meditating however all of them said that they have lost their peace of mind. There was a certain prisoner who also asked for conjugal rights because he reasons that someone has to carry on the family if he is executed by the state. Almost all prisoners said that they cannot sleep during the night. Many say that they only sleep for half an hour and are awake most of the night. Therefore, it is very common for them to consume sleeping tablets. Many prisoners broke down while narrating about their lives to me. Some claim that they are innocent and framed in this; some cried because they felt guilty about the crime; some cried thinking about their families; some cried talking about their broken lives. One of the other prisoners broke down saying that he did not mean to kill, it happened at spur of the moment and he regrets it. One prisoner

said that the most difficult thing is that he cannot stay here because he always thinks about his parents. It has been 10-12 years and he claims to be innocent and cries when he thinks about his family.

Many of them spoke about their guilt after committing the crime. One of them said that 98% of the people commit a murder in the heat of the moment. He says that when the judiciary gives them punishment, it should also consider why the crime was committed or what the circumstances were. While another one said that when he committed the crime he was very young and now after 15 years realizes that what he did was not 'correct'. Another prisoner said that he was 18 years and five days old when he was arrested and that he has learned his lesson in life the hard way and he blamed the judiciary which did not consider his age while handing out the punishment. Similarly many prisoners spoke that they were guilty of what they have done but the system does not give them a chance.

Concurrently, there were prisoners who spoke about their anxiety and nervousness. A prisoner narrated a ghost story that he 'experienced' from his childhood. He claims that the prison also has 'ghosts' because many people have died in the prison. He said that while sleeping at night he feels heavy in his chest and feels that a sword is hanging over his head which might fall on him any time. He continued that he lies down to sleep but the tears do not stop and he cries all night and if at all he sleeps, he wakes up with a scary dream. Another prisoner associated any kind of thread fallen from his shirt, sack, etc. to the noose. It made him nervous and he considered it "*ashub*" (Bad omen) because a thread resembles a noose. One of the prisoners said that he feels restless and nervous about his daily existence and said that he has not found sound sleep for the past 14 years. This prisoner also said that he stopped his reading habits and has forgotten everything that he has read. He said that he often sees a dream where his school teachers are present and all of them tell him that he has failed but his favourite teacher tells him that he will pass. There is also a physical deterioration where one forgets spellings, books, memories. Some prisoners said that they cannot do things they could do earlier e.g. speak in English or recollect certain memories.

Many prisoners showed signs of mental illness but I was in no position to assess this because I am not a doctor neither was finding out about the mental behaviour the objective of the study. However, I could not overlook some incidences where one of the prisoners was locked in his cell because he hit a prison guard the previous day and broke the guard's left hand. The co-accused of this prisoner told me that he is 'mental' and is locked in his cell. I asked the prison officer to take me to his cell. The officer said that this prisoner was mentally disturbed. I insisted on meeting him and was taken to his cell. I was asked to wait ten metres away from his cell so that he could get dressed. After a minute or two I was asked to come near the cell which was locked. He was lying down and opened his eyes slightly to see who was there at his cell. He looked dull and was oblivious to things happening around him. I sat down near the cell and passed the consent note to him telling him that he could contact me through his relatives if he wishes to speak to me. He did not respond but he gave me a smile. This prisoner did not even know that he was given death sentence. When I enquired with the prison official if any doctor visited him, the official responded in negative. Thus 'double-jeopardy' culminated in what is called as death row phenomenon/syndrome.

## **5.6. SUMMARY**

In this chapter we have looked at the profile of the prisoners on death row. This is mainly their demographic profile and the impact of their incarceration on their families. This was elaborated to gain an understanding on the background of the prisoners who are on death row. The next section of this chapter discussed the process the prisoner went through before receiving death sentence. This process is recorded from their arrest till the time death penalty was pronounced. The last section of this chapter deliberated on the concept of '*double jeopardy*' which is incarcerated on the death row. This section discussed the physical structure of the prison and death row, daily routine of prisoners on death row and finally the death row phenomenon. The next chapter which is the concluding chapter mainly interprets the findings presented in this chapter and discusses the three salient features that emerge from the study.

## **CHAPTER SIX: 'DYNAMICS' OF VOCALS CREATING (DIS)HARMONY**

### **6.1. INTRODUCTION**

I borrow heavily from Scheper-Hughes - an anthropologist who says that what drew her to the people and places she studied was not their exoticism and their "otherness" but the pursuit of those small spaces of convergence, recognition, and empathy that one shared with the people. She further says that seeing, listening, touching, recording can be, if done with care and sensitivity, acts of solidarity. Above all, they are the work of recognition. Not to look, not to touch, not to record can be the hostile act, an act of indifference and of turning away. Ethnography (or I put it as any research with human participants) could be used as a tool for critical reflection and for human liberation.<sup>512</sup> This study has been a part of a college which is called "Empowerment through Human Rights". With this intense Human Rights milieu, and my being in Vienna which is known to be the heart of the Human Rights debate; coming from a background of being a human rights activist and a professional social worker in criminal justice - it is difficult not to act in solidarity with the issue of death penalty and the prisoners themselves.

This chapter synthesizes the empirical findings to answer the study's main question: Is the dignity of the prisoners upheld after confronting the criminal justice system and while surviving the death row? The profile of prisoners, the processes leading to death penalty and the '*double jeopardy*' of being incarcerated on the death row will be discussed as a cross-cutting issue through the voices of prisoners. After the interpretation of the findings, this chapter discusses the three salient features that emerge from the interpretation. Further, it discusses the impact of the study in terms of policy implication and the scientific contribution to the field of criminal justice. It also explores researches that could be undertaken in this field of criminal and social justice. These topics emerge from the present study as gaps or concerns that need to be

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<sup>512</sup> Scheper-Hughes, Nancy. "The primacy of the ethical: propositions for a militant anthropology." *Current Anthropology* 36, no. 3 (1995): 409-440.

further investigated. Finally it attempts to summarize the knowledge produced in this research.

## **6.2. INTERPRETATION OF THE FINDINGS**

While the empirical findings of this study are presented in the fifth chapter, this chapter attempts to interpret these findings with the contextual questions. This research showed how prisoners on death row are one of the most vulnerable in the different categories of prisoners that prisons generally house. Contrary to the widely held notion that prisoners on death row are ‘dangerous’, ‘hard core criminals’, ‘cannot be reformed’, ‘have no guilt or remorse’ – this research has brought attention to the voices of these ‘dangerous criminals’ highlighting the aspect of dignity. Thus, the voices of death row prisoners is best understood in the context of their socio-demographic profile, the processes leading to death penalty and the ‘*double jeopardy*’ of being incarcerated on the death row. These voices highlight the various experiences and perceptions about the dignity and vulnerability of prisoners on death row.

While prisoners are the essential focus of the study, prison authorities have told me - “We are the custodians of prisoners. We treat them well, we feed them. What more does one want?” What the prisoners ‘want more’ is that their voices be heard. They want the world to hear that they are human beings even though criminal hue stains their personalities. Prisoners narrated certain experiences in greater depth than others and it is significant to interpret the rationale behind the narrations of certain experiences which were more detailed than the others. The discussion opens firstly with the interpretation of the socio-demographic profile of death row prisoners, and thereafter moves to the process leading to death penalty and finally the discussion ends with the ‘*double jeopardy*’ of being incarcerated on the death row.

### **6.2.1. DEATH ROW PRISONERS IN THE STUDY**

While I started interacting with the prisoners, it was imperative to understand their social backgrounds. This information reaped rich findings and provided a scope to interpret meanings out of these findings. The findings from the profile of the prisoners were illustrated in the family, age, gender, religion, ethnic background, language, education, occupation and the stage of their appeals. Prisoners on death row represented diverse religious, cultural and ethnic background thereby characterizing the diversity in India. However, in India where the society is already ridden with class, caste and gender bias, it becomes essential to examine the above variables in this light.

The findings reveal that it is the failure of the criminal justice system which overlooks the age of the prisoners while the crime was committed. A large number of (65%) of prisoners belonged to the category of 18-29 years which is one of the most productive age groups. This is also corroborated with the fact that they run in the circle of poverty, unemployment, idleness and inactivity. Thus it is worth enquiring about the lives of death row prisoners before they came to the prison or came in conflict with the law. Many of them said that they had a criminal record or two in matters of theft, robbery or drug offenses. This demonstrates that they were ridden with poverty even before they were arrested and that there is a larger society which taps into young adults and draws them into the loop of crime. This interplays with the variables of education and occupation. Almost 48% of the prisoners studied only till 7<sup>th</sup> grade which further diminished their employment opportunities. Thus 53% of the prisoners were daily wage workers who earned Rs. 120/- (2 Euro) per day. This is not sufficient for a family to survive thus indicating the gravity of the poverty they come from. In addition to this, there was an unemployment rate of 15 % among the prisoners. This unemployment indicates how the prisoners themselves and their families lived in poverty and debt before coming in conflict with the law.

There was only one woman prisoner on the death row in this study. She had to face the stigma of being in prison from the society. Her children also suffered



from the disgrace and the stigma of both parents being incarcerated. There have not been enough studies on women prisoners in general, especially women prisoners on death row. It is not the lack of interest in studying the situation of women prisoners ; rather it reveals a '*patriarchal criminal justice system*' which blocks any studies with women prisoners even when there is an interest to know the problems faced by women in prison.

A large number of prisoners (44 %) refused to disclose their ethnic identity (caste). This 'non-disclosure' is in itself a very gripping phenomenon because prisoners might have had various reasons for this non-disclosure. I can only assume that it could be because they want to protect themselves from further vulnerabilities in case they belong to a certain caste. The ones that have disclosed their caste identity have a higher percentage of lower castes individuals on the death row. 37% belonged to lower castes while 19 % belonged to the upper caste. This when co-related with education and occupation depicts how the ones belonging to lower caste are marginalised thus creating vulnerabilities. It is generally the lower strata of the society that do not have the opportunity to finish formal education and which work as daily wage workers or casual labourers. While the largest majority of prisoners on death row were Hindus (66.67%); there were minority-community prisoners who were Muslims, Christians, Sikhs, Buddhist, Marxist and Atheist. The minority harboured a feeling that the law is biased against them due to their religious identity especially the Muslims. They perceived that justice is never delivered and that the right wing parties in India think that every Muslim is a 'terrorist'. One prisoner went on to say that, "It is not just India but even in the U.S.A, this prejudice exists. Black people in the U.S. who commit crime are more likely to be convicted than a white person committing the same crime." This confirms the literature from Wacquant who says that it is the socially excluded and the marginalised who enter the prison system.

Prisoners generally begin narrating their experiences starting with their families. Even the ones who are convicted for murdering a family member share about the surviving members. When a person is incarcerated, the families suffer huge financial burden because of the legal expenses. Furthermore, when

the person is sentenced to death, the situation worsens because of the higher legal expenses in the higher courts. This is corroborated by the fact that death row prisoners are not allowed to work in the prison and thus do not earn any money in the prison. They wait for their appeal not knowing when they will be executed or released or their sentence be commuted to life imprisonment. This uncertainty affects families of prisoners in diverse ways: older parents often die, partners re-marry and children do not reach their potential. Thus it destroys the fabric of a family unit and one cannot ignore the negative financial, emotional, social and mental impact of death sentence on family members. At the same time prisoners lose all social interaction with people in the larger society. One of them said that, "I have been in the prison for such a long time that I do not even know how to talk to a woman." Also other prisoners have talked about missing out on the family for an entire generation while some say that they have been in the prison for such a long time that they do not know the progress or innovations in the society.

Many of the prisoners on death row claim innocence. One of the arguments against death penalty is execution of the innocent. One of them who claims to be innocent said, "I can lie to you but lying to my own conscience will only kill me. I want my case to be re-opened." It must be clarified that I am not suggesting that every person on the death row is innocent and is always 'framed' by the police. I was also in no position to assess their cases as all of them went through a judicial process and it was not my objective to assess their innocence or guilt, rather this became a platform for the prisoners to voice out their experiences and perceptions. Many prisoners claimed to be juveniles while they were arrested. According to the Indian Law, no juvenile can be arrested and tried in a normal court.<sup>513</sup> They have to be tried in a juvenile court. I myself have asked many younger-looking prisoners their age when they were arrested. Two of the prisoners on death row who participated in the study were released from the prison because they were juveniles on the day of the crime. One of the 'juveniles on death row' was in the prison for almost 10 years and

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<sup>513</sup> Juvenile Justice (Care and Protection of Children) Act, 2000 see <http://wcd.nic.in/childprot/jjact2000.pdf> [accessed on 4th January 2012]

the other for three years. There are still many prisoners who were juveniles when the crime was committed and there are still many juveniles serving on the death row.

Prisoners talked about their perception of justice and majority of them said that it belonged to the wealthy and that justice is sold for money. Some called justice and death penalty a game of luck again confirming the literature of Amnesty International which is titled “Lethal lottery” which is an analysis of death sentences from 1983 – 2006.<sup>514</sup> There are some prisoners who said that they have been writing to various commissions and the government to look into their cases but there has been no response whatsoever. The general perception is that prisoners feel like they are being treated as garbage. One prisoner in this context said, “It is a shame to live in a country like this. Two Lakhs people are arrested for petty crimes like thefts but people involved in major scams and money laundering are still out there, free”.

Prisoners also asked questions about the injustice in the system for which I had no answers. Some were: “Why do police arrest poverty-stricken people like us? Why do they give us death sentence? (Pointing at the judgment he had in his hand) Who should we ask about this and who is going to enquire about all this? Why can’t the court listen to us? Why does the court listen to the police and not us? Why are we who are in a state of penury and who do not have any good, experienced lawyers given death penalty?”

A large number of prisoners (55%) had their appeals in the High Court. This was followed by the maximum number (24%) of prisoners who had their mercy petition with the President of India or the Governor of the State. The mercy petition is a stage where all the court appeals are exhausted and they ask for final mercy - first from the Governor of the particular State they are housed in; when rejected by the Governor, then from the President of India. Around 16 % of prisoners had their appeals in the Supreme Court. This data reveals that

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<sup>514</sup> Lethal Lottery: The Death Penalty in India - A study of Supreme Court judgments in death penalty cases 1950-2006

the financial burden of the prisoner increases as they go to a higher court because the legal charges are higher in higher courts.

### **6.2.2. THE PROCESS OF DEATH PENALTY**

The contextual issues that lead to revealing the processes leading to death penalty were to find the perceptions and experiences of social life of prisoners on death row, the stages that prisoners experience before being sentenced to death and their perception and experience of the treatment received by the criminal justice system during these stages. The findings revealed that the processes leading to death penalty had seven stages - arrest, police lock-up, production before the magistrate for the first time, being sent back to the police lock-up or given judicial custody (prison), judicial custody, trial and finally sentenced to death. There are other actors such as media, lawyers, judges, family members, doctors, prison officials, police officers and prison visitors who play a role in this process of death penalty.

Beginning with the arrest, the police, in most of the cases, kept the arrest a 'secret' from the rest of the family for a long period of time. Also when prisoners were arrested, the police neither informed them about the charges they were arrested for nor did they inform if the crime they were arrested for was a bailable offence or not. In addition to this, prisoners were not told that they have the right to a lawyer from the time of their interrogation. The findings in the process of the arrest revealed four C's, namely; class/caste, coercion, charged and confined. Most of the prisoners have refused to disclose their caste but the ones that did; it indicated that majority of the prisoners belonged to the lower caste and also lower socio-economic background. Again not revealing one's caste-identity is a 'statement' in itself by which, it can be interpreted that prisoners do not want to be vulnerable again in the system by revealing their caste identity. Coercion is a clear process that makes one lose their right to determination and further moves on to violation of their dignity. Prisoners were coerced to go to the police station on the basis of 'questioning' and sending them away the same evening. 'Charged' is a phenomenon where they were often arrested for theft but 'charged' for all the murders that were not 'solved' in a particular jurisdiction. 'Confined' is a phenomenon where

prisoners were arrested but instead of being housed in a police lock-up and produced before a magistrate; they are confined in an illegal place of detention. These places of detention could be houses under construction or farm houses or a bungalow.

After the arrest, the main concern of the police is to extract the 'story' of the crime from the accused. The next stage of being in police lock-up reveals a phenomenon which is termed as the three T's – tortured, tutored and threatened. As Goffman has described the loss of agency in a total institution; the process of the loss of agency begins in a lock-up where prisoners lose their autonomy and agency.<sup>515</sup> Cases of torture are morally wrong in almost every respect. Torture is morally wrong because an individual is insulted and verbally humiliated, this might not be the reason for the wrongness of another torture case where symbolic humiliation does not play a central role. Torture is morally wrong since the rights of the victim are violated; second, the will of the victim is turned against the victim himself/herself; and, finally, the victim is completely exposed to the torturer.<sup>516</sup>

What I find worth discussing is the fact that prisoners call being tortured in custody as 'regular work'. It has to be questioned, when the 'torturing' of individuals in custody becomes 'a regular work or practice'- becomes an accepted norm and when one cannot report these incidences because the very protectors of law (police) become the perpetrators of crimes. Additionally, threatening prisoners to rape their female relatives goes unreported. In many cases, prisoners also reported that their female relatives were sexually molested by police officers. It is mere exercising of power by the police when such incidences occur. Tutored before taken to the magistrate is inter-related to the threatening and torture phenomenon. This is again making them victims of the state by exercising the power to tutor them to 'act' in a certain way in front of the magistrate.

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<sup>515</sup> Hacking, Ian. "Between Michel Foucault and Erving Goffman: between discourse in the abstract and face-to-face interaction." *Economy and Society* 33, no. 3 (2004): 277-302.

<sup>516</sup> Kaufmann, Paulus, Hannes Kuch, Christian Neuhaeuser, and Elaine Webster, eds. *Humiliation, degradation, dehumanization: Human dignity violated*. Vol. 24. Springer, 2010.

The next stage after the arrest and the police lock-up is 'being produced before the magistrate for the first time' which according to the CrPC, 1973 should be within 24 hours of the arrest. Before being taken to the magistrate, the prisoners are tutored to say that they were not harmed while they were in custody. The Magistrates while questioning the prisoner if s/he was tortured in custody gives a mere lip-service to the DK Basu<sup>517</sup> guidelines; a judgment by Supreme Court which issued certain requirements to be followed as preventive measures against custodial violence in all cases of arrest or detention "till legal provisions are made in that behalf". These requirements have been explained in the second chapter. Being hit in custody is not verified; prisoners are not sent to judicial custody (prison) even when they have complained of being tortured in custody. In one case, the prisoner removed all his clothes and showed it to the Magistrate to show the injury he 'sustained' while in custody. According to him, the Magistrate did not even make a note of it in the case-paper.

He was sent back to police custody where he was beaten even more for not speaking the way he was 'tutored'. Prisoners were also produced in the house of Magistrates for the first time at night. It is not possible to see injuries, if any, on the prisoner at night. Usually police officers know where to hit a prisoner so that the injury is not visible but in case if something is seen, this cannot be observed at night; especially on an Indian skin tone. However this again confirms what Foucault deliberates upon about torture - that it is calculated, organized, technically thought-out and that it may be subtle.<sup>518</sup> Prisoners who were produced in the Magistrate's homes said that the Magistrates did not even look at them. According to the prisoners, Magistrates have failed in their duty. Only in one instance did a Magistrate tell the police officer that she wanted to talk to the prisoner and verified with the prisoner directly if he was harmed in custody. The police officer told the Magistrate that the prisoner is a 'dangerous criminal' however, the Magistrate snapped at the police officer saying, 'He could be dangerous for you, not for me. Let me talk to him alone.' She

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<sup>517</sup> *D. K. Basu v. State of West Bengal* – AIR (SC)-610, 1997-SCC-1-416.

<sup>518</sup> Foucault, Michel. "Discipline and punish: the birth of the prison (tr. A. Sheridan)." *London: Allen Lane Penguin* (1977).

enquired about his treatment in custody. This Magistrate was transferred from this case. However in this instance the prisoner felt that his dignity was upheld. This stage reveals that the Magistrate and the police, both state machineries, work hand in glove and further violate the rights of the ones they are entrusted to protect.

In most cases, usually the prisoners are sent back to police custody because generally the police can keep the prisoners in custody for 14 days. After 14 days, the prisoners are sent to judicial custody after being produced once again in the court. This time they are not asked anything about the torture in custody by the Magistrate. According to the prisoners, being in judicial custody is a different experience from being in police custody. One of them said, "If we knew that judicial custody is not like police custody, we would not have 'confessed' to our crimes by signing the blank sheets that the police asked us to." Lack of information about judicial process is one of the biggest gaps when it comes to being arrested or detained. They meet their lawyers only in the judicial custody when the family is involved or when they are produced in the court later and are provided with a state lawyer.

Once in prison, the prison officials who are the custodians of the prisoners act against their interest and well-being. For instance, prison officials inform the police about visits from the family members. These family members are arrested outside the prison by the police and the prisoner is unaware about the family members for a long time. Prison officials also target prisoners based on caste if it was a case of caste violence and this makes them vulnerable based on the caste. Religion also plays a role here. Muslims are often called "*pakistanis*" and '*desh-drohi*' (traitors). When a prisoner whose mother tongue is Urdu writes letters to her/his families in Urdu, their letters are not sent across. Prisoners call this a violation of their right to be in contact with the family. All letters sent and received in the prison are scrutinized for security reasons. Prisoners say that the prison authorities can make a 'trusted' prisoner who can read Urdu to read the letter for them as a part of the security screening and see if there are any security violations. But prison authorities simply refuse to allow the prisoners send or receive letters in Urdu.

The other instance where the prisoners feel violated in terms of their dignity is when they have to go on a hunger strike to voice their dissent against the authorities or to get their rights. The use of body as a weapon against the state by carrying out a hunger strike is a 'tradition' that has existed since the freedom struggle movement and still exists even today. Gandhi often used this weapon against the state to voice his dissent against the *Raj*. Today it is Irom Sharmila who has been on a fast for the past 12 years to repeal the 'draconian law' called Armed Forces (Special Powers) Act, 1958 which gives the army (troops) the right to shoot anyone suspected of being a rebel and to arrest suspected militants without a warrant. The prisoners are told by the authorities that they could die carrying out the hunger strike and no one will care. Prison authorities tell the prisoner that they will report that the prisoner died while being taken to the hospital. In most cases, prisoners manage to get some part of their dissent expressed or rights met. Often when prisoners' dissent is expressed or rights are demanded and an action is taken, they feel that their rights and dignity are upheld.

Wacquant quotes Kennedy who says that along with the return of Lombroso-style mythologies about criminal atavism and the wide diffusion of bestial metaphors in the journalistic and political field where mentions of 'superpredators', 'wolf-packs', 'animals' and the like are commonplace, the massive over-incarceration of blacks has supplied a powerful common-sense warrant for 'using colour as a proxy for dangerousness'.<sup>519</sup> In the Indian context, it is not a 'return' but a 'style' that existed for a long time since 1871 when the British Raj introduced the "Criminal Tribes Act of 1871" where once a tribe became "notified" as criminal, all its members were required to register with the local Magistrate, failing which they would be charged with a crime under the Indian Penal Code, 1860. Though this act was repealed in 1952 with the Habitual Offenders Act, 1952, certain tribes and people are still registered with the police authorities as 'habitual offenders'. They also claim that people from this 'list' are still picked up in case of any offence in a particular

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<sup>519</sup> Kennedy, Randall. "Race, law, and suspicion: Using color as a proxy for dangerousness." *Race, crime and the law* (1997): 136-67 cited in Wacquant, Loic. "Deadly symbiosis when ghetto and prison meet and mesh." *Punishment & Society* 3, no. 1 (2001): 95-133.



jurisdiction. I confirm this because as a social worker in the women's prison, women prisoners who were termed 'habitual offenders' were the ones to be picked up first when there was a reported crime such a petty theft or robbery in that particular jurisdiction. Police officers and prison officials both sent prisoners' 'stories' to the media. One of the prisoners on death row showed me a newspaper report where his daily routine was printed as a 'juicy' cover story.

One of the actors in this process of death penalty is the official or non-official prison visitor. Visits by these official or non-official visitors have been reported as one of the most degrading experiences by most of the prisoners. The Prisoners said that they are humiliated for the crimes they are arrested and also asked questions like how many more rapes or murders have they committed. In some cases, the prison visitors do not talk to the prisoners or do not ask them any questions at all. In these cases, the prisoners say that they feel like dummies inside the prison. The feeling of "being just a number" inside the prison has been depicted in popular culture, mostly films. It is somehow true in this case. At the same time, prison officials also told me that "You do not see them every day; you see them sometimes; we deal with them every day and we know how 'dangerous' they are. You don't realise it."

The next process of 'trial' in most cases begins within two months after the police file the chargesheet in the court. There are also cases where the police have failed to file the chargesheet even after three months of the arrest. The prisoner gets a lawyer by this time. It is either a legal aid lawyer provided by the state or a private lawyer. Prisoners have also talked about losing autonomy while dealing with the lawyers because the lawyers do not often 'listen' to them. They are unable to speak in the court and are asked to keep quiet during the trial. According to them, after they sign the '*vakalatnama*<sup>520</sup>' they give the lawyer the power to determine the fate of their cases. Additionally, the lawyers are very often absent on the day of the most important hearings. According to the prisoners the lawyers sometimes do not argue at all. They give the prisoners false hopes or often go with the opposite party [prosecution]. In one instance, a

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<sup>520</sup> Note: An authority in writing by litigant to one's Lawyer

lawyer told the prisoner, "Death penalty is easier - take that punishment and we can get it easily commuted to life in the High Court." The prisoners have also felt humiliated and not 'understood' by the lawyers when the lawyers tell the prisoners that s/he should not have signed the 'confessional' statement in police custody. The prisoners said, "What the lawyers do not understand is that it is better to die than be beaten in this manner. So we sign whatever the police ask us to."

Court proceedings are very overwhelming for the prisoners. Indian courts are known to have a backlog of millions of cases. Courts are always crowded with thousands of people and the media. Hence it becomes all the more overwhelming for most prisoners. Most of the times there is no escort<sup>521</sup> to take them to court. When they are taken to the court during the trials, they are tied to each other with a rope to prevent them from escaping. This has been presented in the findings chapter. Their being tied to each other with a rope further degrades them and they perceive this treatment accorded to them as being worse than the treatment given to animals. Law in India prohibits handcuffing of prisoners and if handcuffed only with a court order,<sup>522</sup> however handcuffing or tying them together with a rope is a very common practice. For instance, one prisoner said that he was handcuffed for the whole day; he could not even wipe his own sweat.

Being 'sentenced' is the last stage of this process leading to death penalty. Death penalty is demanded in the last arguments in the court. In the end of the trial, the Magistrate asks the prisoners if they have something to say. Most of the prisoners responded with - "I have done nothing." Some said, "Please give us less punishment and consider our age" but whatever they said was used against them by the media and the court. The media write stories saying that the accused do not want any punishment. Media also writes reports such as the prisoner showed no remorse, they do not show any guilt or they look like

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<sup>521</sup> Note: Police who take them to the court

<sup>522</sup> Citizen For Democracy Through Its ... vs State Of Assam And Others on 1 May, 1995 [AIR 1996 SC 2193, 1996 CriLJ 3247, (1996) 1 GLR 682]

‘hungry wolves’ or ‘animals thirsty for blood’. Prisoners are left with the feeling of justice not being delivered when a sentence of death is pronounced.

### **6.2.3. ‘DOUBLE JEOPARDY’ – INCARCERATED ON THE DEATH ROW**

The contextual questions guiding this section were - how do the prisoners perceive and experience their conditions on the death row? How do the prisoners survive each day on the death row? The death row is a very peculiar kind of setting where it is a city in itself. Prisoners who were interviewed did not have a more varied opinion than Bruce Jackson<sup>523</sup> about the death row. This section will include how the prisoners narrate their experiences and perceptions of basic rights and dignity being denied. Sykes describes the pains of imprisonment<sup>524</sup> however I would add that being incarcerated on the death row doubles the ‘pains of the imprisoned’. The pains of imprisonment begin from the main gate of the prison where the process of dishonouring them begins when they enter the prison. Both the officials and prisoners are ‘victims of dishonour’ when they enter the prison, however, the prisoners are the more vulnerable victims because of their loss of liberty. They bear the burden of losing their liberty and undergoing the ‘pain of imprisonment’. The barracks in which one was placed as an undertrial could be a sociological study in itself to examine how the prisoners are housed. The poor are often in the margins of the barracks and in the cold and damp places while the rich prisoners are in the centre of the barrack.

It is not only the families which are affected by having a member of the family on death row but the prisoners themselves are affected by living on the death row. It begins at a very latent level when meanings are associated with names of the yard they are placed in. The other names for the high security yard are ‘darkness yard’, ‘hanging yard’ or ‘*phasi-wale* yard’ (yard of the people to be hanged) or ‘separate yard’. This name-association of being in darkness starts playing on the minds of the prisoners on the death row. In addition to that, the

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<sup>523</sup> Jackson, Bruce. *Fieldwork*. University of Illinois Press, 1987.

<sup>524</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

cells where the prisoners on death row spend all their time are thoroughly inhuman. It is a known fact that prisons are overcrowded but it is a not-so-known fact that even death row cells are overcrowded. Thus it affects the routine life of the prisoners on death row who are not assigned any work by the prison administration because s/he is 'destined to die'. When they are placed in death row, their lives have no meaning. According to them, because the prisoners discuss about the meaninglessness of life, they are not allowed to work either. Hence their lives on the death row are simply determined by their mental state. The rules that they have to follow are arbitrary in nature. The prisoners lose their liberty but they also claim to lose their fundamental rights of being a 'human being' while being on the death row. The rules of being on death row vary from prison to prison. For instance, in some prisons, the prisons' officials allow death row prisoners to study while in others prison authorities say that they are prisoners to be hanged' (condemned prisoners) and therefore there is no need to study.

Thus the prisoners on death row claim to carry the burden of being 'just a number' or as 'dummies locked in a cell'. Being single and being crowded in a single cell is a phenomenon that one observes on the death row. Sometimes four people are placed in a cell built for one while most of them are placed alone. Both bother them. Placing a person in solitary confinement is a punishment that only the court can hand out. Until their last appeal (Presidential pardon) is exhausted, a prisoner cannot be held in solitary confinement. However the prison uses the Section 30(2) of the Prisons Act 1894<sup>525</sup> in an act of subversion to giving a prisoner solitary confinement according to a Supreme Court judgment. A prisoner is not a prisoner 'under the sentence of death' unless all the appeals are exhausted or petitions rejected.<sup>526</sup>

I asked a prisoner about his perception about the treatment on death row, and he said, "Be locked inside for a month, get third class treatment, no medication,

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<sup>525</sup> Note: Every such [death sentence] prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

<sup>526</sup> *Sunil Batra v. Delhi Administration and other* 1978-(4)-SCC-494: 1978 – Cr.L.J – 1741 – SC

do not meet anyone – then you'll know how we feel.” Speaking of the death row another prisoner said, “It is a jail inside a jail. There are rules for sports, food, bathroom, and toilet. We want freedom inside jail.” This confirms what Jackson<sup>527</sup> has written about death row in Texas prison. Another prisoner said a similar account about death row saying, “Lifers have a life even inside the prison but we on death row do not. We have no freedom, no timing, we do not know what to do”. Prisoners also talked about the food received in the prison. They say that it is one of the worst kinds of food made available to the prisoners. It is so bad that it cannot be even given to animals. Some of them say that it contains worms and maggots. There is also a ‘gossip’ among prisoners that the food is mixed with sedatives. The prison-visitors who are state and non-state actors provide no support whatsoever to the prisoners on death row but instead ask humiliating questions and further deepen their shame of being a ‘rapist’ or ‘murderer’ or ‘prisoner’. In addition to this, the perception of the treatment received on the death row reveals that the prison system or the courts are counter-productive in further denying dignity to prisoners. This is accentuated by the fact that some prisoners on death row are denied permission to study or apply for courses from within the prison. They are called by names other than their own, branded as ‘traitors’, ‘Pakistanis’ or ‘Muslim fundamentalists’ or ‘hungry wolves’ or ‘sex maniac’.

Death row phenomenon is a violation of human rights and has been well-expounded in various literatures including many court judgments both in international law<sup>528</sup> and national law<sup>529</sup>. Prisoners go through this feeling of being killed every second on the death row. The wait for their appeals makes them anxious and nervous thus violating their right to be free from this mental torture. Many countries for this reason do not extradite prisoners to countries which carry out death penalty. However, a European country violated this law by sending back a prisoner who sought asylum and is now facing death row in India (this prisoner was not part of the study).<sup>530</sup> While delay in judicial

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<sup>527</sup> Jackson, Bruce. *Fieldwork*. University of Illinois Press, 1987.

<sup>528</sup> *Soering v. United Kingdom*, 161 Eur. Ct. H.R. at 102 (1989).

<sup>529</sup> *Triveniben v. State of Gujrat*, AIR 1989 SC 1335; 1990 Cr. L.J. 1810.

<sup>530</sup> *State of Punjab versus Devinder Singh Bhullar*, 2012 (1) RCR (Criminal) S.C.126.

processes itself is an insufficient ground for causing death row phenomenon, the supplementing factors of mental agony and perceptions of harsh treatment while being on death row are enough reason to consider a more humane approach to deal with prisoners on death row. An opinion voiced by all prisoners was that living on the death row is a daily struggle, torture and is oppressive.

One prisoner narrated an account of his sister and mother molested by the police while he was in custody. He was tortured to tell about the victim's death in judicial custody. His reply to them was, "If you can bring back my mother's and sister's honour back; I will tell you about the victim." There is a certain prisoner who belonged to a middle class family- with a 9:00 a.m. to 5:00 pm job. He said that he had not wasted a single day in his life and his name was found in someone's diary. Therefore, he was implicated in the crime. He said, "I am a social animal. I have contacts with other people. But just because my name appears in someone's diary, is that a reason to sentence me with death sentence?" In police custody, the most humiliating experience for the prisoners is being branded and thus feeling humiliated.

When prisoners ask for certain facilities, they are denied those facilities, in spite of the fact that it could be provided according to the prison manual. One of the prisoners said, "The moment we want an Urdu newspaper or write an Urdu letter, we are called Pakistanis." Another prisoner said that the prosecution and the judge had branded him as "Samaj ke liye khatharnak, Muslim fundamentalist". (Dangerous for the society, he is a Muslim fundamentalist) and that is how they are also treated in the prison. The other prisoner said, "*Jail staff British ke jamane ke jailors hai* (The Jail staff are like British Era Jailors) hinting that the British era jailors were very mean and that prison authorities keep them in the dark about their rights. A certain prison provided phone facility to prisoners to call their family but the prisoners on death row were not allowed this facility. They had to go on a hunger strike to avail this facility. Also in a certain prison, the prisoners asked for a copy of the State Prison Manual but the officers kept refusing them a copy. The prisoners went on a hunger strike to get a copy of the Prison Manual and eventually the

prison officers gave them a copy of the Prison Manual. The prisoners are also branded according to the crimes they have committed and often they are referred by this nickname than their own name. I was told by a prison guard that I should refer to a certain prisoner by the nickname and not his first name. Speaking about the arbitrariness of giving death sentence, one of the prisoners on death row asked, “Why is the law not equal for everyone? Some prisoners do not know at which stage their cases are - with the President or in the Supreme Court. One prisoner said that the criminal nature of people must be dealt with inside the prison instead of punishing everyone with a death sentence.

Finally when mercy petitions are sent to the highest authority in the judicial system - the President, the prisoners expect a quick reply and fair justice which might eventually lead to being pardoned. Moreover, the death row phenomenon that a prisoner on death row faces is an extremely harrowing experience. Lack of sleep, hallucination, fear, anxiety are some of the emotions that break the spirit of a prisoner on death row. An incident like finding a thread in the death row cell creates panic attack and nervousness among prisoners on death row because a thread resembles a rope and noose. The uncertainty of the impending death sentence further creates restlessness and waiting for news such as this is never a pleasant wait.

While these were the interpretation of the findings of the study, there are certain features that emerge from these interpretations.

### **6.3. THREE SALIENT FEATURES OF THE STUDY**

This section thus discusses the three salient features that emerge from the interpretation: (i) poverty, social exclusion and marginalization become an antecedent to death penalty (ii) death penalty is a constructed account by the state machinery (ii) prisoners on the death row situate dignity higher in the juxtaposition of death and dignity

#### **6.3.1. POVERTY, MARGINALIZATION AND SOCIAL EXCLUSION BECOMES AN ANTECEDENT TO DEATH PENALTY**

It has been reiterated throughout the thesis from Wacquant that prisoners are a socially- excluded and marginalised class. Also one has to look at who are the ones who are being punished. Through the work of Foucault and Marx we know that punishment is a raw exercise of power. Nevertheless, Garland argues that punishment is not just an exercise of power but it is an expression of moral community and collective sensibilities, in which penal sanctions are authorised response to shared values individually violated.<sup>531</sup> Garland also says that the punishment is symbolically a deep event which has a profound cultural resonance. He says that it not only involves the state but also the wider community in matters of ultimate and common concern which in turn evokes powerful sentiments and a rich symbolism.<sup>532</sup> In relation to this study, prisoners have shown very low literacy rate which in turn either makes them unemployed or having to work as casual labourers. This leads to low income level and thus low or no savings in turn driving them in the vicious circle of poverty. In addition to this, most of the prisoners who revealed their caste identity belonged to the lower castes which make them marginalised because India till today is a caste-bound traditional society. They are also spatially marginalised in the sense that they live on the peripheries of villages or town or cities where they come from. At the same time, being poor and marginalised makes them socially-excluded. Poverty, marginalization and social exclusion transport them in a situation where they are unable to confront and deal with

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<sup>531</sup> Garland, David. "Sociological perspectives on punishment." *Crime & Just.* 14 (1991): 115.

<sup>532</sup> Garland, David. "Sociological perspectives on punishment." *Crime & Just.* 14 (1991): 115.



the gigantic criminal justice system when they are arrested. In this period, prisoners do not know their rights while being arrested, detained, interrogated or when tortured. This is corroborated by the fact that they are more susceptible to vulnerabilities because of their lack of education, lack of social and financial capital and because of their caste or religious identity. Though Wacquant states that prisoners are marginalised and socially excluded it emerges in this study that it is this very poverty, marginalization and social exclusion that bring them to this stage.

### **6.3.2. DEATH PENALTY IS A CONSTRUCTED ACCOUNT BY THE STATE MACHINERY**

Crimes such as murder, waging a war against the Government of India, treason, kidnapping for ransom, dacoity with murder and so and so forth are the crimes which can result in death penalty. However in India, according to a Supreme Court judgment only the 'rarest of the rare' crimes can be given death penalty. This means that not everyone who has committed murder or dacoity or has waged war against the nation is given death sentence. The point of departure for my argument that death penalty is a constructed account by the state lies in the process that leads to death penalty. It begins with the arrest which is based on four C's, namely; 'class and/or caste', 'coercion', 'confined' and 'charged'.

'Caste and class' play a major role in who is being arrested and who is finally on the death row likewise 'coercion' by the state while arresting an individual is another instance where state plays a role. Individuals are 'coerced' into believing that they will be released eventually on the same day that they are arrested. Prisoners have narrated incidences of being 'confined' in 'secret' locations and finally many reported that they were arrested for theft but 'charged' with murder which were unsolved for a short or a long period in a particular jurisdiction.

This continues in the second process which depicts the phenomena of three T's – 'tortured', 'tutored' and 'threatened' in custody and while producing detainees before the Magistrate. During this 'investigative period' there is also

the public prosecutor present in some instances during interrogation in the police station. At the same time, prisoners are not informed about their right to lawyers during interrogation or while in custody. In addition to this, the next process is of 'being produced before the Magistrate' for the first time. This production before the Magistrate is dialectic as it can be interpreted as an 'unfair' procedure where the prisoner is not asked about the violence in custody or even if asked about it; nothing is done to further prevent it.

In the next process the prisoner is either sent back to police custody or sent to judicial custody. If sent back to police custody the three T's ('tortured', 'tutored' and 'threatened') are repeated again and then prisoners are placed in judicial custody after producing them once again before a Magistrate. In judicial custody, there exists a nexus between the police, prison and prosecution. Where the state has the responsibility to protect an individual even in custody, it further violates their right. In judicial custody, prisoners are often targeted based on their caste, religion or even gender. Prison officials give information to police officers during this period especially about visits by families and lawyers. Thus it is a nexus that exists between the state machineries.

In the next process of the trial, the chargesheet is produced in the court which is a formal document of the accusation prepared by the police. A document which is prepared on the basis of the four C's ('class and/or caste', 'coercion', 'confined' and 'charged') and the three T's ('tortured', 'tutored' and 'threatened') is highly questionable. The 'production of stories' by the police in a chargesheet describes the 'gruesome' crime of prisoners. The stage of going through the three T's, forcing them to confess their crime and signing the documents goes against them because the prosecution finally nails the prisoner based on the chargesheet. This 'story' finally determines whether the crime falls under the category of the 'rarest of the rare'. Thus 'rarest of the rare' is a phenomenon produced by the state leading me to say that death penalty is a constructed account by state machinery.

### **6.3.3. PRISONERS ON DEATH ROW SITUATE DIGNITY HIGHER IN THE JUXTAPOSITION OF DEATH AND DIGNITY**

“Whatever may be the pains of imprisonment, then, in the custodial institution of today, we must explore the way in which the deprivation and frustrations pose profound threats to the inmate’s personality or sense of personal worth.”<sup>533</sup>

Sykes writes about exploring the deprivation and frustration that pose threats to the prisoners’ personality and sense of personal worth. This research has tried to explore some of the deprivation and frustration that prisoners have undergone. This part is the result of this deprivation and frustration that strike the prisoner’s personality and his/her sense of personal worth. In the face of conducting interviews, many of the death row prisoners claim to be juveniles, innocent, have committed crimes but not the ones they are convicted for, committed the crime but now are full of remorse for doing that so on and so forth. While it is for the judiciary to decide the merits of the case, it is imperative that the judiciary also takes into consideration the mental agony of the impending death sentence, the perception of dignity being denied on death row and the long years of wait on the death row for a decision on their death sentence.

Gewirth suggests that humans have such dignity regardless of how they are treated; certain modes of treatment may violate but not remove their dignity.<sup>534</sup> This is indeed true, but ends when the ‘treatment’ in question is capital punishment.<sup>535</sup> Capital punishment or death penalty removes their dignity in various forms. These can be observed in the processes of the death sentence and their survival on the death row. It is the intersection of all the experiences and perceptions of prisoners on death row that make them voice their concepts

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<sup>533</sup> Sykes, Gresham M. *The society of captives: A study of a maximum security prison*. Princeton University Press, 1958.

<sup>534</sup> Gewirth, Alan. "Human dignity as the basis of rights." *The constitution of rights: Human dignity and American values* (1992): 10-46.. cited in Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

<sup>535</sup> Knowles, Helen J. "A dialogue on death penalty dignity." *Criminology and Criminal Justice* 11, no. 2 (2011): 115-128.

of dignity. The most commonly accepted understanding of dignity is the one that depicts it as an inalienable element of humanity, without which a person ceases to have any worth – physical, psychological, or moral. When understanding dignity, Kaufmann and others have discussed about taking a negative approach which is to begin a narration with description of violations felt by an individual. Prisoners have started describing a negative account from the time they were arrested till they were on death row. There were however positive accounts where they felt that they are respected by the state.

In the process of death penalty, it is mainly the three T's – torture, tutored and threatened which completely remove their dignity. The purpose of torture is not only to make a person talk, but make him betray others. The victim must turn himself by his screams and by his submission into a lower animal, in the eyes of all and in his own eyes.<sup>536</sup> In the course of torture, the victim loses more and more his reference to the world, being thrown back to his own bodily existence. The victim thus gradually loses his or her human voice.<sup>537</sup>

Arendt's writing is an indispensable resource for thinking about the threats to human dignity in the late modern world. As she recognized, Human Rights are not a given of the human nature, they are always the tenuous results of a politics that seeks to establish them, a vigorous politics intent on constituting relatively secure spaces of human freedom and dignity. And as she saw, the nation-state was far from being the vehicle of self-determination that the individuals and communities seek. Those interested in Human Rights - who wish to provide a new guarantee for human dignity, have no alternative but to take responsibility upon themselves, to act *politically* as members of elementary Republics, locally and globally, on behalf of a dignity that is in perpetual jeopardy in the world in which we live.<sup>538</sup> Prisoners are individuals whose liberty is taken away and do not have the means to take responsibilities

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<sup>536</sup> Sartre, Jean-Paul. 1958. Preface in Alleg, Henri. *The question*. Bison Books, 2006.

<sup>537</sup> Scarry, Elaine. *The body in pain: The making and unmaking of the world*. Oxford University Press, USA, 1985.

<sup>538</sup> Jeffrey C. Isaac "A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights *The American Political Science Review*, Vol. 90, No. 1. (Mar., 1996), pp. 61-73.

on themselves to secure spaces of human freedom and dignity. Hence it becomes the responsibility of the custodians [state] to take these responsibilities and guarantee freedom and dignity. Nowak in tandem with these ideas says that it is not the pain or suffering inflicted, but the powerlessness of the victim and the purpose for which the pain is being inflicted. Powerlessness means that the victim is under the direct control of the torturer; this usually means detention or a similar form of deprivation of personal liberty.<sup>539</sup>

Further while the prisoner is on the death row they experience what has been termed as the death row phenomenon or syndrome. The “death row phenomenon” or “death row syndrome” is a combination of circumstances found on death row<sup>540</sup> that produce severe mental trauma and physical deterioration in prisoners under those sentences.<sup>541</sup> There has been a lot of deliberation on death penalty as a form of torture.<sup>542</sup> Fear is perhaps the most important evil-maker connected with the pain of torture. And terror itself is closely connected with humiliation, especially when someone else sets about terrifying us. Terror makes us whimper and beg, it makes us lose control of our bowel and bladder. The experience of acute pain is itself degrading because it collapses our world and reduces us to mere prisoners of our bodies. Pain forcibly severs our focus on anything outside of us; it shrinks our horizon to our own body. This is degrading in itself, but when it happens in front of spectators, the experience is doubly shameful and humiliating.<sup>543</sup>

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<sup>539</sup> Nowak, Manfred. "What practices constitute torture? US and UN standards." *Human Rights Quarterly* 28, no. 4 (2006): 809-841.

<sup>540</sup> Note: Death row is the prison that houses inmates sentenced to death.

<sup>541</sup> Hudson, Patrick. "Does the death row phenomenon violate a prisoner's human rights under international law?." *European Journal of International Law* 11, no. 4 (2000): 833-856.

<sup>542</sup> Camus, Albert. *Reflections on the Guillotine*. Fridtjof-Karla Publications, 1960.; Bluestone, Harvey, and Carl L. McGahee. "Reaction to extreme stress: Impending death by execution." *The American Journal of Psychiatry*; *The American Journal of Psychiatry* (1962).; UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: note/ by the Secretary-General*, 28 July 2008, A/63/175, available at: <http://www.unhcr.org/refworld/docid/48db99e82.html> [accessed 30 December 2012] (Transmits interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 62/148. "Annex: Istanbul Statement on the Use and Effects of Solitary Confinement": p. 22-25.)

<sup>543</sup> Luban, David. "Human Dignity, Humiliation, and Torture." *Kennedy Institute of Ethics Journal* 19, no. 3 (2009): 211-230.

Apart from this, living on the death row is a task they have to daily carry out even if not allowed to work in the prison. This leads to humiliation and disrespect of the prisoner because s/he is situated away from others in a separate yard or darkness yard or hanging yard. However it is rejection or exclusion and disrespect that lie at the heart of humiliation. Exclusion is one form of a deep loss of recognition.<sup>544</sup> This leads to spatial segregation within the prison. Prisoners are in itself a socially-excluded group and death row prisoners are doubly excluded of this spatial ghetto that they are situated in. The vulnerability to humiliation is the flip side of the human urge for social inclusion and recognition.<sup>545</sup>

Prisoners on death row have expressed this need for social inclusion and recognition for instance while saying, "I want to go back to the society and work and earn my name back" or "I want to die outside. This will bring back my honour". A prisoner said that life is snubbed off without a cause while being on death row. There are also prisoners who say that they do not want to beg for their life from the system because the system is corrupt and that they do not want to bend before the system. Some call it 'fate' and say that it is their 'fate' that led them to death penalty. Prisoners also blame their fate for being born in a poor family. One of the prisoners said, "When fate is bad to you, what can we do? Nobody listens to us no matter what we tell. There is no justice when one is poor." Many prisoners say that everyone has the capacity to change and they all should be given a chance to prove themselves in the society and be given a chance to live. One said that he wants to die outside the prison and dreams of working on his farm again.

I have explicated in the previous chapter that the 'minimum core characteristics' for 'being human' is to have justice and freedom. Justice here denotes the aspiration to organize society in a way that every human is treated according to the fullness of her/his being, to not reduce her/him to abstract categories, and to do so equally with all. Freedom in relation to dignity refers

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<sup>544</sup> Margalit, Avishai. *The decent society*. Harvard University Press, 1996.

<sup>545</sup> Statman, Daniel. "Humiliation, dignity and self-respect." *Philosophical Psychology* 13, no. 4 (2000): 523-540.

to freedom from domination or freedom from instrumentalisation. It is something like a "right of rights". Both justice and freedom have given dignity its particular flavour: dignity is *empowerment*.<sup>546</sup> Coming back to the juxtaposition of death and dignity, prisoners have chosen dignity over death. Hence it leads me to say that the prisoners on death row are much empowered than the world contemplates.

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<sup>546</sup> Beyleveld, Deryck, and Roger Brownsword. *Human dignity in bioethics and biolaw*. Oxford University Press, 2001.; Whitman, James Q. "Two Western Cultures of Privacy: Dignity versus Liberty, The." *Yale LJ* 113 (2003): 1151.

#### **6.4. IMPLICATION, RECOMMENDATIONS AND FUTURE STUDIES**

It is impossible to explore the lives of death row prisoners in a 25-minute interview. However, bringing out the voices of these prisoners to the public seems imperative in the face of the public opinion that has been formed in India in recent times. Quoting Justice Suresh once again that we do not know anything about the person apart from the crime s/he has done. Hence it is important to 'know' these men and women who are on death row. At the same time it is vital too that one is aware that it is the poverty, social exclusion and marginalization that become an antecedent to death penalty - that death penalty is a constructed account by the state machinery and that prisoners on death row situate dignity higher in the juxtaposition of death and dignity. Nevertheless, there is a vast amount of literature written about the law and death penalty with specific reference to case laws from the Supreme Court of India. 'Lethal lottery' is a report which talks about the Supreme Court judgments in India and also does a legal analysis of these judgments. However, this study does fill the gap of prisoners being on death row and their perceptions never being studied about. Thus this becomes a distinctive study where the prisoners are studied and not their cases per se. This does not become a limitation instead it becomes the strength of the study where the prisoners' views are taken into consideration and their experiences are talked about.

The key recommendation of this study is derived from the 'process of death penalty' especially the process of 'being in the lock-up'. Prisoners have described this stage with immense pain and humiliation. Even though the DK Basu guidelines exist, Magistrates need to really implement that instead of giving it a mere lip-service. The very protectors become perpetrators in this process. However, there have been instances where Magistrates have shown great integrity and have talked to the accused alone. They have managed to elicit from the prisoners whether they were tortured or not in custody. If this happens, then a lot of incidences of torture in custody could be prevented. The police officer concerned can be prosecuted the same day. The accused should be sent immediately to judicial custody rather than police custody again. Detainees should be informed about their rights as detainees in a police lock-



up. Police officers need training and their curriculum needs to be reviewed. Theories such as the 'Lombroso theory' need to be taught with a critical aspect.

In addition to this, the Magistrates also need to be proactive to verify the age of the prisoners when they look younger. The police want the accused to be nailed not because they are personal enemies, but because the system puts a pressure on the police that they have to 'solve' cases. Hence they go to any extent to 'solve' a case. Arresting juveniles, pregnant women and old adults have been done ruthlessly and Magistrates have closed their eyes to this cruel treatment by the police. Magistrates have to be more sensitive when young adults, pregnant women or very old adults are brought in front of them. Also the practice of taking detainees to a Magistrate's home has to be stopped or if this continues, the Magistrate needs to be proactive and talk to the detainee about their treatment in custody. Since the study also claims that death penalty is a constructed account by the state machinery of police, prison and court; the legislature should delve into these accounts and act towards a better system that is fair.

Prisoners on death row have told that they have committed crimes and are remorseful about it. But there are a few of them who claim innocence. Who looks into their matters? As a researcher I had my limitations. When a person claims innocence, it is for the system to review the case. No individual would say 'I am innocent' because they want to be free. The range of deliberation in capturing voices of death row prisoners is extensive and multifaceted. To generate solid research outcomes and policy changes, there is need for more research studies in the area of criminal justice. This will further enable in exploring the gaps or dimension that this study has not been able to capture. Exploring in detail, the link between media reporting of crime stories and finally leading to death penalty, the relation of class, caste and education in cases of death row prisoners; the representation of lawyers in cases of death sentences; the experiences of prisoners in court; women on death row; lives of prisoners whose sentences have been commuted from death to life; will shed more light to this unexplored category of individuals – the death row prisoners.

### **6.5. 'DUAL DILEMMA'**

There is a dual dilemma when it comes to the voices of prisoners on death row. On the one hand, there are voices which say that they want to recover their honour. "I am not afraid of death. I want to regain my honour; I want to live free and I want to re-possess my name on honourable terms in the society." On the other hand, the prisoners say, "The impending death kills me a thousand times each day. This makes me nervous and anxious." This is corroborated with the fact that they lose their dignity either way. Their main grievance is that they feel their dignity is not respected no matter what the stage of the punishment is. Many want to return to normal life as citizens who obey the law. Staying in the prison has changed their lives forever. Having interacted with prisoners who have been on death row for several years now, I have repeatedly heard the prisoners on death row saying that they had committed the crime in the heat of the moment or under the influence of alcohol or when they were young boys.

Now they are grown- up men or reformed individuals. It is a dual dilemma that a prisoner faces – on the one hand, there is a belief that one should not be afraid of death and hope to live and on the other hand the 'fear' of being killed soon exists too. Prisoners say that when their death sentence is commuted to life, they will have their dignity back and some want to die outside the prison and feel that they will regain their dignity once they are out of this 'total', 'complete' and 'austere' institution. Prisoners learn to cope with this dual dilemma in order to survive and one of them said, "I am living in a fool's paradise thinking positively that God will help and we will go out...I also tell others to be positive. This is nothing but 'a fool's paradise'. For the time being, the paradise is good. I do not want to come out of this paradise. If I do, I will have to walk through the dark realities of life. Why not live in this fool's paradise till then?" Though prisoners convince themselves to live in 'fool's paradise', the judiciary must act rationally and act to uphold the dignity of prisoners on the death row.

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#### **Legal documents:**

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 The preamble include the following paragraph: "Whereas the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with Article 14 of the International Covenant on Civil and Political Rights".

Adopted by the United Nations General Assembly. 68th plenary meeting, December 14, 1990.A/RES/45/116

They were later endorsed by the GA in its resolution A/RES/39/118 on human rights in the administration of justice Available at <http://www.un.org/documents/ga/res/39/a39r118.htm> [accessed on 9th January 2012].

Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights <http://www.unhchr.ch/tbs/doc.nsf/0/cb752ca5a0c62b61c1256dbb002a67fe?Opendocument> [accessed on 6th January 2012].

Assembly, UN General. "Convention on the Rights of the Child." *United Nations, Treaty Series* 1577 (1989): 3. <http://www.unicef.org/crc/> [accessed on 12<sup>th</sup> December 2011].

Beijing Rules: Adopted by the General Assembly in resolution A/RES/40/33. The relevant part reads: "The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights."

UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: note/ by the Secretary-General*, 28 July 2008, A/63/175, available at: <http://www.unhcr.org/refworld/docid/48db99e82.html> [accessed 30 December 2012] (Transmits interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 62/148. "Annex: Istanbul Statement on the Use and Effects of Solitary Confinement": p. 22-25.)

United Nations Model Treaty on Extradition (A/RES/45/116). Article 4 establishes Grounds for refusal: Article 4(d) reads: "If the offence for which extradition is requested carries the



death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested.

United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> [accessed 1 January 2013] [Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.]

General Assembly GA/SHC/4058 See at <http://www.un.org/News/Press/docs/2012/gashc4058.doc.htm> [accessed on 1st December 2012]

General comment No. 29 (2001) on article 4: Derogations during a state of emergency, para. 15.

General comment No. 32 (2007) on Article 14 CCPR/C/GC/32: Article 14: Right to equality before courts and tribunals and to a fair trial, para 59.

Human Rights Council (HRC), Communication No. 554/1993, LaVende v. Trinidad and Tobago, para. 5.8.

Standard Minimum Rules for the Administration of Juvenile Justice Adopted by the General Assembly in resolution A/RES/40/33.

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## **Judgments**

*Anand Mohan and ors. v. State of Bihar*, 2008 Cr. L. J. 1273 Bih

*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684: AIR 1980 SC 898.

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Madras Regulation (6 of 1811), sec. 111.

Bombay Regulation (14 of 1827), Sec. 16-17

## Notes

1. Section 30: Prisoners under sentence of death. – (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by the order of, the Jailer and all articles shall be taken from him, which the Jailer deems it dangerous or inexpedient to leave in his possession. (2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.
2. Section 354(3), CrPC 1973.
3. Section 366 (2) CrPC (Jail Custody): The Court passing the sentence shall commit the convicted person to jail custody under a warrant.
4. Section 366 (2) CrPC (Jail Custody): The Court passing the sentence shall commit the convicted person to jail custody under a warrant.
5. Large tribal community in Eastern India
6. 'Rounds' are regular visits conducted every morning by the Superintendent or the Senior Jailor of each prison. This is a time to inspect the barracks and cells of prisoners and it is usually done in the morning. During the rounds; the prisoners also have the opportunity to talk about their grievances and petitions to the officer.
7. A trusted convict in charge of certain duties in the prison.
8. A wicket gate is a personnel door or gate, particularly one built into a larger door or into a wall or fence.
9. Ajmal Kasab, the lone survivor of the Mumbai terror attacks in 2008 who became the last person to be executed in India in November 2012.
10. BJP: *Bhartiya Jantha Party* [Right winged political party]
11. Death row is the prison that houses inmates sentenced to death.
12. Every such [death sentence] prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.
13. Honorable Mr. Justice Suresh retired Bombay High Court Judge. Available at <http://bombayhighcourt.nic.in/libweb/judges/Hosbet%20Suresh.html> [accessed on 27<sup>th</sup> September 2011]
14. Landlords
15. Maharashtra Prison Manual, 1978. Though this is an example from the State of Maharashtra, all state prison manuals only provide 20 minutes for family visits to death penalty prisoners.
16. Muslims
17. Police men who take prisoners to court.
18. Police who take them to the court
19. RSS: *Rashtriya Seva Sangh* [Extreme Right winged political party]
20. Wearing green glass bangles is a sign of married women
21. With the creation of 3 new states viz., Uttaranchal, Chhattisgarh and Jharkhand in 2000, three new High Courts have been created in these states, thus raising the number of High Courts from 18 to 21.

22. World Bank 2011 *Present* 1,241,491,960
23. Punishments.-- The punishments to which offenders are liable under the provisions of this Code are-- First.-- Death; 2[ Secondly.-- Imprisonment for life;] 3[ Fourthly.-- Imprisonment, which is of two descriptions, namely:- (1) Rigorous, that is with hard labour; (2) Simple; Fifthly.-- Forfeiture of property; Sixthly.-- Fine.
24. Solitary confinement.-- Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say-- a time not exceeding one month if the term of imprisonment shall not exceed six months: a time not exceeding two months if the term of imprisonment shall exceed six months and 1[ shall not exceed one] year: a time not exceeding three months if the term of imprisonment shall exceed one year.
25. Comrade
26. Prison officials are transferred within the state every three years
27. Advocate Vijay Hiremath – Bombay High Court

## **APPENDIX**

### **Appendix 1: Sampling criteria<sup>547</sup>**

<b>Particulars about the State</b>	<b>Eastern Region</b>			
<b>State</b>	<b>Jharkhand</b>	<b>Orissa</b>	<b>West Bengal</b>	<b>Bihar</b>
Area	79,714 sq. km	1,55,707 sq. km	88,752 sq. km	94,163 sq. km
Capital	Ranchi	Bhubaneswar	Kolkata	Patna
Population	26,945,829	36,804,660	80,176,197	82,998,509
Language	Hindi	Oriya	Bengali	Hindi
Literacy (%)	53.56	63.08	68.64	47
Sex ration	941	972	934	921
<b>Particulars about the prison</b>	<b>Jharkhand</b>	<b>Orissa</b>	<b>West Bengal</b>	<b>Bihar</b>
Prison population	5865	4345	4345	6266
Custodial death	56	43	76	165
No of prisoners on death row	2	14	6	14
Educational status (All)				
Illiterate	1906	766	1345	1885
Below class 10	1659	2847	2290	3456
Above 10 & below Graduate	1556	412	601	718
Graduate	528	308	97	163
Post graduate	83	11	6	26
Technical degree/Diploma	133	1	6	18
<b>Religion (All)</b>				
Hindu	4757	4104	1971	5252
Muslim	671	83	2226	918
Sikh	88	4	10	7
Christian	324	119	85	72
Others	25	35	53	17

<sup>547</sup> Only those states which housed death row prisoners according to the National Prison Statistics 2007 were included in the sampling criteria.

<b>Caste (All)</b>				
Schedule Caste	1487	944	723	1419
Schedule Tribes	1813	118	384	440
Other Backward Castes	1550	1383	416	2121
Others	1015	900	2822	2286

<b>Particulars about the State</b>	<b>Western Region</b>		
<b>State</b>	<b>Maharashtra</b>	<b>Goa</b>	<b>Rajasthan</b>
Area	3,07,713 sq. km	3,702 sq. km	3,42,239 sq. km
Capital	Mumbai	Panaji	Jaipur
Population	96,878,627	1,347,668	56,507,188
Language	Marathi	Konkani and Marathi	Hindi and Rajasthani
Literacy (%)	76.88	82.01	60.41
Sex ration	922	96	922
<b>Particulars about the prison</b>	<b>Maharashtra</b>	<b>Goa</b>	<b>Rajasthan</b>
<b>Prison population</b>	9203	147	5870
Custodial death	139	0	63
No of prisoners on death row	29	1	3
<b>Educational status (All)</b>			
Illiterate	1678	25	1733
Below class 10	5067	78	2588
Above 10 & below Graduate	1904	31	1047
Graduate	440	13	266
Post graduate	76	0	121
Technical degree/Diploma	38	0	115
<b>Religion (All)</b>			
Hindu	6764	98	4714

Muslim	1903	16	938
Sikh	72	0	188
Christian	213	33	16
Others	251	0	14
<b>Caste (All)</b>			
Schedule Caste	1756	2	1349
Schedule Tribes	1246	1	1141
Other Backward Castes	2744	8	1964
Others	3457	136	1416



<b>Particulars about the State</b>	<b>Southern Region</b>		
<b>State</b>	<b>Kerala</b>	<b>Tamil Nadu</b>	<b>Karnataka</b>
Area	38,863 sq. km	1,30,058 sq. km	1,91,791 sq. km
Capital	Thiruvananthapuram	Chennai	Bangalore
Population	31,841,374	62,405,679	52,850,562
Principal Language/s	Malayalam	Tamil	Kannada
Literacy (%)	99.86	73.45	66.64
Sex ration	1058	986	964
Particulars about the prison	Kerala	Tamil Nadu	Karnataka
Prison population	2916	6382	3830
Custodial death	44	78	61
No of prisoners on death row	5	14	14
<b>Educational status (All)</b>			
Illiterate	443	2200	1109
Below class 10	1605	2772	1807
Above 10 & below Graduate	679	1064	622
Graduate	144	207	122
Post graduate	21	56	47
Technical degree/Diploma	24	83	123
<b>Religion (All)</b>			
Hindu	1208	4883	2839

Muslim	852	578	884
Sikh	0	0	4
Christian	841	921	95
Others	15	0	8
<b>Caste (All)</b>			
Schedule Caste	333	2509	739
Schedule Tribes	213	1016	784
Other Backward Castes	1169	2129	308
Others	1201	728	1999

<b>Particulars about the State</b>	<b>North Eastern Region</b>		
<b>State</b>	<b>Assam</b>	<b>Meghalaya</b>	<b>Tripura</b>
Area*	78,438 sq. km	22,429 sq. km	10,491.69 sq. km
Capital*	Dispur	Shillong	Agartala
Population*	26,655,528	2,318,822	3,199,203
Principal Language/s*	Assamese	Khasi, Garo and English	Bengali and Kokborak
Literacy (%)	63.25	62.56	73.19
Sex ration	932	975	950
<b>Particulars about the Prison</b>	<b>Assam</b>	<b>Meghalaya</b>	<b>Tripura</b>
Prison population	3580	72	813
Custodial death	35	1	1
No of prisoners on death row	2	3	2
<b>Educational status (All)</b>			
Illiterate	847	13	124
Below class 10	2224	11	613
Above 10 & below Graduate	453	44	61
Graduate	44	3	10
Post graduate	3	1	2
Technical degree/Diploma	9	0	3
<b>Religion (All)</b>			
Hindu	2058	29	593
Muslim	1246	5	116
Sikh	22	0	9
Christian	220	38	75
Others	34	0	20
<b>Caste (All)</b>			
Schedule Caste	652	15	183
Schedule Tribes	315	48	241
Other Backward Castes	1120	3	120
Others	1493	6	269

<b>Particulars about the State</b>	<b>Central Region</b>	
<b>State</b>	<b>Chattisgarh</b>	<b>Madhya Pradesh</b>
Area	1,36,034 sq. km	3,08,000 sq. km
Capital	Raipur	Bhopal
Population	20,833,803	60,348,023
Principal language/s	Hindi	Hindi
Literacy (%)	64.66	63.74
Sex ration	990	920
<b>Particulars about the Prison</b>	<b>Chattisgarh</b>	<b>Madhya Pradesh</b>
<b>Prison population</b>	4525	16313
Custodial death	48	78
No of prisoners on death row	7	22
<b>Educational status (All)</b>		
Illiterate	1529	4906
Below class 10	1782	8491
Above 10 & below Graduate	720	2146
Graduate	323	573
Post graduate	148	149
Technical degree/Diploma	23	48
<b>Religion (All)</b>		
Hindu	3477	14101
Muslim	509	1893
Sikh	65	83
Christian	391	52
Others	83	184
<b>Caste (All)</b>		
Schedule Caste	1183	3409
Schedule Tribes	1373	3448
Other Backward Castes	1198	5448
Others	772	4008

Particulars about the State	Northern Region					
State	Haryana	Himachal Pradesh	Jammu & Kashmir	Uttar Pradesh	Chandigarh	Delhi
Area	44,212 sq. km	55,673 sq. km	2,22,236 sq. km	2,40,928 sq. km	114 sq. km	1,483 sq. km
Capital	Chandigarh	Shimla	Srinagar (Summer), Jammu (Winter)	Lucknow	Chandigarh	Delhi
Population	21,144,564	6,077,900	10,143,700	166197921	900,635	13,850,507
Principal Language/s	Hindi	Hindi & Pahari	Urdu, Dogri, Kashmiri, Pahari, Punjabi, Ladakhi, Balti, Gojri and Dadri	Hindi and Urdu	Hindi, Punjabi, English	Hindi, Punjabi, Urdu & English
Literacy (%)	67.91	76.48	55.52	56.27	81.76	81.82
Sex ration	861	970	900	898	773	821
<b>Particulars about the prison</b>	<b>Haryana</b>	<b>Himachal Pradesh</b>	<b>Jammu &amp; Kashmir</b>	<b>Uttar Pradesh</b>	<b>Chandigarh</b>	<b>Delhi</b>
Prison population	4976	875	292	19693	146	2268
Custodial death	32	0	1	183	0	33
No of prisoners on death row	3	1	3	30	2	9
<b>Educational status (All)</b>						
Illiterate	1473	98	125	6500	50	918
Below class 10	2152	427	84	5727	38	890

Above 10 & below Graduate	1079	325	75	3453	39	304
Graduate	175	22	5	922	15	113
Post graduate	58	3	2	330	1	32
Technical degree/Diploma	39	0	1	2761	3	11
<b>Religion (All)</b>						
Hindu	3872	773	148	16138	90	1674
Muslim	556	46	130	3079	14	529
Sikh	496	34	10	208	39	35
Christian	24	13	0	51	3	21
Others	28	9	4	217	0	9
<b>Caste (All)</b>						
Schedule Caste	1156	249	0	4303	36	NA
Schedule Tribes	172	38	0	715	6	NA
Other Backward Castes	1348	56	0	8375	27	NA
Others	2300	532	292	6300	77	NA

## Appendix 2: Maharashtra Prison Manual (Prisoners sentenced to death)

CHAPTER XLII	
PRISONERS SENTENCED TO DEATH	
SECTION I: STATUTORY RULES	
[Government Notification, Home Department, No. RJM-1052 (XLVI)/12,495-XVI, dated 18th January 1971]	
In exercise of the powers conferred by clauses (18) and (28) of section 59 of the Prisons Act, 1894 (IX of 1894), in its application to the State of Maharashtra, and of all other powers enabling it in that behalf, the Government of Maharashtra hereby makes the following Rules, namely :—	
1. (i) These Rules may be called the Maharashtra Prisons (Prisoners Sentenced to Death) Rules, 1971.	Short title and commencement.
(ii) They shall come into force on the 25th day of February 1971.	
2. In these Rules, unless the context requires otherwise,—	
(a) "Act" means the Prisons Act, 1894;	
(b) "Convict" means a prisoner who is sentenced to death;	
(c) "Form" means a Form appended to these Rules;	
(d) "relative" in relation to a convict means spouse, children, grand-children, parents, grand-parents, parent's brother or sisters, parents-in-law, grand-parents-in-law, brothers or sisters of spouse, children of brothers or sisters and children of brothers or sisters of the spouse;	
(e) "section" means a section of the Act.	
3. (i) On admission of a convict in a prison the Superintendent shall report the admission to the State Government. The Superintendent shall also report to the State Government the date fixed for his execution by the Court of Session on confirmation of the sentence of death by the High Court, and solicit orders of the State Government regarding stay of his execution.	Admission.
(ii) On admission a convict shall be thoroughly searched by the Jailor or by order of the Jailor as provided in section 30 of the Act. A woman convict shall be searched by a woman Jailor or under her orders, by a Matron. In the absence of a woman Jailor or Matron, such search may be made by any other suitable woman or by a woman convict officer as ordered by the Jailor.	



(iii) Subject to the provisions of section 30, all private property shall be removed from the convict.

Issue of articles  
on admission.

4. (i) The Senior Jailor shall ensure that the following articles are issued to a convict; on his admission to a prison:—

- (a) a pant without cord;
- (b) \*two all wool blankets or two cotton wool blankets, one for spreading and another for coverage;\*

(c) a pot, plate and a mug of thin light aluminium.

(ii) Two cotton sarees and bodies may be issued to female convicts. However, if it is considered unsafe to issue sarees to any such convicts; pyjamas without cord and Kurta may be issued to her.

(iii) A thin Kasti may be issued to a Parsee convict.

(iv) A sheet in form I shall be maintained by the Superintendent for every convict and it shall be displayed outside his cell.

Confinement in  
cell in special  
yard.

5. (i) Every convict shall (whether or not the sentence of death has been confirmed by the High Court), from the date of his admission to a prison, be confined in a cell in a special yard, apart from all other prisoners as required by section 30 of the Act. The cell or room in which a convict is confined shall before he is placed in it, be always examined by the Senior Jailor who shall satisfy himself about its fitness and safety. No prisoner except convict shall be kept in the special yard.

(ii) Where there is more than one such cell in a prison, the convict shall be changed daily from one cell to another.

Guarding.

6. (i) The convict shall be under observation of the guard on a twenty-four hours basis. Convict officers shall not be employed on this duty of guarding convicts.

(ii) A guard shall in no case be given more than two hours' duty at a stretch.

(iii) Every guard shall be equipped with a regulation baton and shall be so posted that the convict shall be under continuous watch. A convict shall not be taken out of his cell, unless the requisite number of guards are present.

(iv) If an attempt to commit suicide by a convict is noticed, the guard on duty or the matron shall raise alarm for help, and enter the cell.

(v) The guard in whose charge a convict is put shall allow no one to approach the cell, or communicate with him in any manner.

\* Substituted by Government Notification, Home Department, No. RJM 1071-XLV 11574-II-XVI, dated 12th July 1971.



except the Superintendent and any officer authorised by the Superintendent in that behalf.

7. Every convict shall be thoroughly searched daily in the presence of the Jailor-in-charge immediately on opening of the cell in the morning when guards on duty are changed, and before lock-up. Search.

8. A case history in Form II shall be compiled in respect of each convict. Observation.

9. Convicts shall not be removed to any prison hospital for treatment without the previous sanction of the Inspector-General: Restriction on removal.

Provided that, the Superintendent may, if the Medical Officer of the prison certifies that the convict is in danger of death, and requires immediate treatment in a prison hospital, order the removal of the convict to the prison hospital in anticipation of such sanction. If a convict is removed to a prison hospital, he shall be segregated from all other prisoners in the hospital, and a special guard or guards shall be posted according to the requirements of each case of a convict.

10. (i) The Superintendent may permit a convict to have interviews with the relatives, friends or legal advisers, once a week, or more often if the Superintendent is of opinion that such interviews may be granted in the case of any convict. Interviews.

<sup>\*</sup>(The convict shall be brought from the cell to the interview room under proper escort at the time of interview and the interviewers and the convict shall be separated by expanded metal barriers). The Jailor shall before granting interviews, ensure that all precautionary and security measures are taken before hand<sup>\*</sup>.

(iii) A Minister of the faith to which a convict belongs may be summoned once a week <sup>†</sup>(at the cost of Government, if the convict so desires) <sup>†</sup>. The Superintendent may permit a Minister to be summoned oftener for adequate reasons to be recorded in the History Ticket of the convict.

(iv) Convict may also be visited by a Minister of the persuasion or religious denomination to which he belongs.

11. (i) A convict may be allowed the following facilities at the discretion of the Superintendent, namely:—(a) religious books; Facilities.

<sup>\*</sup>—<sup>\*</sup> Substituted by Government Notification, Home Department, No. RJM 0172-3-B-XVI, dated 24th April 1973.

<sup>†</sup>—<sup>†</sup> Substituted by Government Notification, Home Department, No. RJM 1071 (XLVI)-11574-XVI, dated 20th January 1972.



subject to security requirements; (d) newspapers, books.

(ii) A convict may, on the recommendation of the Medical Officer, be allowed exercise in open air and within the prison walls, morning and evening, under the care of the guard. If the Superintendent considers it expedient so to do, the convict may be fettered\* or handcuffed, when he is taking exercise.

(iii) A convict may be given tobacco and other indulgences as the Superintendent may think fit.

#### Appeals.

12. (i) Immediately on receipt of a warrant of execution consequent of the confirmation by the High Court of the sentence of death, the Superintendent shall inform the convict that if he wishes to appeal to the Supreme Court or to make an application for special leave to appeal to the Supreme Court under any of the relevant provisions of the Constitution of India (hereinafter referred to as "appeal and application" respectively), he may do so within the period prescribed in the Supreme Court Rules, 1960.

(ii) Whenever a sentence of death has been passed by any Court or Tribunal, the sentence shall not be executed until after the dismissal of the appeal or of the application or, in case no such appeal has been preferred, or no such application has been made, until after the expiry of the period allowed for an appeal or for making of such application:

Provided that, if a petition for mercy has been submitted by or on behalf of a convict, the execution of the sentence shall further be postponed, pending the orders of the President thereon:

Provided further that, if the sentence of death has been passed on more than one person in the same case, and if an appeal or an application is made by or on behalf of only one or more but not all of them, the execution of the sentence shall be postponed in the case of all such persons (convicts) and not only in the case of the person or persons by whom, or on whose behalf, the appeal or the application is made.

#### Petition for mercy—stay of execution.

13. (i) On receipt of an intimation of the dismissal by the Supreme Court of the appeal, or as the case may be the application lodged by or on behalf of the convict the Superintendent shall unless he has already made an application for mercy, forthwith inform him that if he desires to submit such petition, it should be submitted in writing within seven days from the date of such intimation.

\* Substituted by Government Notification, Home Department, No. RJM 1071 (XLVI)-11574-XVI, dated 20th January 1972.



(ii) In cases where no appeal or no application has been made by or on behalf of a convict, the said period of seven days shall be counted from the date next after the date on which the time allowed for making an appeal or an application expires. On the expiry of such time, or a convict has made no previous petition for mercy, it shall be the duty of the Superintendent to inform him that if he desires to submit a petition for mercy, he should do so in writing within seven days from the date of such intimation.

14. (i) Except in cases where a convict has already submitted a petition for mercy, every convict shall be allowed for the preparation and submission of a petition for mercy, seven days after and exclusive of, the date on which the Superintendent of the Jail informs him of the dismissal by the Supreme Court of his appeal, or as the case may be, of his application :

Petition for mercy.

Provided that, in cases where no appeal has been preferred or no application has been made, the said period of seven days shall be computed from the date next after the date on which the period allowed for an appeal or for making an application expires.

(ii) If a convict submits a petition within the period of seven days prescribed \* [in rule 13] it shall be addressed to the Governor and the [13] President of India. The Superintendent shall forthwith forward it by registered post to the Secretary to the Government of Maharashtra in the Home Department together with a covering letter stating that the date fixed for the execution has been stayed, pending receipt of the orders of the State Government on the petition.

(iii) If any person has been sentenced to death by Court Martial then any such petition shall be addressed to the President of India and forwarded to the Government of India, Ministry of Defence for consideration.

15. *Petition submitted after period prescribed.*—Where a convict submits a petition after the expiry of the period prescribed in rule 13, the Superintendent shall at once forward it to the State Government, and at the same time telegraph the substance of it, requesting orders whether the execution may be postponed, and stating that pending reply, the sentence shall not be carried out.

Petition submitted after period prescribed.

(ii) If such petition is received by the Superintendent later than noon on the day preceding that fixed for the execution, he

\* Substituted by Government Notification, No. RJM 1071 (XLVI)-11574-XVI, dated 20th January 1972.



shall at once forward it to the State Government, and at the same time telegraph the substance of it, giving the date of execution and stating that the sentence will be carried out, unless orders to the contrary are received.

Insanity.

16. (i) If any prisoner awaiting sentence of death shows signs of insanity which, in the opinion of the Medical Officer, are not feigned, or require observation to determine whether or not they are feigned, the circumstances shall at once be reported to the State Government by the Superintendent, under intimation to the Regional Deputy Inspector General for orders along with the following documents, that is to say—

- (a) the nominal roll of the prisoner;
- (b) a copy of the warrant under which he is confined (in duplicate);
- (c) the Medical Officer's certificate in the prescribed form No. III;
- (d) the medical history sheet in form IV (in duplicate).

Note.—A copy of the judgment should also be sent as soon as possible.

(ii) If the State Government orders the appointment of a Special Medical Board for the purpose of examining the mental condition of a convict, he shall be kept under observation in the prison by the Mental Specialist in charge of the nearest Mental Hospital or the Civil Surgeon for a period of ten days or longer if considered necessary prior to his examination by the Medical Board.

(iii) The Superintendent and the Medical Officer of the prison in which the convict is confined shall give all facilities to the Mental Specialist or the Civil Surgeon for the physical examination of the convict including serological tests and for the observation of the convict without his knowledge.

(iv) As soon as possible after the Medical Board is appointed and the convict is placed under observation, the Superintendent shall collect information about the convict through the police or other sources and place it at the disposal of the Mental Specialist or the Civil Surgeon.

(v) As soon as the Mental Specialist or the Civil Surgeon is ready with his report, he shall request the Director of Health Services to fix a date for the meeting of the Special Medical Board.



(vi) The Mental Specialist or the Civil Surgeon shall place all the record before the Special Medical Board. The Chairman of the Board shall forward all its proceedings together with their own opinion to the Secretary, Home Department through the Inspector General and the Director of Health Services.

17. (i) Where a woman convict is certified by the Medical Officer to be pregnant, the Medical Officer shall inform the Superintendent of the same, and the Superintendent shall make a note to that effect on the warrant, and return the warrant to the Sessions Judge for endorsing thereon an order for the suspension of the execution of the sentence, until the orders of the High Court have been taken under section 382 of the Code of Criminal Procedure, 1898.

(ii) Where a women convict declares herself to be pregnant, and the Medical Officer is unable to certify the truth or otherwise of the statement, he shall state the interval of time necessary to enable him to satisfy himself on the point. The Superintendent shall report the case to the State Government for further orders through the Inspector General of Prisons for postponing the date of the execution. If the Medical Officer confirms the fact of pregnancy, the provisions of sub-rule (1) of this rule shall apply.

(iii) Where execution of the capital sentence on a women convict has been suspended under either of the proceeding sub-rules, the sentence shall not afterwards be executed without the express orders of the State Government for which the Superintendent shall apply immediately through the Inspector General of Prisons.

18. (i) The State Government shall fix the date of the execution of a convict if his/her Mercy Petition is rejected.

Action on confirmation sentence.

(ii) On receipt from the State Government of the final confirmation and the date of execution of a convict.

(a) the convict and his relatives shall be informed about the date of execution by the Superintendent;

(b) the convict, if he so desires, be permitted to prepare his will in accordance with his wishes. If the Convict does not desire to prepare his will, his statement to that effect shall be recorded by the Senior Jailor.

19. All executions shall take place at the prison to which the warrant is directed, unless expressly ordered otherwise in the warrant. They shall usually be carried out in a special enclosure attached to, or within the walls of the prison. To this enclosure, adult male relatives of the convict and other respectable adult

Execution of death sentence.



males may be admitted as spectators up to a maximum of twelve, with the permission of the Superintendent who shall have full discretion to refuse admission altogether, or to particular individuals in cases where he considers the circumstances to justify such as course.

No execution on public holiday.

20. No convict shall be executed on a day which has been notified as a public holiday.

Postponement of execution of sentence on medical grounds.

21. (i) The execution of a convict shall not be carried out on the date fixed if he is physically unfit to receive the punishment, but in determining the degree of physical disability sufficient to justify postponement of the execution, the illness shall be both serious and acute (not chronic) before postponement is considered.

(ii) The Superintendent shall at once submit to the Inspector General a detailed report of such cases together with the medical opinion regarding the degree of physical disability of the prisoner and the probable date, if any, on which the prisoner is likely to become physically fit for execution.

Delay in capital sentence.

22. Should any extraordinary or unavoidable delay occur in carrying out a capital sentence into execution from any cause other than the submission of an appeal or application, the Superintendent shall immediately report the circumstances to the Sessions Judge and return the original warrant either for the issue of a fresh warrant, or for an endorsement upon the same warrant, of an order containing a definite date for carrying the postponed sentence into effect.

Report of execution of the sentence.

23. The Superintendent shall, immediately after each execution, send a report thereof to the Inspector General in Form V and he shall return the warrant duly endorsed to the Court which issued it.

#### FORM I

[Rule 4 (iv) ]

*Sheet for a Prisoner Sentenced to Death*

Date of execution by Sessions Judge

1. Register No. ....
2. Name .....
3. Neck measurement .....
4. Weight .....



5. Result of Medical examination. special points, etc. ...
6. Date of sentence by the Court of Sessions ...
7. Date of appeal to the High Court of Judicature at Bombay ...
8. Date of decision of the High Court ...
9. Date of petition for special leave for appeal to the Supreme Court ...
10. Date of appeal to the Supreme Court ...
11. Date of decision of the Supreme Court ...
12. Date of submission of 'Mercy Petition' ...
13. Date of result of 'Mercy Petition' ...
14. Final date of execution ...

## FORM II

(Rule 8)

### *Case History of Convict*

1. Name ...
2. Number ...
3. Age ...
4. Sentence ...
5. Section ...
6. Habitual or casual ...
7. Legal history and statement of the prisoner regarding present and previous crimes, if any ...
8. *Social History*—
  - (a) Childhood ...
  - (b) Family history ...
  - (c) Health history ...
  - (d) Neighbourhood ...
  - (e) Educational background ...



- (f) Adolescence ...
- (g) Economic background ...
- (h) Employment history ...
- (i) Associations, companionship, etc. ...
- (j) Habits, aptitude, etc. ...
9. Personality (general impression only) ...
10. Clues regarding sequence of criminal behaviour ...
11. Is he a social or individualised criminal?...  
Is he an ordinary criminal or careerist or professional criminal? Is his criminal act behaviour of the moment, or eruptive behaviour? ...
12. Is his maladjustment at the surface level or at the deep emotional level? ...
- Date on which the case history was prepared. \_\_\_\_\_
- Prison : \_\_\_\_\_

## FORM III

[See rule 16 (1)]

*Medical Certificate*

In the matter of.....  
of.....in the town of..... or the  
sub-division of.....in the district of.....  
an alleged lunatic.

I, the undersigned .....do hereby certify  
as follows:—

1. I am a gazetted medical officer (or a medical practitioner/  
a holder of † .....  
or declared by Govt. to be medical officer under Act IV of 1912).  
local Govt. to be a medical practitioner under Act IV of 1912 and  
I am in the actual practice of the medical ..... profession.

\* Insert residence of patient.

† Insert qualification to practice medicine and surgery registerable in the United Kingdom.



2. On the..... day of..... 19  
at § ..... in the town..... (or the  
village of .....  
sub-division of in the district of.....) (Separately  
from any other practioner) § I personally examined the said  
..... and came to the conclusion that  
the said ..... is a lunatic and a proper person  
to be taken charge of, and detained under care and treatment.

3. I formed this conclusion on the following grounds viz,  
(a) Facts indicating insanity observed by myself, viz:— §  
(b) Other facts (if any) indicating insanity communicated to  
me by other, viz:—

(Signed) .....  
(Designation as above).

#### FORM IV

[See rule 16 (1)]

#### *Medical History Sheet of Lunatics*

(N. B.—The ultimate responsibility for the preparation of this form rests with the committing officer, who must see that the requisite information is supplied by the police and the Medical Officer without undue delay).

Questions to be answered upon information supplied by the Police alone:—

1. Name of patient in full and caste or race.

2. Name of patient's father.

3. Married or single or widowed.

4. Condition of life and previous occupation  
(if any).

5. Religion

6. Insert place of examination.

7. Omit this where only one certificate is required.

8. Here state the information and from whom



6. Place of birth and recent place of abode\* or domicile.†
7. Whether homeless or living with relatives.‡
8. Whether any member of patient's family has been or is affected with insanity.
9. Whether the attack is the first attack of insanity or not.
10. Age (if known) at onset of first attack.
11. Previous history and habits and facts indicating insanity§
12. Duration and nature of any previous attacks.
13. Supposed cause of insanity¶
14. Duration of existing attack.
15. Details of injuries, if any, and how caused.

Signature.

\* Here the name of the lane, or street, village, police station and district and length of residence should be stated. As much detail as possible should be given.

† Government Notification, G. D. No. 3107, dated the 23rd April 1921.

‡ This heading should show the names and addresses of the relatives or persons legally bound to maintain the lunatic (if any) and whether they are able and willing to take charge of him or to bear the cost of his maintenance in the asylum and, if not, why not.

§ In this the mode of life the patient led, his conduct, reasons for suspecting insanity, history of any particular illness which may have helped to produce this condition of mind, his temperament or any habit of taking or smoking any drug should be mentioned, in the case of criminal lunatics, also the nature of the crime the detailed circumstance under which it was committed, how he came to be arrested by the police, and the section under which the lunatic was charged and the result of trial in addition to other particulars which may be available.

¶ Whether he is addicted to any spirits or drugs and, if so, for how long he has been so addicted and what is the quantity habitually taken, whether he is a member of any particular religious or political society, or whether he suffered from loss of property, loss of relatives, domestic trouble or ill-health immediately before the attack.

1. Sex and age of Patient ...
2. Marks whereby the patient may be identified.
3. State of bodily health ...
4. Symptoms exhibited ...
5. Supposed exciting cause of present attack ...
6. Whether subject to epilepsy or any other disease.
7. Whether suicidal ...
8. Whether dangerous to others ...

Signature.

### FORM V

(Rule 23)

#### Report of Execution

From the Superintendent,

To

The Inspector General of Prisons,

No.

Office

Dated

The execution of the convict referred to below was carried out in a \*proper manner this morning at ..... O'clock in the presence of the ..... Magistrate. ....

Register No. ....

Name of convict—

Superintendent. ....

† If any mishap or accident occurs, details should be given on the reverse.

**Note.**—This report should be submitted to the Inspector General of Prisons on the same day on which the capital sentence of a convict is carried out in any prison or Jail.

\* In this the general health of the patient as well as any abnormality of feature or development should be entered. It is desirable that special mention be made as to whether the patient is not suffering from any tubercular disease.

† Here the name of the lane, or street, village, police station and district and length of residence should be stated. As much details as possible should be given.

S (JC) 1727—40.



## SECTION II : NON-STATUTORY RULES

[Framed under Government Resolution, Home Department  
No. RJM 1053 (XLVII)/12495-XVI, dated 18th January 1971 and  
brought into force with effect from 25th February 1971]

### PRISONERS SENTENCED TO DEATH

Guarding of  
prisoners  
sentenced to  
death.

1. The guards shall not be armed with fire-arms, bayonet or sword or any sharp weapon. The guards shall be posted in front of the grated door of the cell. The key of the cell-lock shall be kept with the guard/Matron on duty so as to be immediately available in case of emergency. The Lock must be such as cannot be opened by any other key in use in the prison.

Observation.

2. (i) The Jailor in charge of the Yard/Circle should carefully observe the behaviour of a prisoner sentenced to death from the date of his admission in the Prison till final disposal of the case with special reference to the following points:—

(a) His reactions towards Police, Courts, Witnesses, Co-accused, etc.

(b) His reactions towards the family of the victims,

(c) Whether he shows signs of repentance,

(d) Whether he admits his crime to a prison official and/or his friend/relatives,

(e) Whether he shows any vindictiveness,

(f) Whether he shows interest in material things or in spiritual matters,

(g) Whether he spend his time in meditation or engages himself in phantasy (i. e. day dreaming),

(h) Attitude towards the staff,

(i) Attitude towards other prisoners,

(j) Emotional stability (i. e. whether he shows sign of nervousness or excitement),

(k) His demeanour-particularly on the day of execution and during the previous night,

(l) His actions immediately before the hanging rope is put around his neck.

(ii) The notes of psychological observation kept by the Jailor should be checked daily by the Superintendent who should ensure that the data required for the compilation of the notes is collected



by the Jailor in an intelligent manner and that the same have a factual base. Two copies of the case history of the prisoner and the notes shall be sent by the Superintendent to the Inspector General of Prisons immediately after the final disposal of the case.

(iii) A copy of the case history and psychological notes shall be sent by the Inspector General of Prisons to Government immediately on receipt together with his own remarks thereon if any.

3. (i) The Superintendent of the Prison in which Prisoners sentenced to death are confined, may incur expenditure upto Rupees thirty for each deserving prisoners for amenities provided in rule 11 of the Maharashtra Prisons (Prisoners sentenced to death) Rules, 1971 and/or securing the presence of his relatives to visit him. Facilities.

(ii) The I. G. of Prisons may incur further expenditure upto Rupees twenty per prisoner sentenced to death in urgent and deserving cases.

4. Where a petition for mercy from a convict under sentence of death is forwarded to the Secretary to Government in the Home Department in accordance with the rule 14 of the Maharashtra Prisons (Prisoners Sentenced to Death) Rules, 1971 (Statutory) and if no reply is received within 15 days from the date of despatch of the petition for mercy, the Superintendent shall telegraph to the Secretary to the Government drawing his attention to the fact, but he shall in no case carry out the execution before the receipt of reply from the State Government. Petition for Mercy.

5. Where State Government orders appointment of Special Medical Board for examining the mental condition of a convict under sentence of death under rule 16 (2) of the Maharashtra Prisons (Prisoners sentenced to Death) Rules, 1971, (Statutory) the Superintendent shall obtain the history of such convict from institutions or individuals with whom he has had contacts. The Mental Specialist under whose observation the convict is kept pending examination by the Special Medical Board, shall furnish the Superintendent with a questionnaire for collecting the information. Factual material concerning the mental condition of the convict shall be obtained either from records or from eye-witnesses including the officer who arrested him. For the purpose of an estimation of the convicts state of mind just prior to, at the time of and soon after the commission of the offence, reports shall be obtained from eye-witnesses including relatives of the convict. Insanity of Convict Under Sentence of Death.

**Note :—**Evidence regarding the behaviour of the prisoner at the time of the trial and especially during examination in court will



be available from the proceedings of the court including the evidence and the summing up and judgment. Reports on the convict shall be obtained from individuals who have been in contact with him during his remand and subsequent detention in the prison. While collecting this information, utmost care shall be taken to see that the object within which it is collected is not divulged. It should also be remembered that the relatives of the convict are likely to be specially interested and the information supplied by them shall be used with the greatest care.

**Execution of Death Sentence.** 6. A batch of guards with arms consisting of one Havildar, one Naik and nine Sepoys shall be present at every execution of sentence of death. The reserved guard, Jamadar shall also be present.

**Postponement of execution of Death Sentence on medical grounds.** 7. Ordinarily the criterion for postponing the execution of sentence of death on medical grounds under rule 21 of the Maharashtra Prisons (Prisoners Sentenced to Death) Rules, 1971 shall be that the mere act of moving the prisoner from his bed in hospital and placing him in an erect position on the scaffold might in itself be sufficient to cause death.

**Identification of convict under sentence of Death.** 8. Before the condemned criminal is taken for execution of the sentence from his cell, his hands shall be pinioned behind his back, and the Superintendent and the Senior Jailor shall then identify the convict by a reference to the prison registers as the individual named in the warrant.

**Witnessing the execution of Death Sentence by prisoners.** 9. Prisoners shall never be made to attend an execution, save in the case of an execution arising out of a capital offence committed by one of their number when undergoing a lesser sentence either within or without the prison walls. In such cases, it shall rest with the Superintendent with the prior sanction of the Inspector General to determine what prisoners shall be selected to witness the execution.

**Publicity of execution of the convict.** 10. If orders are received from the Government that publicity shall be given to the execution of any prisoner carried out within the Jail precincts, the Superintendent shall notify the fact of the execution to the District Magistrate who shall then cause it to be proclaimed by beat of drum in the village or locality in which the crime was committed and shall cause a notice to the following effect to be posted in the village Chowri:—

"A. B. convicted of the murder of ..... was hanged on ..... at ..... Jail. Let all evil minded persons take warning."



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Resolution, Judicial Department NO. 3048, dated the 7th September 1898:

Arrangements for Execution.

11. (i) The gallows shall be erected and the rope tested in the presence of the Superintendent the evening before the execution, he being personally responsible that these arrangements are properly made. A new rope need not necessarily be used for every execution, but the Superintendent shall see that the rope is carefully tested. As a rule, a bag of sand weighing  $1\frac{1}{2}$  times the weight of the prisoner to be hanged and dropped between 1.830 and 2.440 metres will afford a safe test of the rope. Two spare ropes for each prisoner sentenced to death shall be kept ready in reserve on the scaffold in the event of accidents.

(ii) (a) If a prisoner weighs less than 45.360 kgs., he shall be given a drop of 2.440 metres.

(b) If a prisoner weighs from 45.360 kgs. to 60.330 kgs. (both inclusive) he should be given a drop of 2.290 metres.

(c) If a prisoner weighs more than 60.330 kg. but not more than 75.300 kgs. he shall be given a drop of 2.130 metres.

(d) If a prisoner weighs more than 75.300 kgs. but not more than 90.720 kgs., he shall be given a drop of 1.980 metres.

(e) If a prisoner weighs more than 90.720 kgs. he shall be given a drop of 1.830 metres.

Provided that, so long as the extreme limits of 1.830 metres on the one hand and 2.440 metres on the other are adhered to, if owing to any physical peculiarity of the prisoner the Medical Officer is of the opinion that the drop should be increased or decreased, effect should be given to the view of the Medical Officer.

(iii) The following measures shall be adopted in the fixing of the rope to allow of a given drop:—

(a) The height of the prisoner sentenced to death to the angle of the jaw immediately below the left ear shall be accurately measured.

(b) The height from the drop shutter, when fixed in position to the lower portion of the ring in the beam to which the rope will be affixed shall also be accurately measured.

These two measurements will determine the distance, when the prisoner is standing in position on the drop from the point of the latter's jaw to the ring in the beam. The measurement of the prisoner's neck shall also be carefully taken, the neck measurement and the height measurement to angle of jaw being carried



out immediately after the convict has been sentenced to death. The length of rope for any given drop shall be length of that drop plus the in stance distance from the angle of the prisoner's jaw to the ring in the beam. That is to say, that assuming the distance between the angle of the jaw and the iron ring to be 1.220 metres and the desired drop to be 2.130 metres, the amount of free hanging from the ring shall be 3.350 metres from the ring to the leather washer maintaining the loop in position on a pillow of gunny cloth, filled with sand, of the same thickness as the neck of the prisoner.

Presence of  
Officers at  
Execution of  
Convict.

12. The Superintendent, Deputy Superintendent, Senior Jailor, and the Medical Officer shall be present at all executions. An Executive Magistrate deputed by the District Magistrate shall attend the execution and countersign the return thereof to the Sessions Judge.

Execution.

13. (i) The Superintendent shall invariably see that the rope round the neck of the prisoner is adjusted properly and the knot place in the proper position.

(ii) The body shall remain suspended for half an hour before being taken down and until the Medical Officer has certified that the life is extinct.

Hangman's fee.

14. A hangman shall be paid at the rate of Rs. 10 for execution of a convict but the Inspector General of Prison may sanction a higher rate not exceeding Rs. 25 in any special case, see G. R. H. D. No. MIS 5162/15252-IV, dated 21-5-1962.

Disposal of Body.

15. (i) Subject to the provision of this rule, the body of the executed convict shall be disposed of according to the requirements of the religion to which the executed convict belonged.

(ii) If any relative of the executed convict makes a written application for performing his last rites, the Superintendent may, in his discretion, allow such request, provided that the relative gives an undertaking in writing that he shall not make public demonstration of any kind in relation to the cremation or burial of the executed convict. In case the Superintendent thinks that there is likelihood of public demonstration he may refuse such permission and his discretion shall be final.

(iii) In any case of the disposal of the body of an executed convict there is likelihood of public demonstration, the Superintendent shall consult the District Magistrate, and the arrangements for disposal of the body shall be made according to the requirements of the situation as per directions given by the District Magistrate.



(iv) Except as provided in sub-rule (2) the body of an executed convict shall be taken out of the prison with all solemnity. Where possible, a municipal hearse or ambulance may be hired for the transport of the body to the jail cremation/burial ground and the Superintendent may incur reasonable expenditure upto Rs. 50 (fifty rupees), required for the transport and disposal of the dead body of the convict.

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### **Appendix 3: Interview guide for prisoners on death row**

Voices of prisoners on death row

Working title during data collection: Death Penalty in India: Perception of the prisoner on death row

University of Vienna

Interview guide - Prisoners on death row

#### **Profile of the prisoner**

Name

Age

Gender

Religion

Language

Ethnic background

Education

Occupation

Present stage of appeal

Family members and relation with prisoners after incarceration

#### **Arrest**

Date of arrest.

Whom did you inform (as third party) about the arrest?

What were the reasons given for your arrest?

Could you share your experience or perceptions during arrest?

Could you share your experience or perceptions while producing before the magistrate?

#### **Interrogation**

How and where did the interrogation take place?

What were your experiences when you were taken to the spot of crime?

What happened during the identification parade (if there was one)?

How many times did you have access to relatives, doctors and lawyers and what were your experiences with them?

#### **Judicial custody**

How long did the trial last?

How were you housed in JC (Solitary confinement or barracks) and what were your experiences or perception during this period?

How often were you taken to the court and what were your experiences while being taken to court?

What are the facilities that you get as an undertrial?

How was the behaviour of other prisoners towards you?

Could you share experiences or perceptions with regards to prison officials or prison visitors?

### **Court room experience**

How difficult or how easy was it understand the court proceedings?

What were your experiences or perceptions with magistrates and lawyers?

When did the prosecution demand death sentence and what were your perceptions or experiences about it?

Did you expect a death sentence in your case? Why?

### **Media**

What were your experiences of or perception of media?

How did the family respond to the news articles or news on television about you?

What version of the story was in the media?

What were your experiences with journalists?

### **Life on death row**

Period on death row

After how many days of your conviction, were you brought to the security yard?

Could you describe the experience of being brought to death row?

What were the rules that you had to follow?

What are the facilities that you get on death row?

What kind of information did you have about the conditions on death row or about death row?

What is your daily routine?

What are the conditions of the cell you are housed in?

How often do you have access to your lawyers, doctors and relatives?

Who are the other visitors on death row and what are your experiences with them?

What does it mean to be in death cell?

What are the more difficult things and less difficult things being on death row?

## **Appendix 4: Data analysis for dignity**

### **PROFILE OF THE INMATE**

Name

Age

Gender

Religion

Ethnic background

Education

Address

Prisoner No

Convicting court

Conviction (IPC)

### **PROCESS OF DEATH PENALTY**

#### **Arrest**

When I was arrested

I was told why I was arrested

I was shown some degree of respect

I was taken away without telling me why

I was given no respect

I was insulted, beaten up and handcuffed

#### **In the lock-up**

I was given food on time

I was allowed to meet my friends and relatives

I was always kept hungry

I was fed only to keep me alive

I was never allowed to meet anyone

#### **Interrogation**

It never involved beating or abuses

Only the officers handling the case interrogated me

The interrogation took place

Mostly during the day time

Mostly during the night time

It always involved beating and abuses

It always involved beating and abuses in the most humiliating manner

Any officers who was not involved with the case interrogated me

**During interrogation**

I was never abused  
I was treated with respect  
I was given time and space to think  
I was never allowed to sleep  
I was constantly abused verbally and physically

**During the identification parade**

I was treated with dignity by people who identified me  
I was treated with respect and care by the officers  
I was treated with scorn by the people who identified me  
I was humiliated and insulted  
I was an object to be mocked

**Health**

I was allowed to get medical treatment when I asked for it  
I was allowed to eat my medicines (If on daily dose)  
I was not allowed to get medical treatment  
I was not allowed to eat my medicines

**Access**

I always had access to my lawyer and relatives  
I was sometimes allowed to meet my lawyer and relatives  
I never had access to my lawyer and relatives

**Judicial custody****Other prisoners**

They were not interested in my case at all  
They were neutral to my case  
They never talked to me good or bad about my case  
I was never physically abused because of the case I was in  
I was still treated as an under trial  
They were curious about my case  
I was quite often insulted by fellow inmates on my crime  
I was already treated as a convict by them  
I was physically abused because of the case I was in

**Court room experience**

I was cross examined in a language I understood  
The public prosecutor treated me with respect during the court proceedings  
The magistrate was unbiased and neutral according to me  
The public prosecutor constantly called me names

The magistrate never reacted to these 'name calling' by the prosecutor

The magistrate was biased according to me

### **Media**

#### **The media was**

Asked me about my side

Was very empathetic towards my case

When they interviewed were very sensitive

They wrote/aired facts about my case

Very angry with me and my family

They wrote/aired twisted facts

They had the version of the police

Asked me about my side but never printed it

When they interviewed were very insensitive

#### **Reading or hearing about reports**

I was very happy to read/hear them

I was angry with the media for printing/airing twisted facts

### **DEATH ROW PHENOMENON**

#### **On death row the most difficult thing is**

Being in solitary confinement

Being constantly watched by a guard

Not being able to meet family as often as other prisoners

Not being able to see anything except the high security yard

Being constantly reminded of being executed

Hearing the word '*Phaansi*'

#### **Solitary confinement**

It is separate cell

Lot of privacy

It is being away from rest of the inmates

Very lonely

#### **On death row the easiest thing**

Get individual attention from prison guards

Get whatever we demand

#### **Treatment in Prison (checklist based on Minimum standards for treatment of prisoners)**

Torture and ill-treatment

Use of force or restrain  
 Segregation/isolation/seclusion  
 Protection measures  
 Disciplinary procedures  
 Complaints and inspection  
 Categories in detention  
 Daily Dairy  
 Material Conditions

- Accommodation
- Health and sanitation
- Food
- Access to others

Socio-demographic profile	Age
	Gender
	Language
	Ethnicity
	Religion
	Education
	Occupation
	Stage of appeal
Arrest	Family details
	Produced in Court within 24 hours
	When were they produced
Police custody	Inform third party
	Tortured
	Type
	Tutored
	Given back to Police Custody
Judicial Custody	Sign blank papers
	Prison officers
	Fellow prisoners
Court	Prison visitors
	Lawyer

	First demanded Death Penalty
	Expected Death Penalty
	Judge
Media	Reading about self
	Version of 'story'
	Negative or positive aspect of media
Death Row (DR)	Imprisonment
	DR Phenomenon
	Difficult or easier aspects of being on DR
	Facilities on DR
	Rules while on DR



## Appendix 5: Consent note<sup>548</sup>

Consent note for research participant

Death penalty in India: Perception of the prisoner on death row<sup>549</sup>

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Opposite Examiner Press and Lentin Chambers, Fort, Mumbai 400001

Phone: +91-9 9167002088 (Mumbai)/ 0043-69910090885 (Vienna)

I am Reena Mary George, a PhD student of the University of Vienna. I am studying the topic “Death Penalty in India: Perception of the prisoner on death row” and would like to understand the situations that lead to death penalty and the survival on the death row.

The information that you share with me will remain confidential and would be used only for the purpose of study. There is no compulsion to share any information that you do not feel comfortable about. If you wish not to be interviewed you have every right to refuse. You also have the right to stop the interview at any given point in time.

The information from this study will be used to address the knowledge gap in the area of death penalty in India. A summary report stating the main finding will be shared with all participants of the study. It will not contain any personal information or identification, nor will it name any individual or groups.

Please feel free to contact me for more information or clarifications. I am duty bound to provide these to you.

Sincerely,

Reena Mary George

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<sup>548</sup> These consent notes were translated in the local language of the states that I visited.

<sup>549</sup> Please note that this was the working title which was used during data collection and hence all the consent note had this title

Sample letter sent to states/Home Ministry of India



universität  
wien

**Initiativkolleg Empowerment  
through Human Rights**

Koordiniert vom Ludwig Boltzmann Institut für  
Menschenrechte

Prof. Dr. Manfred Nowak  
Freyung 6, 1. Hof, Stiege II  
A-1010 Vienna  
AUSTRIA

T +43-1-4277-27420  
F +43-1-4277-27429  
manfred.nowak@univie.ac.at

To,  
The Director General,  
Bureau of Police Research and Development (BPRD),  
Ministry of Home Affairs,  
Block No. 11, 3/4th Floor,  
CGO Complex, Lodhi Road,  
New Delhi - 110003  
India

Subject : Permission to collect data from all the Prisons  
housing inmates on death row in India

Wien, am 23rd April 2010

Dear Sir,

Greetings from the University of Vienna!

The University of Vienna was founded in 1365 and is the oldest university in the German-speaking world and one of the largest in Central Europe. The University of Vienna has 13 PhD fellows within the interdisciplinary doctoral college "Empowerment through Human Rights". The doctoral college is comprised of the disciplines of law, sociology, psychology and development studies. "Empowerment" of the vulnerable groups constitutes the central element of this college.

Ms. Reena Mary George is a PhD fellow in this doctoral college. Her topic is 'Death Penalty as a form of torture, cruel, inhuman, degrading treatment or punishment'. I am the Speaker of the Initiative College and the United Nations Special Rapporteur on Torture. I am Ms. George's supervisor and her other supervisor is Prof. Dr. Christoph Reinprecht who is the Director of Study Programme Sociology & Postgraduate European Studies. For the purpose of the study she will have to visit all the prisons in India housing prisoners on death row and interview them. While she was a student at the University of Mumbai, she did a similar study in Maharashtra for her Post graduate Diploma in Human Rights.

We request you to grant her the permission to visit the prisons and to conduct data collection.

Looking forward to hearing from you.

Truly,

Prof. Dr. Manfred Nowak

Cc:

- 1) Mr. Gopal K. Pillai - Home Secretary,
- 2) Mr. B.D. Trivedi - Additional Director General

Attached:

- 1) Brief summary of the topic
- 2) Copy of Passport
- 3) Copy of Student's identification card

<sup>550</sup> My home address has been erased from the permission letter received.

**Assam**

**GOVERNMENT OF ASSAM  
OFFICE OF THE INSPECTOR GENERAL OF PRISONS : : : : ASSAM**

No. PRI.1/2002/157

Dated Guwahati the 23<sup>rd</sup> Dec, 2010.

From : Sri Simanta Thakuria, ACS,  
Inspector General of Prisons, Assam  
Khanapara, Guwahati-22

✓ To : Ms.Reena Mary George,  
C/o-Professor Dr.Manfred Nowak,  
Freyung 6, 1 Haf, Stiege II  
A-1010 Vienna  
AUSTRIA.

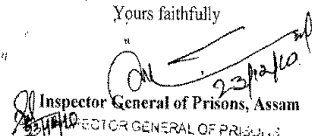
Sub : **PERMISSION TO VISIT JAILS TO COLLECT DATA FROM THE  
PRISONS HOUSING INMATES ON DEATH ROW IN ASSAM.**

Ref : Your application dated.14-9-2010.

Madam,

With reference to your application dated.14-9-2010 regarding permission to visit Jails (Now Central Jail, Guwahati) to collect Data from the Prisons housing inmates on death row in Assam. You are hereby accorded permission to interview with the prisoner provided that it is done with the consent of the convicts and that it does not violate the provisions of Jail Manual and Court's sentence.

Yours faithfully


  
Inspector General of Prisons, Assam  
ASSAM, GUWAHATI

Memo No.1/2002/157-A

Dated Guwahati the 23<sup>rd</sup> Dec, 2010

Copy to:

1. The Joint Secretary Government of Assam, Home (B) Department, Dispur with reference to Govt. letter No.1134B, 56/2010/23 dated.26-11-2010.
2. The Superintendent Central Jail, Guwahati for information & requested to take adequate security measure to ensure the safety of the convicts as well as the research fellow at the time of interview.

  
Inspector General of Prisons, Assam

**GOVERNMENT OF ASSAM  
OFFICE OF THE INSPECTOR GENERAL OF PRISONS:::ASSAM**

NO.PRI.2002/179

Dated, Guwahati the 26<sup>th</sup> April/2011

From : Sri Simanta Thakuria, ACS  
Inspector General of Prisons, Assam  
Khanapara, Guwahati-22

✓ To : Ms. Reena Mary George.  
C/o- Professor Dr. Manfred Nowak  
Freyung 6, 1 Haf, Stiege II  
A-1010 Vienna  
AUSTRIA

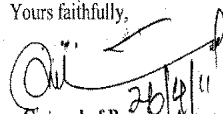
SUB : **PERMISSION TO VISIT JAILS TO COLLECT DATA FROM  
THE PRISONS HOUSING INMATES ON DEATH ROW IN  
ASSAM.**

Ref : Your application dated 25-4-11

Madam,

With reference to your application dated 25-4-11 regarding permission to visit Jails (Now Central Jail, Jorhat and District Jail North Lakhimpur) to collect Data from the Prisons housing inmates on death row in Assam. You are hereby accorded permission to interview with the prisoner provided that it is done with the consent of the convicts and that it does not violate the provisions of Jail Manual and Court's sentence.

Yours faithfully,

  
Inspector General of Prisons, Assam

128  
26/4/11  
INSPECTOR GENERAL OF PRISONS  
ASSAM, GUWAHATI

Dated, Guwahati the 26<sup>th</sup> April/2011

Memo No. PRI. .2002/179-A

Copy to:-

1. The Joint Secretary to the Govt. of Assam, Home (B) Department, Dispur with reference to Govt. letter No.HMB.56/2010/23 dated 26-11-2010.
2. The Superintendents Central Jail, Jorhat and District Jail North Lakhimpur for information & requested to take adequate security measure to ensure the safety of the convicts as well as the research fellow at the time of interview.

  
Inspector General of Prisons, Assam

## Karnataka

Von: KARNATAKA PRISONS [[karnatakaprison@gmail.com](mailto:karnatakaprison@gmail.com)]  
Gesendet: Montag, 25. Oktober 2010 07:18  
Bis: Nowak Manfred  
Betreff: Permission to Reena Mary to visit Prisons of Karnataka

Government of Karnataka  
(Prisons Department)

No: RS : CR: 1 Permission : 2010

Office of the  
Addl. Director General of Police  
& Inspector General Of Prisons.  
No.4, Seshadri Road, Bangalore - 9  
Dated : 21 .10.2010

To,  
Prof Dr. Manfred Nowak  
Freyung6, 1 Hof, Stiege-II  
A-1010 Vienna  
Austria

Sir,

Sub: Permission to Ms. Reena Mary George, to  
Visit Karnataka prisons to study on  
Prisoners under Death Sentence-reg  
Reg: Your letter No: nil- dated:-14.09.2010.

\*\*\*

Permission is accorded to Ms. Reena Mary George, Ph.D Student of University of Vienna, Austria to visit Central Prison, Bangalore and Central Prison, Belgaum, where prisoners under death sentence are detained and interview prisoners under a supervision of a Prison Officer of respective prisons.

You are hereby requested to tie with the Deputy Inspector General of Prisons, Central Prison, Bangalore and Chief Superintendent, Central Prison, Belgaum in order to fix up exact date and time for visit. The telephone numbers of the following officers are furnished as below: -

- 1) Sri. M.C Vishwanathaih, DIG of Prisons, Central Prison, Bangalore Ph: 080-25733809/ 25733743
- 2) Sri. G.Veerabhadra Swamy, Chief Superintendent, Central Prison, Belgaum. Ph: - 0831-2405275

Further it is requested to instruct the student to abide to the Rules and Regulations of the prison and should possess identity card issued by your institution during her visit to respective prisons.

For any queries you can contact this office on email:  
[karnatakaprison@gmail.com](mailto:karnatakaprison@gmail.com) <<mailto:karnatakaprison@gmail.com>>./Ph:  
080-22267290.

Yours faithfully,

Note Apprvd by ADGP& IGP

sd/-

For Addl. Director General of police and  
Inspector General of Prisons.

Copy to : Deputy Inspector General of Prisons, Central Prison, Bangalore and Chief Superintendent, Central Prison, Belgaum information and directed to facilitate to above said student study.

## Kerala

Sectt. 37. 3/41/2009/2 Lakh. GPM. © Govt. of Kerala.



GOVERNMENT OF KERALA  
Home (B) Department,  
Thiruvananthapuram

No.75732/B1/2010/Home

Dated, 7/12/2010.

3/1/2011

From

The Additional Chief Secretary to Government.

To

Professor .Dr. Manfred Nowak,  
Freyung 6, 1, Hof, Stiege II  
A- 1010,  
Vienna, Austria.

Sir,

Sub:- Home Department- Prisons - Permission to collect data from the  
prisons housing inmates on death row in Kerala -Reg.  
Ref:- Your letter dated 14/9/2010 addressed to the Director General of  
Police (Prisons ).

I am to invite your attention to the reference cited and to inform that  
permission is hereby granted to Ms. Reena Mary George, Ph.D fellow of your  
institution to visit the prisons of Kerala and to conduct data collection as part  
of her research subject the following conditions.

- (i). Inter action with the inmates shall be on their consent only.
- (ii). The data collected during the field work will be kept confidential and  
used only for academic purpose.
- (iii). The visit of the applicant inside Jail and Interaction with the inmates  
will be subject to the approval of the Superintendent of the Jails.

Yours faithfully,  
R. Rajagopal,  
Under Secretary,

For Additional Chief Secretary to Government.

Approved for issue

Section officer.

2

**Maharashtra**



Office of the Inspectorate General of Prisons  
Maharashtra State, Old Central  
Building, 2<sup>nd</sup> floor Pune-411001  
Tel. No. - 020/26124815  
Fax No - 020/26125878

To  
Ms. George Reena Mary,

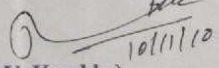
Ow.No.Judi/visit permission /2010 Pune-1 Date 15/11/2010

Ref- Your letter No -Date 14 September 2010

Sub- Permission to collect data from all the prisons  
Housing inmates on death row in Maharashtra.

With reference to above cited letter you are Studying on  
Subject "Death penalty as a form of torture, Cruel, inhuman,  
degrading treatment or punishment" and have to visit prisons in  
Maharashtra.

You are informed to approach to Spl. Police Inspector  
General, (Prisons) Western Region, Yeravada, Pune-6 for visit to  
Yeravada Central Prison and Dy. Inspector General of Police  
(Prison) West Region, Nagpur for visit to Nagpur Central Prison.

  
(R.V. Kamble)  
For Law & Research Officer,  
Inspectorate General of Prisons  
Maharashtra State, Pune-1

प्रति,  
श्रीमती रिना मेरी जॉर्ज,

जा.क्र.परवानगी/नामका/६९५१/२०१०, पुणे-१०, नागपूर-२० दि. २८.१२.२०१०.

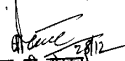
विषय :- नागपूर मध्यवर्ती कारागृह येथील मृत्यूदंडाची शिक्षा झालेल्या बंदयांना भेटाबाबत.

संदर्भ :- डॉ. मॅनफ्रेड नोर्वेक, फ्रेयंग ८, हॉफ, स्टिंग, दोन, अ-१०१० व्हियेन्ना, ऑस्ट्रिया  
यांचेकडील पत्र क्र.निरंक दि. २५ नोव्हेंबर २०१० रोजीचे पत्र.

उपरोक्त संदर्भाकित पत्राचे अनुषंगाने आपणास कळविण्यात येते की, आपण संशोधनाकरीता "भारतातील मृत्यू दंडाची शिक्षा" हा विषय निवडलेला आहे. त्याकरीता आपण महाराष्ट्रातील नागपूर मध्यवर्ती कारागृह येथील मृत्यूदंडाची शिक्षा झालेल्या बंदयांची भेट घेवून माहिती गोळा करण्याकरीता परवानगी मागीतलेली आहे.

सदर संशोधनाकरीता आपण भारतातील नागपूर मध्यवर्ती कारागृह का निवडलेले आहे ? आणि भारतातील इतर कारागृह का निवडलेले नाही याबाबत आपली भूमिका स्पष्ट करावी.

(भा.का.उ.म.नि. यांचे आदेशान्वये)

  
(आर. बी. बोरकर)  
स्वीय सहायक  
कारागृह उपमहानिरीक्षक  
पूर्व विभाग, नागपूर





विशेष पोलीस महानिरीक्षक (कारागृह)  
पश्चिम विभाग, येरवडा पुणे-६, यांचे कार्यालय  
दूरध्वनी क्र. ०२०-२६६८०४८८  
फक्स क्र. ०२०-२६६८४५२८

पति,

मा.अपर पोलीस महासंचालक (कारागृह),  
महाराष्ट्र राज्य पुणे-५.

जा.क्र.परवानगी/फाशीबंदी/२०११पावे-३(२),पुणे-६, ८१७

दि. ०९.०२.२०११

विषय :- येरवडा मध्यवर्ती कारागृहातील फाशीच्या बंधांचा अभ्यास करणे  
साठी भेटीची परवानगी मिळणेबाबत.

संदर्भ :- प्राध्यापक, व्हिन्ना युनिव्हर्सिटी, ऑस्ट्रेलिया यांचे पत्र दिनांक.  
२५/११/२०१०.

उपरोक्त विषयाचे अनुषंगाने सादर करण्यात येते की, श्रीमती रिना मेरी जॉर्ज  
याना येरवडा मध्यवर्ती कारागृहातील फाशीच्या बंधांचा अभ्यास करणेसाठी भेट परवानगी  
प्रस्ताव संदर्भाक्षिप्त पत्रान्वये प्राप्त झाला आहे. सोबत भग्याकित प्रत जोडली आहे.

महाराष्ट्र कारागृह नियमावली १९७९ मध्ये फाशीच्या बंधांना अभ्यास करण्यासाठी  
परवानगी देणेबाबत तरतूद आढळून येत नाही. सदरचे प्रकरण फाशीच्या बंधांशी संबंधित  
असून सुरक्षिततेच्या दृष्टीने अत्यंत संवेदशील आहे. तसेच जक्त प्रकरणी संशोधन पबंध  
एक विदेशी विद्यापिठास सादर करावयाचा आहे. ही बाब विचारात घेवून सदर प्रकरणी  
मार्गदर्शनपर आदेश देणेस विनंती आहे.

याबतः- विनंती अर्ज

( संजय कुमार वर्मा )

विशेष पोलीस महानिरीक्षक (कारागृह)  
पश्चिम विभाग, पुणे-६.



अपर पोलीस महासंचालनालय (कारागृह)  
महाराष्ट्र राज्य, जुनी मध्यवर्ती इमारत  
२ रा मजला, पुणे ४११ ००१  
दुरभाषा क्रमांक ०२०/२६१२५८७  
फॅक्स क्रमांक ०२०/२६१२३५६३,

प्रति,

विशेष पोलीस महानिरीक्षक, (कारागृह)

पश्चिम विभाग, येरवडा पुणे-६

पोलीस उपमहानिरीक्षक (कारागृह),

पूर्व विभाग, नागपूर,

जा.क्र. न्याय/ महिला बंदी/ याचिका ५५९/९४/ /२०१०/कक्ष-९(३) पुणे-१ दि २३/४/२०११

- संदर्भ :-** १) विशेष पोलीस महानिरीक्षक, (कारागृह) पश्चिम विभाग, येरवडा पुणे-६ यांचे पत्र क्र. परवानगी/फाशीबंदी /६१०/२०११/पवि-३(२) दिनांक ७/२/२०११  
२) पोलीस उपमहानिरीक्षक (कारागृह), पूर्व विभाग, नागपूर यांचे पत्र क्र. परवानगी/ कारागृह भेट/ ५०७/२०११ पवि -१० दिनांक ३/२/२०११  
३) श्रीमती रिना मेरी जॉर्ज, यांचा अर्ज दिनांक २४/२/२०११


**विषय :-** येरवडा, नागपूर मध्यवर्ती कारागृह येथील मृत्युदंडाची शिक्षा झालेल्या बंद्यांचा अभ्यासक्रमाचा भाग म्हणून भेटीची परवानगी देणेबाबत.

उपरोक्त विषयी संदर्भांकित पत्रानुसार कळविण्यात येते की, श्रीमती रिना मेरी जॉर्ज यांनी व्हियना (ऑस्ट्रिया) विद्यापीठामधून संशोधनाकरीता भारतातील फाशीची शिक्षा झालेल्या बंद्यांची संशोधनाचा भाग म्हणून अभ्यासक्रमाचा हा विषय निवडलेला आहे. त्यामध्ये येरवडा व नागपूर मध्यवर्ती कारागृहातील फाशीची शिक्षा झालेल्या बंद्यांना भेटून त्यांचेकडून माहिती प्राप्त करण्यासाठी परवानगी मागितलेली आहे.

श्रीमती रिना मेरी जॉर्ज यांनी व्हियना (ऑस्ट्रिया) विद्यापीठामधून संशोधनपर अभ्यासक्रमाचा भाग म्हणून येरवडा व नागपूर मध्यवर्ती कारागृहातील फाशीची शिक्षा झालेल्या बंद्यांना भेटून त्यांचेकडून माहिती प्राप्त करण्यासाठी खालील प्रमाणे अटीच्या अधिन राहून परवानगी देण्यात येत आहे.

- १) नागपूर व येरवडा मध्यवर्ती कारागृहातील फाशीची शिक्षा झालेल्या बंदी कसाबसह देशविघात कृत्यामध्ये मृत्युदंड दिलेल्या बंद्यांना वगळून, दरोडा ३९४, ३९५, ३९६, ३७६, ३७७ भा.द.वि. मध्ये वगळून, कौटुंबिक पार्श्वभूमी असलेल्या केसमधील फाशीची शिक्षा झालेल्या बंद्यांची, कारागृहाची सुरक्षिततेनुसार अधीक्षकांच्या निवडीनुसार व बंद्यांच्या इच्छेनुसारच ठराविक बंद्यांच्या मुलाखती देण्यात याव्यात.
- २) फाशीची शिक्षा झालेल्या बंद्यांचे फोटा काढता येणार नाही. फाशी देण्याच्या ठिकाणी (गॅलोज) भेट देता येणार नाही.
- ३) सदर बंद्यांची प्राप्त केलेली माहिती कोणत्याही परिस्थितीत देश, राज्य यांचे विरुद्ध तसेच स्वतः च्या व्यावसायिक फायद्या करीता वापरता येणार नाही. महाराष्ट्र कारागृह नियमावली १९७९ मधील प्रकरण १५ नियम १९(अ) नुसार बंद्यांची ओळख उघड करता येणार नाही. तसेच संशोधन केलेल्या माहितीचा प्रबंध महाराष्ट्र शासनाच्या पूर्वपरवानगी शिवाय संबंधीत विद्यापिठास सादर करता येणार नाही.
- ४) प्रश्नावलीची छाननी करण्यात यावी. अनावश्यक प्रश्न असेल तर अर्जदारास प्रश्नावलीमधून वगळण्यास सांगण्यात यावे.

वरील प्रमाणे १ ते ४ या अटीचे हमीपत्रक घेण्यात यावे व मुलाखतीलच्या वेळी अधीक्षकांच्या नियंत्रणाखाली जबाबदार अधिकारी यांची नेमणूक करण्यात यावी.

  
(सुरिंदर कुमार)

अपर पोलीस महासंचालक, (कारागृह)

महाराष्ट्र राज्य पुणे-१.

✓ प्रत- श्रीमती रिना मेरी जॉर्ज,

यांना माहितीसाठी व व पुढील कार्यवाहीसाठी रवाना.

प्रति,

अधीक्षक,

नागपूर मध्यवर्ती कारागृह

जा.क्र. मृत्यूदंड/नामका/परवानगी/ 2427 / 11.पूवि-10, नागपूर-20 दि. 08.06.2011.

विषय :- नागपूर मध्यवर्ती कारागृह येथील मृत्यूदंड झालेल्या बंद्यांच्या भेटीस परवानगी मिळणेबाबत.

संदर्भ :- मुख्यालयाने जा.क्र.न्याय/महिला बंदी/याचिका 559 / 94 / 3959 / 2010/कक्ष-9(3) दि. 13.05. 2011

उपरोक्त संदर्भाकित विषयान्वये कळविण्यात येते की, व्हियन्ना, ऑस्ट्रीया येथील विद्यापीठामध्ये श्रीमती रिना मॅरी जॉर्ज यांनी डॉक्टरेट करण्याकरीता "भारतातील मृत्यू दंडाची शिक्षा" हा विषय निवडलेला आहे. त्याकरीता नागपूर मध्यवर्ती कारागृह येथे बंदीस्त असलेल्या मृत्यू दंडाची शिक्षा झालेल्या बंद्यांची भेट घेवुन माहिती गोळा करण्यास परवानगी मागीतलेली आहे.

त्याच अनुषंगाने संदर्भाकित पत्रामध्ये नमुद केलेल्या 4 अटीचे अधीन राहुन मुख्यालयाने परवानगी दिलेली आहे. तरी त्यानुसार सदर प्रकरणी योग्य ती खबरदारी घेवुन अधीक्षक, नागपूर मध्यवर्ती कारागृह यांनी कारागृह नियमावली, 1979 मधील चॉप्टर क्र. 15 मधील रूल नं. 19 (अ) नुसार कार्यवाही करावी असे मा. कारागृह उपमहानिरीक्षक, पूर्व विभाग, नागपूर यांनी आदेश दिलेले आहेत.

(मा.का.उ.म.नि. यांचे आदेशान्वये)

सहपत्र :- 2 ( दोन)

-स्वाक्षरी-

(आर. बी. बोरकर)

स्वीय सहाय्यक

कारागृह उपमहानिरीक्षक

पूर्व विभाग, नागपूर

प्रत :- श्रीमती रिना मॅरी जॉर्ज,  
यांना माहितीस्तव अग्राहत.

(आर. बी. बोरकर)

स्वीय सहाय्यक

कारागृह उपमहानिरीक्षक

पूर्व विभाग, नागपूर

## Punjab

From

Director General of Police (Prisons)  
Punjab, Chandigarh

To

✓ Ms. Reena Mary George,

No GI/9/ 10693  
Dated 28.12.2010

Sub Permission to collect data from the prisons housing inmates on death row  
in Punjab.

Kindly refer on the subject .

You are allowed to visit the prisoners confined in central jail, Amritsar,  
Patiala and Ferozepur on the following conditions:-

- 1 None of the Convicts/Extremist name and personal bio data should be noted down.
- 2 The particulars aspects of jail Administration, be not ~~be~~ noted down.
- 3 The finger print/thumb prints of any of the convict/extremist be not taken.
- 4 Any interview with the convicts/extremist should be conducted in the presence of gazetted officer of the jail.
- 5 A copy of the prepared noted material be sent to this office.
- 6 Any type of Photography will not be allowed.
- 7 Rules and regulations of Punjab Jail Manual be strictly followed.

22/12/10  
3/6/2011

For Director General of Police, Prisons Punjab.

Endstt. No. GI/G.9/

dated

Copy alongwith its enclosure is sent to Superintendent Central Jail Amritsar, Patiala and Ferozepur with the request that Miss Reena Mary George, be given full cooperation to interview with condemned prisoners strictly as per Punjab Jail Manual.

For Director General of Police, Prisons, Punjab.

Tamil Nadu

No.40349/PW3/2010

Office of the Additional Director General  
of Police and Inspector General of Prisons  
Chennai - 600 008, Dated: 12.11.2010  
Ipasi -26- Thiruvalluvar Aandu - 2041.

Sub: Prisons - Permission to visit all Central Prisons by  
Ms.Reena Mary George, Ph.D student of University  
of Vienna - Permission granted - Reg.

Ref: Letter dated: 14.9.2010 received from the  
Dr.Manfred Nowak, Professor, University of  
Vienna.

\*\*\*\*\*

With reference to your letter cited, Permission is given to  
MS.Reena Mary George, Ph.D, since the petitioner is a student. However,  
she is instructed to meet Deputy Inspector General of Prisons (Head  
Quarters) before visiting the prisons, and explain the scope of her studies  
and Deputy Inspector General of Prisons (Head Quarters) should brief her on  
how to conduct visits and then debrief after visit.

P.Rajasoundari,  
for Additional Director General of Police  
and Inspector General of Prisons

To:

- 1] Pro.Dr.Manfred Nowak,  
University of Vienna.
- 2] Ms.Reena Mary George

Forwarded/By Order

*21.11.2010*  
*12-11-2010*  
Superintendent.

*12/11/2010*

K.DIS No.40349/PW3/2010

Office of the Additional Director General  
of Police and Inspector General of Prisons  
Chennai – 600 008, Dated: 11.4.2011

Sub: Prisons – Permission to visit Central Prison,  
Puzhal-I, Vellore, Trichy, Cuddalore, Madurai,  
Coimbatore, Palayamkottai by Ms.Reena Mary  
George, Ph.D student of University of Vienna –  
Permission granted – Reg.

Ref: Letter dated: 14.9.2010 received from the  
Dr.Manfred Nowak, Professor, University of  
Vienna.

\*\*\*\*\*

Under the powers delegated in G.O.Ms.No.1456, Home Department,  
Dated 13.6.79 and Rule No.909 ( c ) of TNPM. Vo.II, permission is granted to  
Ms.Reena Mary George, Ph.D student of University of Vienna to visit the  
above Central Prisons **and to collect the data from the willing prisoners  
who are sentenced to death except Rajiv Gandhi Assassination  
prisoners** subject to the conditions mentioned below:

- i) that strict discipline should be maintained and adequate precautionary measures taken to prevent any untoward incident during the visit.
- ii) that the information or materials collected during the visit should be kept secret and they should not be published or disclosed in any manner without the prior written permission of the Additional Director General of Police/Inspector General of Prisons.
- iii) that a written declaration should be obtained from the individual by the Superintendent to the effect that they will abide by the conditions referred to above and other conditions which the Superintendent may deem fit and proper for the security of the prison.
- iv) Prison area as well as prisoners should not be photographed.
- v) that religious preaching to the prisoners should not be done.
- vi) The thesis to be submitted to the university will be given to this office for Additional Director General of Police/Inspector General of Prisons perusal.

2] The Date and time of the visit of the student shall be fixed in consultation with the concerned Superintendents of Central Prisons.

P.Rajasoundari  
for Additional Director General of Police and  
Inspector General of Prisons

To:

1] Ms.Reena Mary George,

2] The Superintendent, Central Prison-1 Puzhal, Vellore, Cuddalore, Trichy,  
Coimbatore, Madurai, Palayamkottai.  
Copy to:  
1] All the range Deputy Inspector General of Prisons.  
2] PW Superintendent and PW3 Stock file

Forwarded/By Order

*St. Wilson*  
*11-4-2011*  
Superintendent.

*10/4/11*

## Appendix 7: Judgment on taking dry food to prison during trial

MSS

: 1 :

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

PUBLIC INTEREST LITIGATION NO. 17 OF 2007

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Office notes, office : Memoranda of Coram, :  
appearances, Court's : Court's or Judge's Orders orders  
or directions : & Registrar's orders. : .  
-----

Ms. Rajni Iyer, Sr. Counsel  
with Ms. Yasmin Katpitia a/w Ms.  
Sheetal S. Shah i/b Mehta &  
Girdharlal for petitioners

Mr. S. R. Borulkar, PP

CORAM: SMT. RANJANA DESAI &  
V. C. DAGA, JJ.  
DATED:-30/3/2007

**P.C.:-**

We have heard Ms. Iyer learned  
counsel for the petitioner as well as  
Mr. Borulkar, learned PP.

We record the presence of Mr.  
S.B. Sawadkar, Inspector General of  
Prisons, MS.

We direct the State to file  
affidavit in reply. Affidavit to be  
filed within two weeks. Copy be  
served on the petitioner well in  
advance.

In the meantime the prison



MSS

: 2 :

authorities shall ensure that prisoners who leave the prison to attend court cases are given dry lunch packets as their lunch, so that in case they have to wait in court premises for a long time they do not miss their lunch.

Adjourned to 13/4/07.

JUDGE.

JUDGE.

## CURRICULUM VITAE

Reena Mary George, born 21.10.1982 in Mumbai, India

[reena.mary.george@univie.ac.at](mailto:reena.mary.george@univie.ac.at)

### **Work experience**

➤ 10.06.2013 – Present

Human Rights Consultant, Strategic Planning Unit, Division for Policy Analysis and Public Affairs, United Nations Office on Drugs and Crime

➤ 12.03.2013 – 25.06.2013

Lecturer, University of Vienna, Department of International Development

Course: Prison Research-Ethical and Methodological concerns

➤ 15.12.2012 – Ongoing

Diakonie and Deserteurs- und Flüchtlingsberatung (legal support for refugees): Translator for asylum seekers [Hindi/Urdu to English]

➤ 12.03.2012 – 25.06.2012

Lecturer, University of Vienna, Department of International Development

Course: Prison Research-Ethical and Methodological concerns

➤ 15.11.2011 – 30.03.2012

Intern, Justice Section, Division for Operations, United Nations Office on Drugs and Crime

Task: Develop information sheet on death penalty for field offices of UNODC

➤ 08.03.2010 – 08.03.2013

Research Scholar, “Voices of prisoners surviving the death row in India”

Initiative Kollege “Empowerment through Human Rights”, University of Vienna:

➤ 15.10.2009 – 30.10.2009

Lecturer, University of Mumbai, Department of Civics and Politics

Course:

Fact-finding in cases of custodial death.

Death penalty and human rights.

➤ 01.11.2007 – 31.10.2009

Senior Research Associate, Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai, Research project “Health Status of Women Prisoners in Maharashtra” commissioned by the National Commission for Women, Government of India.

➤ 01.06.2007 – 30.09.2007

Research Analyst, AIDS Prevention and Control, (APAC), Chennai, Tamil Nadu

➤ 01.06.2006 – 27.02.2007

Project Director, India Sponsorship Committee, Mumbai

The main objective of this organisation was to prevent drop outs among school children especially girl child.

➤ 01.06.2005 – 30.04.2006

Student social worker

Kalyan District Prison (Prayas-Social Work in Criminal Justice), Thane District: The main area of work was with the under trial prisoners and children of prisoners in Mumbai Prisons with an objective of rehabilitating them by assessing their needs.

➤ 01.07.2004 – 29.04.2005

Student social worker, Sukh Shanti, Mumbai

Sukh Shanti is a home for rehabilitation of adolescent destitute girls/women.

<b>Education and training</b>
-------------------------------

➤ 08.03. 2010 – 08.03.2013

University of Vienna

Doctorate in Philosophy (Sociology): "Voices of prisoners surviving the death row in India"

➤ 15.10.2013 – 17.10.2013

MDF, Netherlands

Rights-based Management

➤ 28.08.2013 – 12.11.2013

Human Rights Education Association, United States

Certificate course on Gender Mainstreaming

➤ 01.06.2008 – 30.09.2009

University of Mumbai

Post Graduate Diploma in Human Rights (Part time)

Dissertation: Death penalty: A human rights perspective

➤ 01.06.2004 – 30.04.2006

Sreemathi Nathibai Damodar Thackersay Women's University, Mumbai

Masters in Social Work

Dissertation: Rights-based assessment of children of recidivists' female prisoners

➤ 01.06.2001 – 30.04.2004

K.J. Somaiya College of Arts and Commerce, University of Mumbai

Bachelors in Commerce

➤ 01.06.1999 – 28.04.2001

K.J. Somaiya College of Arts and Commerce, Mumbai Divisional Board

Higher Secondary Certificate

➤ 13.06.1998 – 30.04.1999

Bhandup Education Society, Mumbai Divisional Board

Secondary School Certificate

## Research experience

- “Rights-based assessment on the situation of the children of female recidivist prisoners” as a partial fulfilment of Masters in Social Work, Department of Social Work, Sreemathi Nathibai Damodar Thackersay Women’s University (2006)
- “Death penalty: A human rights perspective” as partial fulfilment for the Post graduate Diploma in Human Rights, Department of Civics and Politics, University of Mumbai (2009)
- “Health Status of Women Prisoners” commissioned by the National Commission for Women, Government of India (2009)
- Doctoral research “Voices of prisoners surviving the death row in India”. (March 2010-March 2013)

## Publications and paper presentations

*“Perception of death penalty prisoners on the role of media”*; All India Criminology Conference, Mumbai, Tata Institute of Social Sciences, Mumbai, India 23rd -25th March 2012

*“Economic Social Cultural Rights (ESCR) of prisoners in India”*, Enforcement of ESCR - A Critical Review Seminar, Erasmus University Rotterdam, Netherlands, 11th November 2011.

*“Ethical challenges in researching in a prison setting”*; Mahatma Gandhi University, Kerala, India July 2011

*“Death penalty: A human rights perspective”*, British Society for Criminology Conference at the University of Leicester, 10th – 12th July 2010.

Leni Chaudhuri and Reena Mary George, “Condemned twice”. *Combat Law*, Sep-Dec 2009 Volume 8, Issue 5 & 6

Forthcoming: Reena Mary George and Vijay Hiremath, “Ethical consequences of demanding capital punishment”, *Indian Journal of Medical Ethics*