

India: Death penalty has a profound national impact, in the absence of government records of executions

In India the death penalty is limited to applying only in the 'rarest of the rare' cases. This element, along with the lack of clear sentencing guidelines means that subjective elements contribute to judicial decisions to impose the death penalty. Some sources indicate that since India gained independence in 1947, fifty-five death sentences have been carried out. However, other statistics from the National Crime Records Bureau indicate that the true figure is likely to be much higher. Various government officials have reportedly acknowledged that the number of executions carried out is actually unknown in the absence of official documentation recording the use of the death penalty. Political and terror offences have become increasingly likely to attract the death penalty, such as that of Mohammad Afzal, a Kashmiri man convicted for planning the bombing of Indian Parliament in 2001.

Afzal was convicted based on the heinousness of the offence and of the attack it made on Indian "unity, sovereignty and integrity". Human rights activists in India condemned the sentence. Serious problems were raised in the inadequate prosecution of Afzal. It was not established that Afzal was the lead conspirator, neither were the identities of five other co-conspirators. On trial police records were revealed to be inconsistent and Afzal was forced to cross-examine witnesses himself. Many members of the Indian public saw Afzal give a televised confession. Though the confession had little legal relevance it seems to have had a profound influence on the case. The Indian central government has yet to dispose of a mercy petition for Afzal, who has been on death row since 2006. P M Bhagwati, a former Chief Justice of India has highlighted the serious problems of indigent defendants gaining access to justice in capital cases.

Though the death penalty debate in India tends to fracture along left and right wing lines, it appears to have a profound impact on the psyche of the country, despite India being classified as a merely retentionist country. Within two weeks of the last highly publicised execution in India, that of Dhananjay Chatterjee, two children died in imitating the execution and a third was seriously injured. This demonstrates the serious and wide reaching consequences of legislative policy in capital cases.