

Living Under Sentence of Death

A study on the profiles, experiences and perspectives
of death row prisoners in Bangladesh

Department of Law
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**“We are often faced with a system deeply committed to maintaining its insularity. This in turn pushes policy conversations around the criminal justice system into realms of intuition, rhetoric and sloganeering with very little basis in facts”
(Surendranath 2019: vi)**

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Dean's message

I am immensely proud that the Department of Law has successfully completed an empirical study on the profiles, experiences and perspectives of death row prisoners in Bangladesh. I think such a study was long overdue from the perspective of human rights and human dignity. The report, the outcome of the study, provides insightful data about the demographics of prisoners sentenced to death and their experiences of the criminal justice system. I congratulate each and everyone involved with this study.

The report may promote informed debates and discussions on the death penalty regime in Bangladesh. I am sure that it will be helpful for researchers to find new research directions in this field and for policymakers to make necessary interventions in the existing criminal justice system in Bangladesh.

Professor Dr Md Rahmat Ullah

Dean, Faculty of Law, University of Dhaka

Foreword

While states continue to assert their sovereign right to determine what actions and behaviours should be prohibited by criminal law, and what punishments are appropriate for those who breach those laws, the past decades have witnessed growing international consensus on the limits of state punishment, particularly for those deemed to be vulnerable. Through human rights – especially the right to life and the prohibition on inhuman and degrading treatment or punishment – all countries must be on an irrevocable path towards complete eradication of the death penalty. However, pending such time, international standards frame progressive restriction in the use of the death penalty and fair trial procedures for states that still retain the death penalty. Notwithstanding, research around the world has consistently demonstrated that those sentenced to death tend to be the most vulnerable: the poor, the uneducated, and those with inadequate support. Predictably, these are the people with the least faith in the criminal justice system to deliver fair and safe processes and proportionate punishment.

While 143 countries are now abolitionist in law or practice, 55 retain the death penalty, and some of these – including Bangladesh – are responsible for a disproportionate share of the world's death sentences. It is important, therefore, that we know who is subjected to the ultimate penalty in these jurisdictions, what factors might have impacted on their offending behaviour, and whether they are 'worst of the worst' offenders or, in fact, the marginalised and vulnerable.

A rigorous study of almost all death sentenced prisoners in India, by the National Law University, Delhi, was the only project to have sought answers to these questions. No other empirical studies have attempted to interview all prisoners under sentence of death. That research found that most of those on death row were the disadvantaged and the marginalised, and not necessarily the worst offenders. It, therefore, provides an interesting point of comparison for this study of a sample of those on death row in Bangladesh. This project, the result of an effective collaboration between the University of Dhaka and the Bangladesh Legal Aid and Services Trust (BLAST), maps the socio-economic profile of death sentenced prisoners in Bangladesh and the progress of their cases, drawing on qualitative evidence of their experiences of, and opinions on, the criminal justice process. The report has the potential to inform discourse on justice processes and penal policy, but particularly on the death penalty in Bangladesh.

In India, a larger research team was able to travel across the whole country, and the prison authorities were fully cooperative in all but one prison. In Bangladesh, however, the research team did not attempt to obtain official permission for interviewing prisoners on death row because of time constraints. The study, therefore, relied on interviews with family members of 39 death sentenced prisoners, and on primary case records to chart the progress of cases in the High Court Division. While it is a much smaller study than was possible in India – where 373 of 385 prisoners were interviewed – it has produced reliable and interesting data, and serves as a pilot project for more comprehensive research that could target a representative sample of all of the approximately 1,650 prisoners under sentence of death. The two studies produced very similar data in most respects, suggesting that there may be systemic failings across South Asia, and likely further afield, though further empirical research would be necessary to demonstrate that.

All but one of the prisoners for which data were gathered in Bangladesh were men. Most had been relatively young at the time of the offence, which could suggest a high potential for reformation as well as lower culpability, yet these young people had been sentenced to death. High educational attainment is a protective factor in many social, economic and legal matters. Not surprisingly, like the Indian prisoners, most were not educated to a high level and, partly in consequence, most were economically vulnerable:

low-paid employees or unemployed. Notwithstanding their somewhat precarious financial positions, more than half of the families secured private legal representation for the defendant during the trial. This finding may be surprising, but it replicates the data gathered in India. Clearly, in both jurisdictions, faith in legal aid lawyers is low.

On average, the pre-trial and trial proceedings took four and a half years, and the average time between the trial court judgment and the High Court decision was five and a half years. Like those on death row in India, the Bangladeshi men and women would spend a long time under sentence of death before an execution. In some parts of the world, this delay would render an execution unconstitutional. Delays in the criminal process caused concern for the prisoners and occasioned significant financial hardship for families, both because of financing legal assistance and, in some cases, because the family was deprived of the prisoner's financial contributions to household expenses, especially in those cases where the prisoner had been the sole earner within the family.

According to their families, the majority of the death sentenced prisoners in Bangladesh, as in India, lacked confidence in the integrity of the investigation that led to their conviction and the trial process. Concerns focused on the alleged torture of defendants in police custody, corruption and harassment by the police, the courts' reliance on false evidence adduced by the prosecution, and, not unrelated, wrongful convictions. While this is but a small study, the findings on the criminal process mirror those of other research by the author on the experiences and views of former judges.

This important report suggests that there are structural flaws in the criminal process in Bangladesh that should be of concern to those who support the continued application of capital punishment in serious cases. While no one should doubt that those found guilty of purposely causing the death of others should receive severe punishments, the death penalty is not necessary for retribution, and should never be used in a system that cannot guarantee that defendants receive due process of law at each stage in the criminal justice system.

Professor Carolyn Hoyle

Director, Death Penalty Research Unit, University of Oxford

December 2020

Preface and acknowledgements

This report documents the findings of a research study conducted by the Department of Law, University of Dhaka, on the socio-economic profiles of death row prisoners in Bangladesh. The findings clearly expose that the poorest, most powerless, and most marginalised people in the society are disproportionately affected by the death penalty. As the first research study of its kind, it also provides an impetus for future research on the administration of the death penalty in Bangladesh.

This report was made possible by the generous financial and in-kind support received from The Death Penalty Project, UK (DPP). The DPP, for this purpose, received funding from the UK Foreign and Commonwealth Office's Magna Carta Fund and the Swiss Federal Department of Foreign Affairs. We are extremely grateful to all these entities.

As a research collaboration partner of the study, the Bangladesh Legal Aid and Services Trust (BLAST) extended their full support to us in the collection of primary data, in particular case records and in coordinating and conducting interviews. Their support was invaluable.

We are very grateful to Professor Carolyn Hoyle, Centre for Criminology, University of Oxford, UK, for writing a foreword to this report.

We would like to extend a special thank you to Justice Md Nizamul Huq (former Judge, Appellate Division, Supreme Court of Bangladesh, and Chief Legal Adviser of BLAST), Saul Lehrfreund, MBE (Co-founder and Co-Executive Director, DPP), Sara Hossain (Advocate, Supreme Court of Bangladesh, and Honorary Executive Director, BLAST), Dr Anup Surendranath (Executive Director, Project 39A, National Law University, Delhi, India), Shreya Rastogi (Project 39A, National Law University, Delhi, India), Md Tajul Islam (Advocate, Supreme Court of Bangladesh, and Adviser (Advocacy), BLAST) and Mostafa Zamil, Deputy Director of Programmes (BLAST), for their generous support and assistance in conducting the study.

On a concluding note, it can be stated that this study is compelling and thought-provoking. There is, however, a need for more studies to further validate these findings.

Professor Dr Naima Huq

Chairman, Department of Law, University of Dhaka

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Abbreviations

| | |
|--------------|--|
| AI | Amnesty International |
| BILIA | Bangladesh Institute of Law and International Affairs |
| BLAST | Bangladesh Legal Aid and Services Trust |
| DPP | The Death Penalty Project, UK |
| FIDH | International Federation for Human Rights |
| FLAG | Free Legal Assistance Group (of the Philippines) |
| HCD | High Court Division (of the Supreme Court of Bangladesh) |
| ICCPR | International Covenant on Civil and Political Rights |
| NLUD | National Law University, Delhi |
| SDL | State Defence Lawyer |
| SCOB | Supreme Court Online Bulletin |



PART ONE

Introduction to the study

1.1 Background and objectives

Bangladesh retains the death penalty in law as well as in practice for many offences. However, the death penalty regime in Bangladesh, unlike that of many other countries retaining the death penalty, attracts little public debate or discussion (Khondaker *et al*, 2011). Also, there is a dearth of academic study in this area.¹ Moreover, almost nothing is known about the demographics of death sentenced prisoners² and their experiences of the criminal justice system.

Given the scarcity of data on death sentenced prisoners, this empirical study conducted by the Department of Law, University of Dhaka, represents a modest attempt to fill the knowledge gap. The specific objectives of the study are:

- (1) To analyse the socio-economic characteristics of death sentenced prisoners in Bangladesh.
- (2) To understand their experiences of, and perspectives on, the criminal justice system.

To meet the first objective, the study relies on quantitative data, i.e., the socio-economic characteristics of the death sentenced prisoners. The term ‘socio-economic characteristics’ here refers to a prisoner’s age, sex, prior criminal records, economic vulnerability, academic qualifications, occupation, and family circumstances. The second objective is realised through analysis of both qualitative and quantitative data. While quantitative data include the duration of time spent in different procedural stages, qualitative data are drawn from interviews with respondents that sought their views and experiences about different stages of the criminal process.

1.2 Data collection and limitations

Primary data were collected in collaboration with Bangladesh Legal Aid and Services Trust (BLAST), a leading non-governmental legal aid services organisation in Bangladesh.

While we relied, primarily, on relevant case records, we also drew on data collected through interviews with family members of the prisoners. Furthermore, we charted the progress of relevant Death Reference Cases in the High Court Division (HCD) until February 2019.³

When data collection started, in 2018, there were approximately 1,650 prisoners under sentence of death in Bangladesh. We initially aimed to collect data on 50 death sentenced prisoners. To avoid sampling bias, we chose the first 35 Death Reference Cases of 2013.⁴ On collection of copies of the paper-book⁵ for each of these cases, it was found that there were 90 prisoners sentenced to death by trial courts in these cases.

¹ For some exceptions, see Hoyle and Lehrfreund (2019), BILIA (2019), Rahman (2017) and Malik (2000).

² In 2017, the Prisons Directorate of Bangladesh published a report titled *Prison Population Statistics, 2017*. Chapter 4 of the report contains some statistical data on socio-economic profiles of death sentenced prisoners who had been executed from 1976 to 2016. This report, the first of its kind in the Bangladesh Jail Department’s history, remains the only published report on socio-economic characteristics of death sentenced prisoners in Bangladesh. It is available at: prison.com.bd/prisonsite/assets/userfiles/files/Prison%20Statistes%202%20.pdf (accessed on 11 October 2020).

³ Whenever an accused person is sentenced to death by a trial court, the proceedings need to be sent to the HCD and the sentence cannot be carried out unless it is confirmed by the HCD [section 374, The Code of Criminal Procedure, 1898; section 30(2), The Special Powers Act, 1974; section 29, The Suppression of Violence against Women and Children Act, 2000; section 27, The Acid Offence Control Act, 2002; section 31(2), The Anti-Terrorism Act, 2009] and the case is registered in the said Division as a Death Reference Case [Rule 11, Chapter XI, The Supreme Court of Bangladesh (High Court Division) Rules, 1973].

⁴ The number of cases was less than the targeted number of prisoners as there are many cases involving multiple death sentenced prisoners.

⁵ After registration of a Death Reference Case before the HCD, 20 copies of a printed book are prepared with all documents forming part of the record of the case. The book is called a ‘paper-book’ and is necessary for hearing and disposal of Death Reference Cases [Rules 12-14, Chapter XI, The Supreme Court of Bangladesh (High Court Division) Rules, 1973].

We then excluded each case where more than four prisoners were sentenced to death. Hence, six of the 35 cases, which accounted for 34 death sentenced prisoners, were omitted. Our researchers then started to trace and interview family members of 56 death sentenced prisoners in relation to the remaining 29 Death Reference Cases. Notwithstanding all reasonable efforts made by the researchers, family members of 13 death sentenced prisoners could not be traced. Moreover, family members of four death sentenced prisoners refused to be interviewed. Thus, we finally managed to interview family members of 39 death sentenced prisoners.

In conducting face-to-face interviews, our researchers used a semi-structured interview protocol to ensure the objectives of the study were fully covered in the interviews. The digitally recorded interviews, typically lasting for 30-60 minutes, were conducted under rigorous ethical guidelines. Signed consent forms were obtained from all interviewees; the consent forms clearly described the purpose of the study and gave assurances of anonymity and confidentiality. Interviewees were also informed that they were free to refuse to answer any or all of the questions put to them without giving any reason, and that they were entitled to withdraw from the interview at any time.

As with most empirical studies, this project has some limitations that need to be taken into account when interpreting the results. First, the sample size is relatively small and, therefore, we must be cautious in generalising to the total death row population. However, there is no reason to believe that our sample is dissimilar to the general population, so the findings could be suggestive of general trends. The second limitation of the study is that we did not interview prisoners; rather, we interviewed their family members to gather relevant data. As the authenticity of all interview data was not verified, we gave primacy to case records whenever the interview data were found to be inconsistent with case records.

PART TWO

The death penalty
in Bangladesh



By way of context, this section provides information on the legal background and administration of the death penalty in Bangladesh, to allow us to interpret our findings.

2.1 Death penalty offences

Excluding anti-espionage laws, the law on international crimes, and laws relating to defence forces and paramilitary forces,⁶ there are 33 death penalty offences in Bangladesh.⁷

Table 1: List of substantive offences punishable by death⁸

| | Penal Provision | Offences |
|----|--------------------------------------|--|
| 1 | Section 121 of the Penal Code, 1860 | Waging or attempting to wage war, or abetting waging of war, against Bangladesh |
| 2 | Section 132 of the Penal Code, 1860 | Abetment of mutiny in the Army, Navy or Air Force of Bangladesh |
| 3 | Section 194 of the Penal Code, 1860 | Intentionally giving or fabricating false evidence that led to conviction and execution of an innocent person |
| 4 | Section 302 of the Penal Code, 1860 | Murder |
| 5 | Section 303 of the Penal Code, 1860 | Murder by life-convict |
| 6 | Section 305 of the Penal Code, 1860 | Abetment of suicide of child or insane/intoxicated person |
| 7 | Section 307 of the Penal Code, 1860 | Attempt to murder by life-convicts, if hurt is caused to the victim |
| 8 | Section 326A of the Penal Code, 1860 | Voluntarily causing grievous hurt in respect of both eyes, hand or face by means of corrosive substance |
| 9 | Section 364A of the Penal Code, 1860 | Kidnapping or abducting a person under the age of 10 in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person |
| 10 | Section 396 of the Penal Code, 1860 | Dacoity with murder |
| 11 | Section 20A of the Arms Act, 1878 | Unauthorised use/possession of a pistol, revolver, rifle or shotgun, or other firearm, with the intention of using such firearm for the commission of murder |

⁶ For the death penalty offences under these laws, see the Official Secrets Act of 1923, the Enemy Agents Ordinance of 1943, the International Crimes (Tribunals) Act of 1973, the Army Act of 1952, the Air Force Act of 1953, the Navy Ordinance of 1961, the Border Guard Bangladesh Act of 2010, and the Bangladesh Coast Guard Act of 2016.

⁷ The study only takes substantive offences into consideration.

⁸ Anti-espionage laws, the law on international crimes, and laws relating to defence forces and paramilitary forces are not taken into consideration.

Table 1 (cont'd)

| | Penal Provision | Offences |
|----|---|--|
| 12 | Section 3 of the Explosive Substances Act, 1908 | Unlawfully or maliciously causing by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to person or property |
| 13 | Article 7A of the Constitution of the People's Republic of Bangladesh | Constitutional sedition |
| 14 | Section 15 of the Special Powers Act, 1974 | Sabotage |
| 15 | Section 25 of the Special Powers Act, 1974 | Hoarding or dealing in black market |
| 16 | Section 25A of the Special Powers Act, 1974 | Counterfeiting currency notes and government stamps |
| 17 | Section 25B of the Special Powers Act, 1974 | Smuggling |
| 18 | Section 25C of the Special Powers Act, 1974 | Adulteration of, or sale of adulterated food, drink, drugs or cosmetics |
| 19 | Section 11 of the Aviation Security Anti Crime Act, 1997 | Aircraft hijacking |
| 20 | Section 13 of the Aviation Security Anti Crime Act, 1997 | Violence endangering safety of aircraft |
| 21 | Section 4(1) of the Suppression of Violence against Women and Children Act, 2000 | Causing death or attempts to cause death of any woman/child by inflammatory, corrosive or poisonous substance |
| 22 | Section 4(2)(a) of the Suppression of Violence against Women and Children Act, 2000 | Damaging/disfiguring the sight, hearing, face, breast, or sexual organ of any woman/child by inflammatory, corrosive, or poisonous substance |
| 23 | Section 8 of the Suppression of Violence against Women and Children Act, 2000 | Detaining any woman/child to levy a ransom |
| 24 | Section 9(1) of the Suppression of Violence against Women and Children Act, 2000 | Rape |
| 25 | Section 9(2) of the Suppression of Violence against Women and Children Act, 2000 | Rape leading to death |
| 26 | Section 9(3) of the Suppression of Violence against Women and Children Act, 2000 | Gang rape |
| 27 | Section 11(a) of the Suppression of Violence against Women and Children Act, 2000 | Dowry death ⁹ |

⁹ Dowry death means causing the death of a married woman for dowry (i.e., money/other properties demanded by the husband or his family as the consideration for the marriage, or as a condition of continuing the marriage).

Table 1 (cont'd)

| | Penal Provision | Offences |
|----|--|--|
| 28 | Section 12 of the Suppression of Violence against Women and Children Act, 2000 | Mutilation of a child for the purpose of begging or organ trading |
| 29 | Section 4 of the Acid Offence Control Act, 2002 | Causing death by acid |
| 30 | Section 5(a) of the Acid Offence Control Act, 2002 | Causing complete or partial privation, by acid, of the eyesight or the hearing or distortion or disfiguration of face/breast/sex organ |
| 31 | Section 6(2)(a) of the Anti-Terrorism Act, 2009 | Causing death/grievous hurt or confining/abducting any person as a part of terrorist activities |
| 32 | Section 7 of the Prevention and Suppression of Human Trafficking Act, 2012 | Human trafficking by organised group |
| 33 | Section 36(1) of the Narcotics Control Act, 2018 | Cultivation/manufacturing/processing/carrying/storing/trading/possession of certain narcotic trees and substances |

As Table 1 makes clear, nine out of these 33 death penalty offences were introduced during colonial British rule;¹⁰ one was included during the Pakistan period [1947-1971].¹¹ The other 23 have been introduced after Bangladesh became independent [1971-2020]. It seems that contemporary lawmakers are increasingly relying on the death penalty in penal policy.

“The shocking breadth of crimes that attract the death penalty under Bangladeshi law breaches the ICCPR due to the economic and non-lethal nature of several of the crimes, such as dealing goods on the black market or counterfeiting” (FIDH 2010: 12)

A close examination of death penalty offences also reveals that:

- The death of a human being is a constituent ingredient of just eight of the 33 offences.¹² In other words, the death penalty can be imposed for 25 offences that do not have fatal consequences, in clear breach of the International Covenant on Civil and Political Rights (ICCPR).
- Fourteen of the 33 offences have been introduced in the past two decades (i.e., since 2000).¹³
- Children cannot be sentenced to death.¹⁴
- There are two offences that attract a mandatory death sentence – murder by ‘life-convict’ (i.e., murder by a person already under sentence of imprisonment for life)¹⁵ and dowry death.¹⁶ These provisions, however, have been declared unconstitutional by the apex court of the country, thus making room for judges to exercise sentencing discretion.¹⁷

¹⁰ See Entry Nos. 1-7 and 10-11 of Table 1 above.

¹¹ See Entry No. 9 of Table 1 above.

¹² See Entry Nos. 3-6, 10, 25, 27 and 29 of Table 1 above.

¹³ See Entry Nos. 13 and 21-33 of Table 1 above.

¹⁴ See section 33(1), The Children Act, 2013.

¹⁵ Section 303 of the Penal Code, 1860.

¹⁶ Section 11(a) of the Suppression of Violence against Women and Children Act, 2000.

¹⁷ *BLAST and others vs. Bangladesh and others*; 1 SCOB (2015) AD 1.



Figure 1: Historical chronology of death penalty offences

2.2 Trial and post-trial phases

Death penalty offences are tried by sessions judges, additional sessions judges, or tribunals. If an accused is sentenced to death by the trial judge, the proceedings are sent to the HCD as a Death Reference Case, and the death sentence cannot be carried out unless it is confirmed by the HCD.¹⁸

If the HCD confirms a sentence of death passed by the trial court, or sentences a person to imprisonment for life, the prisoner is entitled to appeal as of right to the Appellate Division of the Supreme Court of Bangladesh.¹⁹ There is also scope for filing a review petition against the judgment of the Appellate Division.²⁰ Apart from judicial remedies, a death sentenced prisoner is entitled to apply for the presidential prerogative of mercy.²¹ Moreover, the government can also suspend, remit or commute death sentences.²²

¹⁸ Section 374, the Code of Criminal Procedure, 1898; section 30(2), the Special Powers Act, 1974; section 29, the Suppression of Violence against Women and Children Act, 2000; section 27, the Acid Offence Control Act, 2002; section 31(2), the Anti-Terrorism Act, 2009.

¹⁹ Article 103(2)(b), the Constitution of the People's Republic of Bangladesh.

²⁰ Article 105, the Constitution of the People's Republic of Bangladesh.

²¹ According to Article 49 of the Bangladesh Constitution, the President has the prerogative of mercy, which allows him "to grant pardons, reprieves and respites, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority".

²² Sections 401-402 of the Code of Criminal Procedure, 1898; section 54 of the Penal Code, 1860.

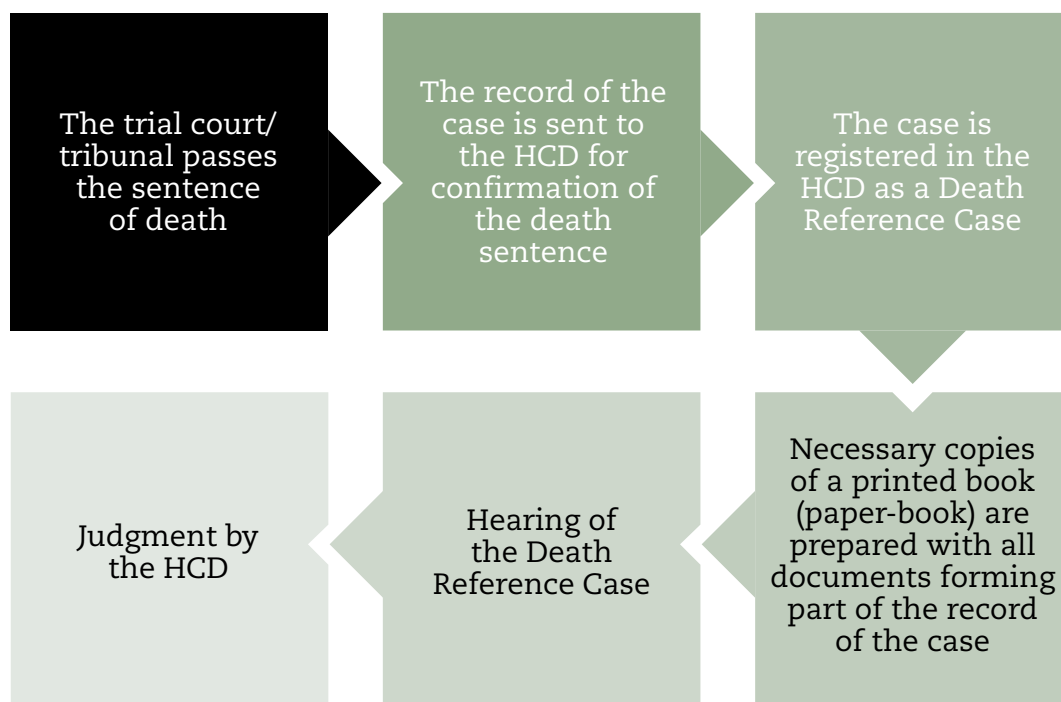


Figure 2: Case flow of a Death Reference Case

Immediately after the trial court verdict, death sentenced prisoners are placed in condemned cells, i.e., an isolated prison cell in which a death sentenced prisoner awaits execution (Yeasin, 2019). This long-standing practice seems to be derived from section 30 of the Prisons Act, 1894, which provides that a prisoner ‘under sentence of death’ 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” (Silvee, 2018). However, whether a person sentenced to death by a trial court can be treated as a person ‘under sentence of death’ is yet to be judicially challenged in Bangladesh. In interpreting this provision, the Indian Supreme Court has clarified that a prisoner cannot be said to be ‘under sentence of death’ until the mercy petition is rejected, and solitary confinement of any death sentenced prisoner prior to the rejection of a mercy petition is unlawful.²³

2.3 Executions

Hanging by the neck is the default method of execution in Bangladesh. Whenever a person is sentenced to death, the judgment needs to specify that the prisoner “be hanged by the neck till he is dead”.²⁴ However, the Special Powers Act, 1974, provides that “when a person is sentenced to death under this Act, the sentence may be executed by hanging him by the neck till he is dead or by shooting him in the prescribed manner till he is dead as the Special Tribunal may direct”.²⁵ Although this law allows for execution by shooting, no prisoner has ever been executed in this manner.

²³ *Union of India vs. Dharam Pal* (2019), available at: indiankanoon.org/doc/95249467

²⁴ Section 368(1), the Code of Criminal Procedure, 1898.

²⁵ Section 34A.

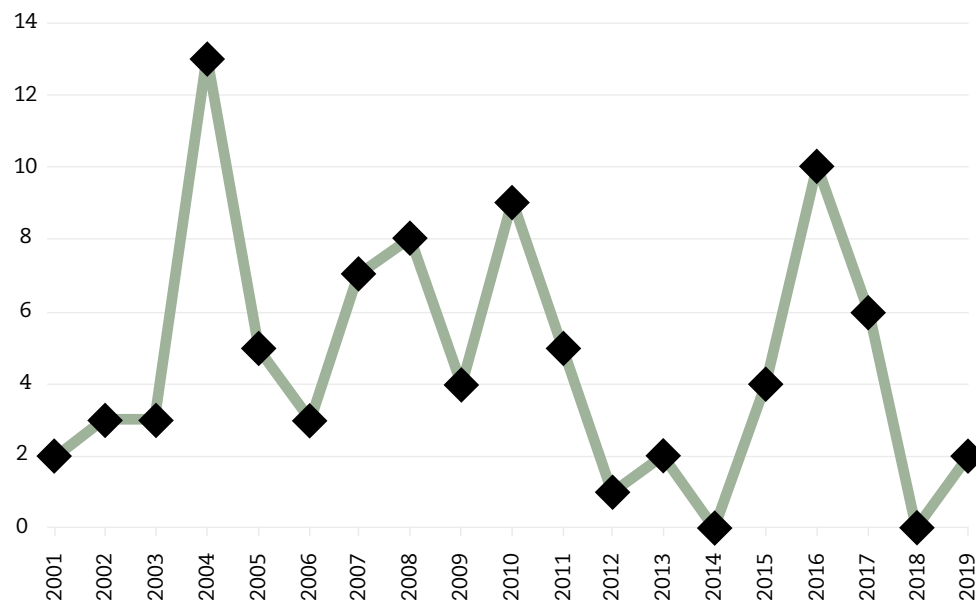


Figure 3: Executions (2001-2019)²⁶

Most years, some prisoners are executed in Bangladesh. From 2001-2019, only two years (2014, 2018) were without any executions. Furthermore, executions have increased significantly since the start of this century. While there were 11 executions during the period 1991-2000, this number climbed to 57 between 2001-2010 and to 30 from 2011-2019.

2.4 Earlier studies on the death penalty

There are only a few systematic studies on the death penalty regime in Bangladesh. Malik (2000) appears to be the first in-depth study in this relatively unexplored area. Through an empirical case law analysis, Malik tried to examine the extent to which the appellate courts in Bangladesh accept the plea of delay in execution as a mitigating factor in death penalty cases. The study exposes huge sentencing disparity and concludes that the treatment of delay as a mitigating factor is far from consistent.

Rahman (2017: Ch. 6) undertook a thorough examination and comparison of all murder cases reported in major law reports during the period 1972-2010, where the trial court awarded the death penalty and the HCD either confirmed the same or reduced the sentence to life imprisonment. He found that sentencing decisions of the HCD in these cases were far from consistent. The study concludes that “the choice between taking and saving life as a sentencing option does not necessarily follow any consistent pattern. Rather, the choice is largely dependent on who sentences”. (p. 222).

²⁶ Source: Prisons Directorate (2017: 58) for statistics from 2001-2016; for 2017-2019, AI (2020: 21), AI (2019: 19), AI (2018: 18).

BILLA (2019) contributes another significant study in this area. That empirical study explores the attitudes and opinions of former trial court judges towards the administration of criminal justice in general, and the death penalty in particular. Some key findings include:

- Judges' frustration with the prevailing criminal justice system. Most respondents opined that police and prosecution lawyers are doing a great disservice, and are responsible for many unwarranted convictions and acquittals. Furthermore, the processes leading to death sentencing are deeply unfair.
- As torture is allegedly used routinely as an investigation tool, the possibility of an innocent person being wrongfully convicted and executed, simply because s/he was forced to confess, cannot be ruled out.
- Access to effective legal representation is particularly challenging for those who are economically disadvantaged
- The current system fails to guard against arbitrary and inconsistent sentencing in death penalty cases, and death sentencing in Bangladesh is largely judge-centric.



PART THREE

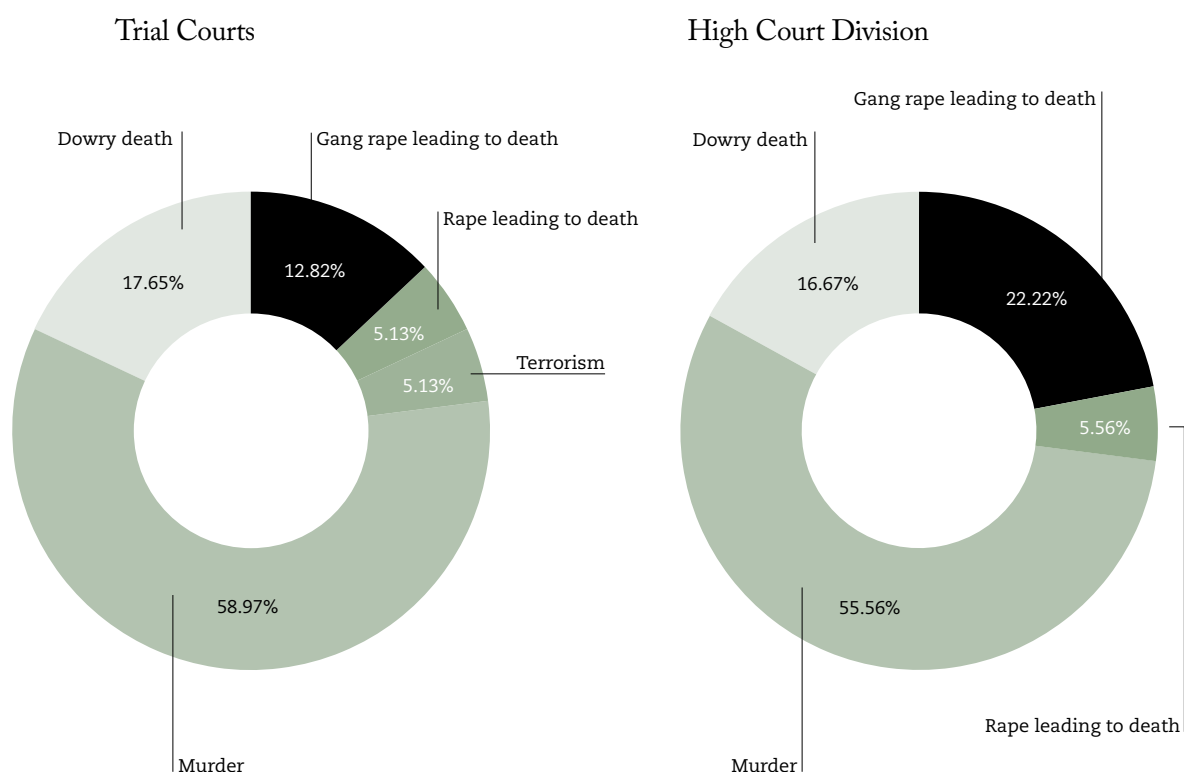
Socio-economic profiles
of the death row prisoners

As mentioned in section 1.2, the present study concentrates on the data relating to 39 death sentenced prisoners. These prisoners were from 17 out of 64 districts in Bangladesh.²⁷ To collect socio-economic data on the prisoners, we primarily relied on relevant case records. Additionally, we interviewed family members of prisoners and followed up the progress of relevant Death Reference Cases in the HCD (up to February 2019). This section attempts to explore and analyse socio-economic profiles of these prisoners.

3.1 Nature of offences

Our data on trial court judgments reveal that an overwhelming majority of death sentenced prisoners [37 out of 39] were convicted for homicide offences. Only two were convicted in a joint trial for terrorism and sentenced to death under section 3 of the Explosive Substance Act, 1908. Homicide offences, however, were of different forms, and the prisoners were sentenced under different penal provisions. Most prisoners [23 out of 37] were sentenced under section 302 of the Penal Code, 1860, for murder; seven were convicted for dowry death under section 11(ka) of the Suppression of Violence against Women and Children Act, 2000; five were sentenced to death under section 9(3) of the said Act for gang rape leading to death; and two others under section 9(2) of the said Act for rape leading to death.

Figure 4: Offences leading to the death sentences



²⁷ The districts are Dhaka, Chattogram, Rajshahi, Tangail, Kishoreganj, Mymensingh, Narayanganj, Manikganj, Faridpur, Gopalganj, Shariatpur, Cumilla, Feni, Lalmonirhat, Sirajganj, Barguna, and Pirojpur.

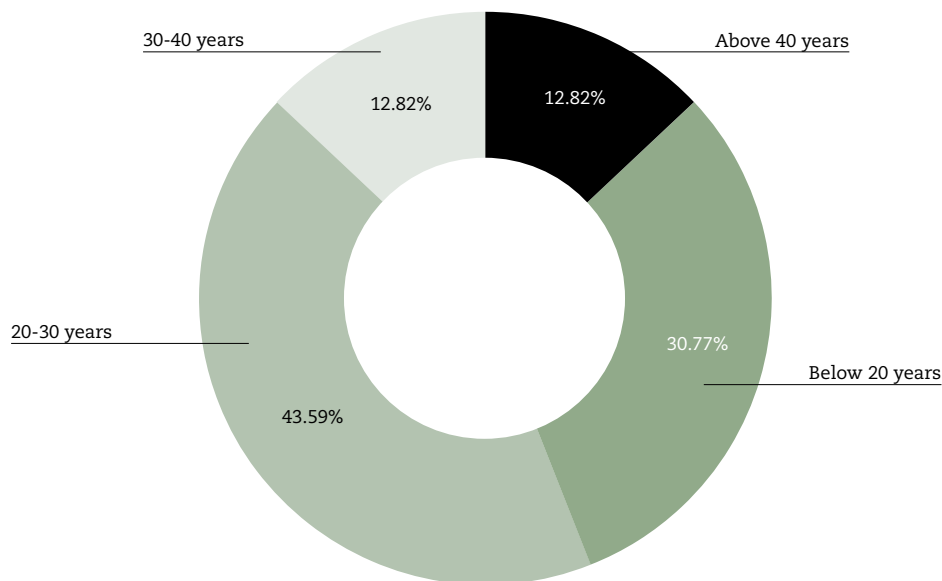
By February 2019, the HCD had given judgments in respect of 35 out of 39 death sentenced prisoners,²⁸ and confirmed the death sentences for 18 of those 35 prisoners. All were convicted for homicide offences – 10 for murder under section 302 of the Penal Code of 1860, four for gang rape leading to death under section 9(3) of the Suppression of Violence against Women and Children Act of 2000, three for dowry death under section 11(ka) of the said Act of 2000, and one for rape leading to death under section 9(2) of the said Act of 2000.

Though only a fifth of the statutes that expose defendants to the death penalty relate to offences that result in death (see s. 2.1, above), 95% of cases in this study in which the trial courts awarded the death penalty, and all of those cases in which the HCD had confirmed a death sentence, had involved a fatality. This suggests that judicial sentencing is not significantly influenced by the growing legislative trend of prescribing the death penalty for non-fatal offences.

3.2 Age, gender and religion

The study data show that most death sentenced prisoners (29 out of 39) were below 30 years of age at the time of offence. More precisely, the largest group was between 20-30 years.

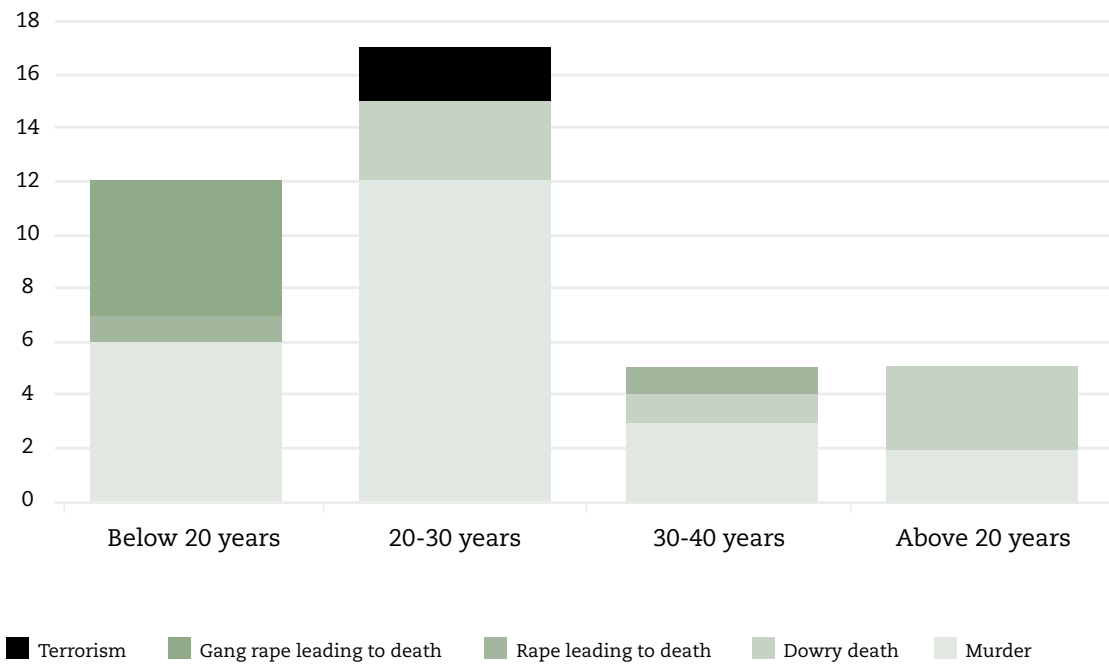
Figure 5: Age at the time of offence



According to case records, the youngest and oldest death sentenced prisoners were 19 and 55 years respectively at the time of offence. In some cases, the case records showed the age of offender to be between 19 and 22 years; the interview respondents, however, claimed that the ages were inaccurate, and that the offenders were below 18. The research team could not verify this discrepancy and, accordingly, gave primacy to case records.

²⁸ The cases against two accused people abated (i.e., stopped) because of their deaths, and cases against two others were yet to be finally disposed of.

Figure 6: Offences according to age groups

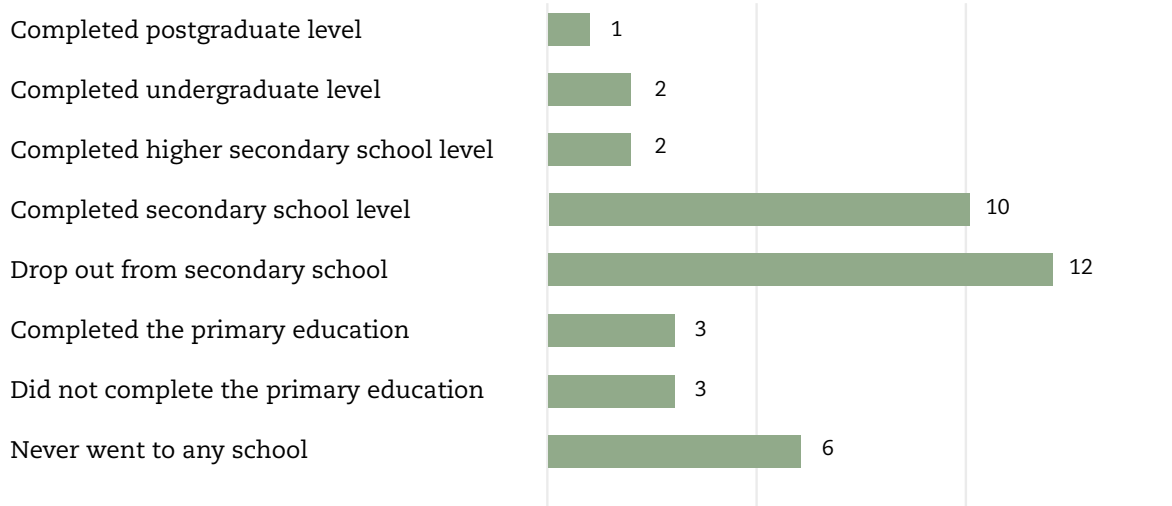


Of the 39 death sentenced prisoners, 38 were men and only one was a woman. However, her death sentence was not confirmed by the HCD. Hence, all 18 prisoners whose death sentences were confirmed are men.

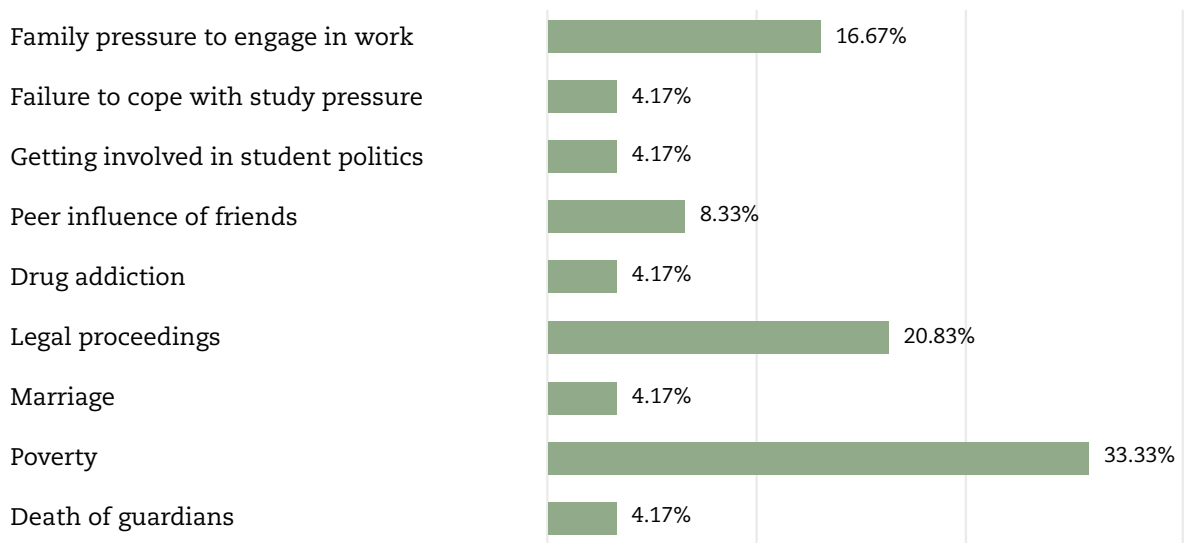
Thirty seven out of 39 of the prisoners were Muslims and two were Hindus. Of the 18 prisoners whose death sentences were confirmed by the HCD, 17 were Muslims and one was Hindu.

3.3 Educational background

Most death sentenced prisoners (56%) had either dropped out of secondary school or completed only a secondary school-level qualification. Six prisoners (15%) had no formal education; only three prisoners (7.69%) completed either undergraduate or postgraduate level. Among 33 prisoners attending formal education, one attended the madrasah-level education.

Figure 7: Educational profile of prisoners

The data show that the vast majority of the prisoners (87%; 34 out of 39) did not have an educational qualification above secondary school level. The official data of the Prisons Directorate of Bangladesh confirms that 84% of the total death sentenced prisoners (1,007 out of 1,204) as of June 2016 were of the same level of educational attainment (Prisons Directorate 2017: 60). It can, therefore, be safely concluded that most death sentenced prisoners in Bangladesh have low educational attainments.

Figure 8: Main reasons for not pursuing formal education or discontinuing before graduation

As only three prisoners completed either undergraduate or postgraduate level of education, this study tried to explore the main reasons why 36 prisoners did not pursue formal education or discontinued before graduation. Because of the absence of response from 12 interviewees, we could only gather information about 24 prisoners. These interviews showed that poverty is the most common explanation (cited in a third of the cases), while legal proceedings leading to the death sentence of prisoners is the second most important reason (just over a fifth of cases). Family pressure to go into the workplace is another important reason, not unrelated to the issue of poverty.

3.4 Economic and criminal background

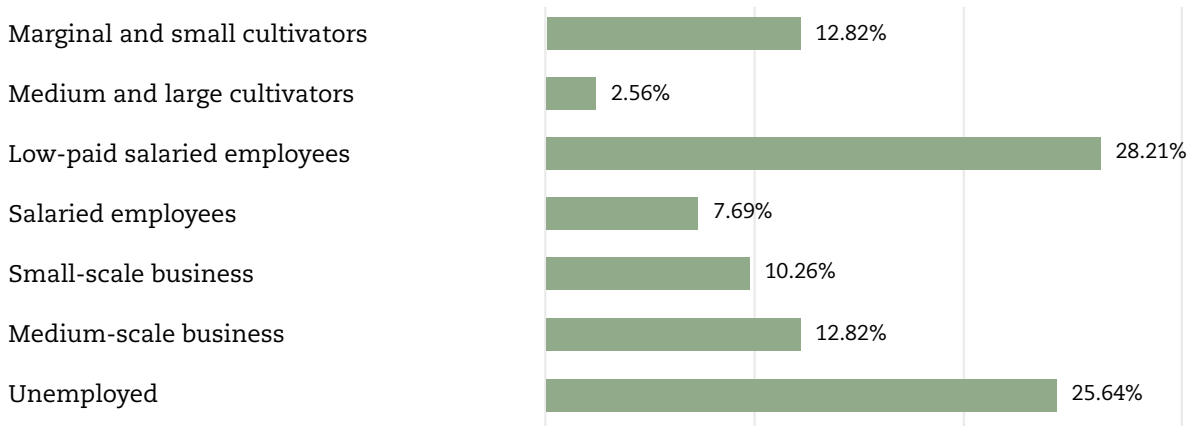
Based on the available data, we can categorise the occupation of death sentenced prisoners at the time of the offence as follows:

Table 2: Categories of prisoners' occupations

| Category | Who is covered by the category? |
|--------------------------------|--|
| Marginal and small cultivators | Cultivators owning cultivable land that was not sufficient to support the family |
| Medium and large cultivators | Cultivators owning cultivable land that was sufficient to support the family |
| Low-paid salaried employees | Shop assistants, factory workers, security guards |
| Salaried employees | Administrative/supervisory jobs in private companies/factories |
| Small-scale business | Cottage weavers, tea-stall owners, small-scale agribusiness |
| Medium-scale business | Shop owners, fishing business |
| Unemployed | Those not employed in income-generating activities, students |

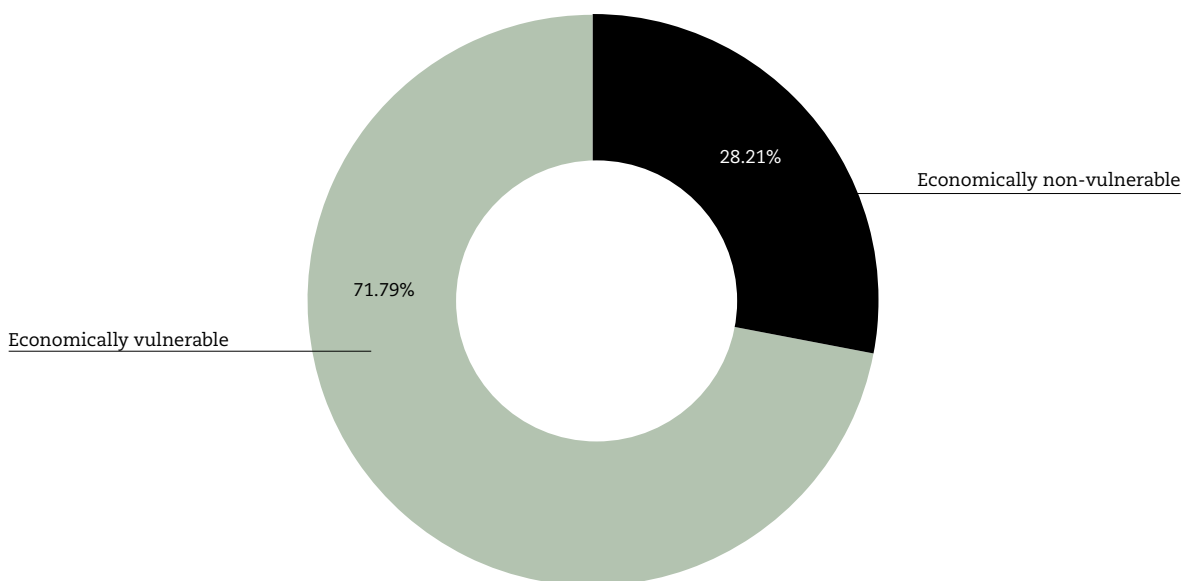
The study data reveal that most death sentenced prisoners were either low-paid salaried employees (11 out of 39) or unemployed (10 out of 39).

Figure 9: Occupation of prisoners



On a broader note, it can be said that those within the categories of ‘marginal and small cultivators’, ‘low-paid salaried employees’ and ‘small-scale business’ are economically vulnerable. On the other hand, those within the categories of ‘medium and large cultivators’, ‘salaried employees’ and ‘medium-scale business’ are not economically vulnerable. The category of ‘unemployed’, however, does not, *ipso facto*, indicate economic vulnerability/non-vulnerability. Among the 10 prisoners who were unemployed at the time of the offence, five were students dependent on family, and four out of these five families were economically vulnerable. Among the other five unemployed prisoners, one was not formally employed but earned a good amount of money through ‘politics’. Therefore, 28 out of 39 prisoners can be classified as ‘economically vulnerable’, while 11 were not.

Figure 10: Economic vulnerability of prisoners



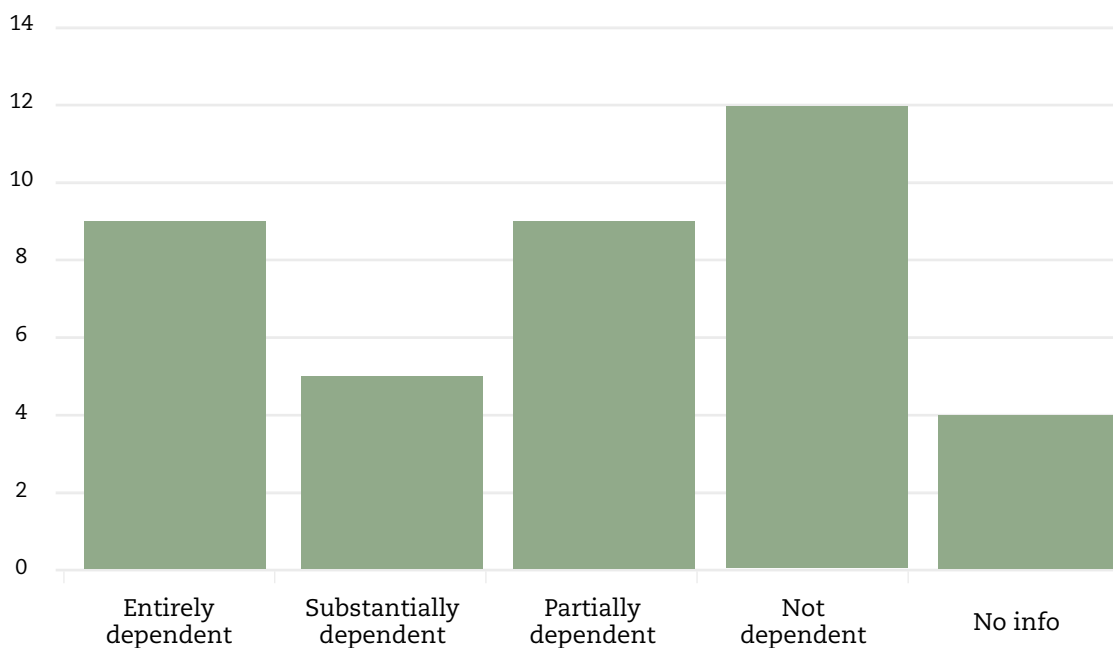
The fact that 11 out of 39 death sentenced prisoners (28.21%) were economically non-vulnerable, however, does not indicate fully the socio-economic class of prisoners. These 11 prisoners were economically non-vulnerable because:

| |
|--|
| Four owned shops |
| Three were engaged in administrative/supervisory jobs in private companies/factories |
| One was engaged in farming and owned cultivable land that was barely sufficient to support the family |
| One was engaged in a medium-scale fishing business |
| One belonged to an economically vulnerable family, but he used to earn a good amount of money through 'politics' |
| One was economically dependent on his father, engaged in a managerial job in a garment factory |

A close look at these data reveals that none of the death sentenced prisoners belonged to the upper or upper-middle class socio-economic strata. One of the 11 economically non-vulnerable prisoners did not have adequate resources to engage a private lawyer to defend his case before the HCD, and was defended by a legal aid lawyer.

It appears from the study data that, while 12 families were not economically dependent on the prisoners, nine families were entirely dependent on the prisoners.

Figure 11: Economic dependency of family members on prisoners



On the question of prior criminal records of death sentenced prisoners, the interview respondents disclosed data about 36 of the 39 prisoners, revealing that:

- 29 prisoners had no prior criminal records
- Three prisoners were earlier involved in petty offences that were settled through local-level informal *shalish*
- One was earlier accused of wife-beating
- One was earlier accused of theft
- One was earlier accused of dacoity (armed robbery)
- One used to sexually harass women in public, but was never formally charged.

3.5 Family contexts

Our data revealed some information about the family structure of the death sentenced prisoners:

- At the time of the offence, 21 prisoners (20 men, one woman) were married and 18 (all men) were unmarried
- Of the 18 prisoners who were unmarried at the time of offence, two got married while on bail and another got married while absconding
- Of the 21 prisoners who were married at the time of offence, eight had committed the fatal offence for which they were sentenced to death against their spouse (seven wives and one husband)
- Of the 7 prisoners accused of killing their wives, two remarried while on bail
- Of the 20 male prisoners who were married at the time of the offence, four got divorced from their wives during legal proceedings
- At the time of offence, 26 prisoners had no children and 13 had children (eight prisoners had one child each; one prisoner had two children; three prisoners had three children each; one prisoner had four children)
- One prisoner was sentenced to death for killing his daughter
- At the time of the offence, both parents of 21 prisoners were alive and both parents of seven were dead; four had only a father alive and three had only a mother alive.²⁹

Among the 39 death sentenced prisoners, there were three pairs of brothers. The study, accordingly, asked interviewees about educational attainments of 36 fathers and mothers of prisoners. Unfortunately, no information was given about 17 fathers and 21 mothers. The data that are available indicate that:

- Of 19 fathers of prisoners, nine had never attended school. Only seven had completed the secondary school level and two had completed undergraduate degrees
- Of 15 mothers of prisoners, seven never attended school. Only three had completed the secondary school level and one of them had completed an undergraduate degree.

²⁹ We could not obtain relevant information about four prisoners.



PART FOUR

Prisoners' experiences of
the criminal justice system

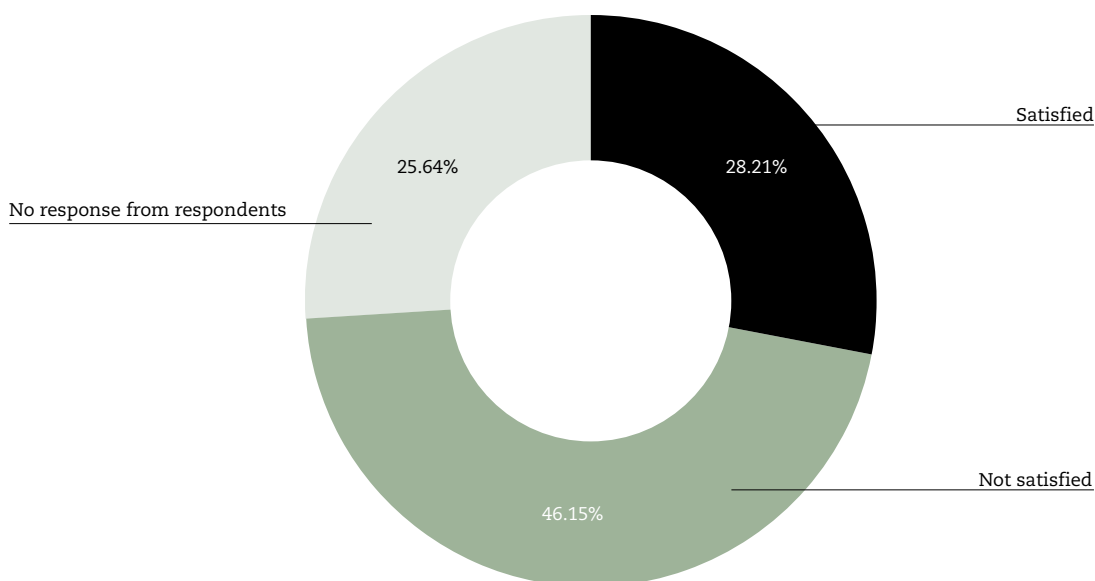
This section seeks to understand death sentenced prisoners’ experiences of the criminal justice system. As most data are derived from facts and opinions disclosed by family members of prisoners, it is important to give a note of caution that we do not endorse the authenticity of all facts disclosed by interviewees. Nevertheless, we strongly believe that these perspectives, even if not always factually accurate or logically defensible, can be helpful in understanding the impacts on prisoners of the death penalty regime in Bangladesh.

**“A discussion on the death penalty that is largely focused on the crime would be masking various dynamics of the criminal justice system”
(NLUD, 2016b: 203)**

4.1 Investigation and trial

While 11 interviewees expressed satisfaction with the quality and integrity of the police investigation, 18 others were quite disappointed and dissatisfied.

Figure 12: Opinions about the quality and integrity of the investigation



Interview data reveal different factors that led 18 respondents to question the quality and integrity of the investigation. The most prominent factor was the alleged use of torture as an investigation tool. While four of the death sentenced prisoners were not taken into custody during investigation – and, therefore, the question of police torture did not arise – and another six interviewees preferred not to talk about the issue of torture, 13 of the remaining 29 interviewees alleged that prisoners were tortured in police custody for the purpose of extracting confessional statements, and two others suspected that their family members, the prisoners in question, were tortured. In one case, the father of two brothers, both prisoners, was taken into custody, though not formally arrested, and beaten badly by the police.

**“All fingernails of my son were pulled off while he was in police custody...
He was later taken to hospital for treatment”**

The mother of a prisoner who was 18 when arrested

“After severe beating, the police tried to convince him saying that he’s like their nephew and if he offers a confessional statement, they will make him an approver [accomplice witness] in this case. Otherwise, he’ll be taken into remand [police custody] again for torture and he will go through a lot more sufferings”

The maternal uncle of a prisoner who was a college student at the time of arrest

It is noteworthy that three of the interviewees who alleged that prisoners had been tortured by the police nevertheless expressed their satisfaction with the investigation. This indicates that torture as a tool of investigation may have become normalised, or at least accepted to some extent.

“He was beaten thrice a day for three days in police remand”

The elder brother of a prisoner who was under 20 at the time of arrest

Apart from torture as an investigation tool, our data reveal allegations about other corrupt practices that may have contributed to interview respondents’ negative impression of investigations.

- Family members of 13 death sentenced prisoners alleged that they were subjected to ill treatment and harassment by the police during investigation.
- Five respondents reported that the police harassed the family members of the prisoners and repeatedly asked for bribes. In three out of those five cases, the family members actually paid bribes.
- Four respondents alleged that the police were heavily influenced by the victim’s family in conducting the investigation.
- Four respondents opined that the prisoners were falsely implicated on the basis only of suspicion.
- In three instances, family members were taken into custody, apparently as hostages, and subsequently released on surrender/arrest of the absentee accused. In another case, the police allegedly tried to detain the brother of an absentee accused, but the family members successfully resisted.
- In one case, the parents of an accused person were picked up by the police and taken to their son, who was in police custody. Then the police allegedly threatened to torture them if the accused refused to confess.

“An entire family has been destroyed because of a false case... I do not want anyone to become victims of false cases, false investigations any more”

The brother of a death sentenced prisoner

All these accounts and the following quotations indicate that there are good reasons why investigations are often not perceived by prisoners to be safe, fair or satisfactory:

“It was the fault of the policemen and their corruption for which this happened to my brother. We have lost faith in the entire system. You know the condition of the criminal justice system in Bangladesh since you are a law student. If the entire system runs like this, only the innocent will be punished”

The cousin of a death sentenced prisoner

“The complainant and a police officer told me that my son was really innocent and would be released if I can persuade him to be an approver [accomplice witness]... But my son didn't agree. He said to me: ‘How can I be an approver implicating two innocent persons, when I know nothing about the incident?’”

The mother of a prisoner sentenced to death for kidnapping followed by murder

“I hope that no innocent person is convicted... No police, after being bribed, should falsely implicate any mother's son like this”

The mother of a death sentenced prisoner

“The police came to our house several times while my elder brother [the prisoner] was absconding, and every time they took some money as a bribe. One day, a police inspector threatened that my younger brother [not an accused in this case] would be arrested and produced before the court if my elder brother does not surrender”

The brother of a death sentenced prisoner

“The police usually investigate a case in favour of the person who pays them more”

The cousin of a death sentenced prisoner

“My son's name is Rokel... But, the police, in the charge sheet, used three names [Rokel @ Lokel @ Lokal] to make it look as if he was a notorious criminal.”

The father of a prisoner who was under 20

“I hope even my enemies do not go through such misfortunes... He was harmed physically, mentally, financially – in every possible way, and was a victim of conspiracy, too”

The brother of a death sentenced prisoner

When asked about their satisfaction with the trial process, most interview respondents (19 out of 39) preferred not to answer. While eight interviewees expressed their satisfaction, 12 others said they were disappointed and dissatisfied. Six out of 12 interviewees who said they were not satisfied with the trial process opined that the trial courts failed to properly appreciate the evidence, and wrongly relied on false evidence adduced by the prosecution. One respondent expressed suspicion that the judge was bribed by the victim's family; another one alleged that the judge was heavily influenced by political factors. Four other respondents were satisfied with the trial, including the conviction, but were not satisfied with the sentencing outcome, with one explicitly questioning the legitimacy of the death penalty as a form of punishment.

“It’s fair enough that my brother has been found guilty... But he is not such a notoriously evil person that he would commit a cold-blooded murder... Probably, he was not in the right state of mind due to which he committed the murder... In my understanding, there is room for leniency in sentencing... A lot of people go scot-free even after committing murder”

The cousin of a prisoner with no prior criminal record, who was in his mid-20s when arrested and has been languishing in jail for more than 10 years (more than five years in condemned cell)

“My brother committed an offence. The law is now taking one life for another. Is this right?”

The younger brother of a prisoner

“By giving a voluntary confession, my brother expressed a sense of remorse. The court, therefore, could be a bit more lenient in sentencing”

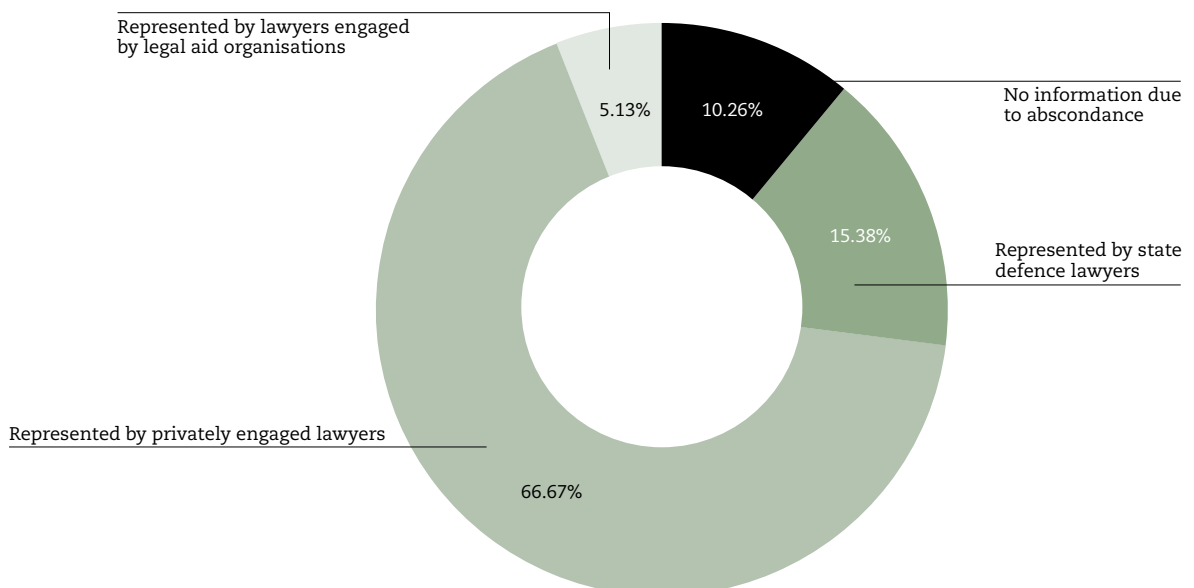
The cousin of a prisoner who gave a confessional statement before a magistrate

4.2 Legal representation

One can hardly doubt the importance of a quality legal defence in a death penalty case. It is important not only for an individual accused, but also for the overall legitimacy of the death penalty regime. Johnson and Johnson (2001: 522) have rightly observed: “We can only feel confident that the truly guilty are the ones being executed when everyone is afforded the same quality (and quantity) of criminal defence.”

In our study, we found that most death sentenced prisoners (26 out of 39) were defended in trial courts by privately appointed lawyers. The families of three prisoners, however, could not afford to engage lawyers of their choice because of poverty. Moreover, four prisoners were tried in absentia and, hence, could not appoint lawyers of their choice. These seven prisoners were represented at trial by state defence lawyers (SDL).³⁰

Figure 13: Legal representation for prisoners in trial courts



³⁰ If an accused charged with a death penalty offence does not appoint a lawyer, he is represented at trial by a state defence lawyer (i.e., a lawyer appointed by the state). See the *Legal Remembrancer's Manual*, 1960, Chapter XII.

When asked for their opinions on the quality of legal representation, most respondents (18 out of 39) were not forthcoming. Of the remaining respondents, 14 spoke positively about the quality of legal representation and seven others negatively.

“The lawyer did not help us; he took money from us but later acted as if he were on the side of the prosecution”

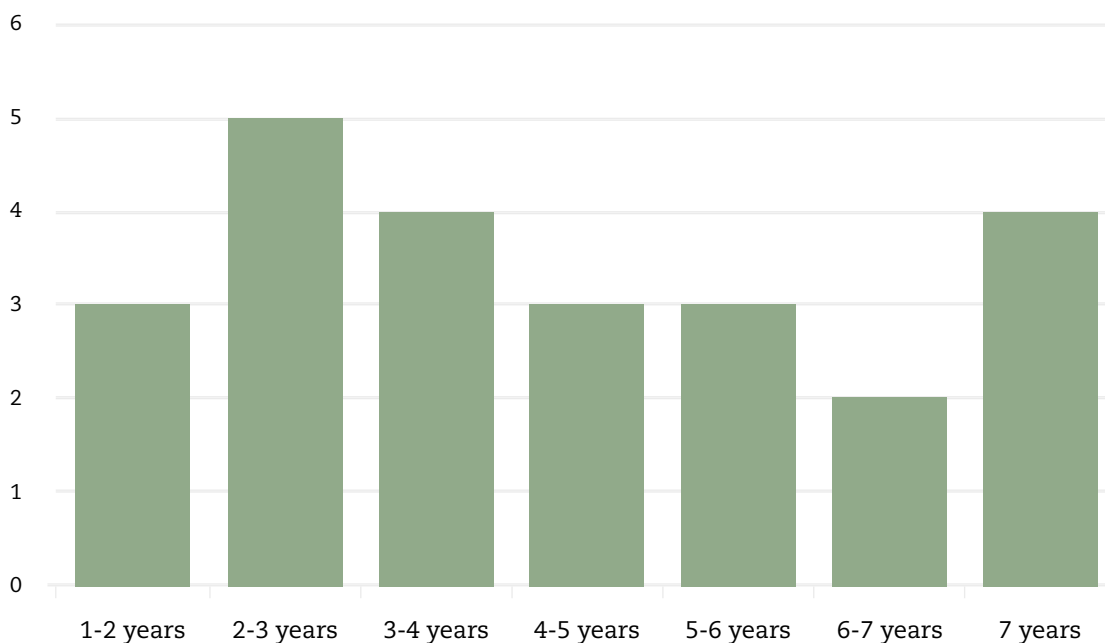
The mother of a prisoner under 20

In Death Reference proceedings before the HCD, the cases of eight prisoners were defended by legal aid lawyers. Two of these prisoners had absconded and, hence, could not appoint lawyers of their choice, but the other six prisoners could not do so because of poverty.

4.3 Delay in procedures

Thirty-nine death sentenced prisoners in this study were tried in 24 different cases. The pre-trial and trial proceedings of these 24 cases took, on average, four years five months 27 days.³¹ The longest and shortest durations were 11 years two months seven days and one year six months eight days respectively.

Figure 14: Duration of pre-trial and trial proceedings



On the other hand, the average duration between judgments of the trial court and the HCD in these 24 cases is five years six months 11 days. There is a consistent pattern here. Only one out of 24 cases took 4-5 years, the remaining 23 cases took 5-6 years.

³¹ The term 'pre-trial and trial proceedings' is meant to indicate the duration between initial registration of the case and pronouncement of the judgment by the trial court.

**“The government lawyer (i.e., state defence lawyer) was included just for show.
He was of no use”**

The uncle of a prisoner

“So many years... He has already been punished enough”

The cousin of a prisoner who was in his mid-20s when accused of murder and has been languishing in jail for more than 10 years (more than five years in a condemned cell)

The present study finds that long delays in procedures are a cause of concern for death sentenced prisoners. From the filing of the case to its disposal by the HCD, 11 out of 24 cases (46%) took more than 10 years. In one case, it was as long as 16 years eight months 21 days. Since the judgments of the HCD are amenable to the appellate jurisdiction of the Appellate Division, the delays found in this study are likely to increase in each case if and when appeals are filed, causing even longer wait times for prisoners.

DELAY IN PROCEDURES: A CASE STUDY

A college-level student with no prior criminal record was arrested in January 2008 in connection with a case of gang rape leading to death of the victim. According to the family members of the prisoner, he was implicated in this case because of previous enmity. He was sentenced to death by the trial court, but finally acquitted by the HCD. During the entire proceeding, he was never granted bail. He had remained in custody for more than 11 years before the judgment of the HCD.

4.4 Challenges for family members

Almost all families suffered from huge economic losses and problems as a result of legal proceedings against prisoners. This was primarily for two reasons. First, many families experienced a significant loss of income because of prisoners' incarceration if they were the only waged person in the family or if they used to contribute substantially to the family income. Second, the families had to spend a lot of money in fighting the case, including paying for legal representation.

“He worked as an employee of a general store and our family was entirely dependent on his income... In fighting the case, we had to sell all landed property, including the homestead lands, sell my mother's jewellery and take loans. We are now penniless...

After the verdict, our parents died from the grief and his wife fled from the marriage... I had to move to Dhaka city to avoid public shaming and now work as a shop assistant”

The brother of a death sentenced prisoner

Because of economic hardship, six families had to sell property. The families of 22 prisoners could not even afford regular family visits to the prison.³² As one person – the cousin of a prisoner incarcerated in a prison approximately 300km away – put it: “Earlier, his father went there several times. Now, it is not possible for family members to meet him in prison on a regular basis... Kashimpur jail is far away from us and it costs a lot to travel there.”

³² At least one visit by any family member in every two months is considered here as a regular family visit.

We collected data on families' expenditure in relation to cases from relatives of 16 prisoners. One family spent nine million taka and another spent 3.5 million taka. The families of the other 14 prisoners spent a total of approximately 7.6 million taka (0.543 million taka per prisoner). Not all this money was paid to lawyers; some was allegedly also paid as bribes to the police and political leaders with the hope of influencing investigations and trials, or to meet the demands of the police.

LIFE STORY CONSTRUCTED FROM INTERVIEW DATA

When arrested, the prisoner was 23, had a wife and a five-year-old son. He was engaged in agribusiness and was the sole earner of the family. Soon after his arrest, the family members of the victim vandalised and ransacked their house. The prisoner's wife struggled hard for five years to maintain the child. She then joined a garments factory as a worker and has been working there for two years. An amount of approximately 0.6 million taka has already been spent in fighting the case. To raise the money, she had to mortgage their landed properties and take loans with interest. The loan amount is yet to be repaid. Because of economic hardships, she cannot even afford to regularly visit her husband in prison.

The families of 21 prisoners (53.85%) were subjected to attacks and harassment of various forms by the local people, including vandalism, forced transfer of properties, continuous stigmatisation, and forced social isolation. This behaviour forced four families to relocate their place of residence.

LIFE STORY CONSTRUCTED FROM INTERVIEW DATA

A boy aged 19, accused of rape leading to death of the victim, was picked up from the house by the local people, beaten unconscious and then handed over to the police. On conclusion of the trial, he was awarded the death penalty, which was later confirmed by the HCD. Soon after the arrest of the prisoner, his family members were driven away from their residence, their landed properties were grabbed and even their agricultural produce (46 maunds of paddy) was snatched away by an influential person of the locality. Since then, the family has shifted its residence three times in the past 10 years, just to avoid local people's wrath against them. As they have no secured source of income, they are now staying in another person's house without paying any rent.

“The local people put on posters demanding the death penalty of my cousin. The family members were unable to go out of the house due to taunts by neighbours. It was very hard for them to continue living in this place... They shifted the place and now reside in a rented house”

The cousin of a death sentenced prisoner

“His [the prisoner's] younger brother was sent away from home so that public shaming and humiliation by the local people do not affect his education and growth”

The cousin of a death sentenced prisoner



PART FIVE

Conclusions and
implications of
the findings

The major findings of this study can be summarised as follows:

- (1) Apart from those under anti-espionage laws, the law on international crimes, and laws relating to defence forces and paramilitary forces, there are 33 death penalty offences in Bangladesh. Lawmakers, particularly for the past two decades, have relied increasingly on the death penalty in penal policy. It is alarming that Bangladeshi laws allow for the imposition of the death penalty for 25 non-fatal offences.
- (2) It is of concern that executions have increased significantly during the past two decades, from 2000. However, judicial sentencing appears not to be significantly influenced by the growing legislative trend of prescribing the death penalty for non-fatal offences. In practice, the courts, by and large, do not impose death sentences unless someone dies as a result of the offence.
- (3) Most death sentenced prisoners (74%) within this study were below 30 years of age at the time of the offence, with the largest proportion being 20-30 years of age.
- (4) The death sentenced prisoners were overwhelmingly male (97%) and Muslim (95%).
- (5) Most death sentenced prisoners in this study had low educational attainments. The majority had not been educated beyond secondary school, primarily because of family poverty.
- (6) More than half of the death sentenced prisoners were low-paid salaried employees or unemployed, with almost three-quarters of them being economically vulnerable. None of the prisoners under the study belonged to the upper or upper-middle classes of socio-economic strata.
- (7) Almost a quarter were the sole earners within their families.
- (8) No prior criminal or delinquent records were reported for three-quarters of the prisoners. No prisoner was earlier convicted for any offence.
- (9) Most interview respondents were not satisfied with the quality and integrity of the investigation, primarily because of the alleged use of torture as an investigation tool, with at least a third of the families claiming that prisoners were tortured in police custody for the purpose of extracting confessional statements. Interview data also indicates that torture as a tool of investigation may have become normalised, or at least accepted to some extent. The respondents also alleged many instances of other corrupt practices by the police that had adverse impacts on prisoners and their families.
- (10) Most interview respondents (60% of those responding) were not satisfied with the trial process. Most felt that the trial courts failed to properly appreciate the evidence and wrongly relied on false evidence adduced by the prosecution. Some were also dissatisfied with the sentencing process and outcome.
- (11) On the quality of legal representation, two-thirds of interviewees who responded appeared to be satisfied, while one-third had negative impressions. In particular, the quality of state defence lawyers was criticised.

- (12) Delay in proceedings is responsible for prolonged detention of prisoners and their prolonged isolation on death row. The cases in the present study took, on average, four and a half years for final adjudication by the trial courts (from the date of registration of case) and, thereafter, another five and a half years for final disposal by the HCD. From filing of the case to disposal by the HCD took more than 10 years in almost half of the cases. In one case, a prisoner spent more than 16 years and eight months from the filing of the case until disposal by the HCD. Yet this is not the end of the judicial process, as judgments of the HCD are still amenable to appellate and review jurisdictions by the Appellate Division. The total length of time that prisoners spend under sentence of death in isolation gives cause for great concern. The death row phenomenon has been held to be unconstitutional in a number of Commonwealth countries, as prolonged detention under sentence of death has been declared to be inhuman and degrading treatment (Novak, 2014).
- (13) Almost all families suffered from huge economic losses and problems as a result of legal proceedings against prisoners, and some had to sell property.
- (14) The families of just more than half of the prisoners were subjected to harassment by local people, forcing four families to relocate.

Most of these findings are not surprising; rather, they are largely consistent with the findings of studies from other countries. The evidence from various jurisdictions around the world convincingly demonstrates that the death penalty has a disproportionate impact on vulnerable and marginalised sections of society, along the lines of economic status, racial identity, and levels of educational attainment.³³ Arguably, there is also a popular belief in Bangladesh that the death penalty is imposed mostly upon the poorest, most powerless, and marginalised people. The socio-economic profiles of death sentenced prisoners in the present study, to a great extent, reinforce this popular belief.

³³ See generally, FIDH (2019), Bright (2016, 2014, 2008, 2003, 1994), NLUJ (2016a, 2016b), Bulkan (2014), Mogwe (2014), Allen and Clubb (2008), FLAG (2004), Johnson and Johnson (2001), Snell (2001), Vick (1995), Berger (1991), Fortenberry (1979), Greenberg and Himmelstein (1969), Johnson (1957), Martin (1934).

“If you are poor, the chances of being sentenced to death are immensely higher than if you are rich. There could be no greater indictment of the death penalty than the fact that, in practice, it is really a penalty reserved for people from lower socio-economic groups. This turns it into a class-based form of discrimination in most countries, thus making it the equivalent of an arbitrary killing.

“People living in poverty are disproportionately affected by the death penalty for many reasons. They are an easy target for the police; they cannot afford a lawyer; the free legal assistance they might receive is of low quality; procuring expert evidence is beyond their means; tracing witnesses is too costly; and access to appeals often depends on being able to afford extra counsel. Many cannot afford bail and, therefore, remain in custody before their trials, further hindering their efforts to prepare an effective defence.

“Some legal aid systems become active only at the trial stage, meaning that defendants from low socio-economic backgrounds are often interrogated and investigated without a lawyer. By the time the case reaches court, it may already be too late to guarantee a fair trial. Corruption of law enforcement officials is another detrimental factor.”³⁴

Because of the relatively small sample size, we must be careful about not generalising from the quantitative data to the situation of all death sentenced prisoners in Bangladesh. We do not make any claim from these statistical findings beyond the sample. That said, the findings of this study do not surprise us and likely give some indications of the socio-economic profiles of death sentenced prisoners in Bangladesh more generally and, therefore, provide an impetus for future research. There is a need for more thorough research on a much larger sample in Bangladesh to establish if these findings are borne out more widely.

Furthermore, the qualitative findings are rigorous, though the numbers are relatively low, and they too expose sobering details about the experiences of justice and the impact of the death penalty regime in Bangladesh. They expose flaws in the justice process that demand our urgent attention.

**“Discussions on the death penalty are quick to dive into merits of the death penalty as a form of punishment without comprehending the systemic realities within which it operates... During these discussions, the realities of the criminal justice system are largely ignored and a misplaced confidence around it is constructed. Meanwhile, those inhabiting worlds locked away from our sights and minds, within high impenetrable walls, have stories to tell that ask damning questions of us”
(NLUD, 2016b: 205).**

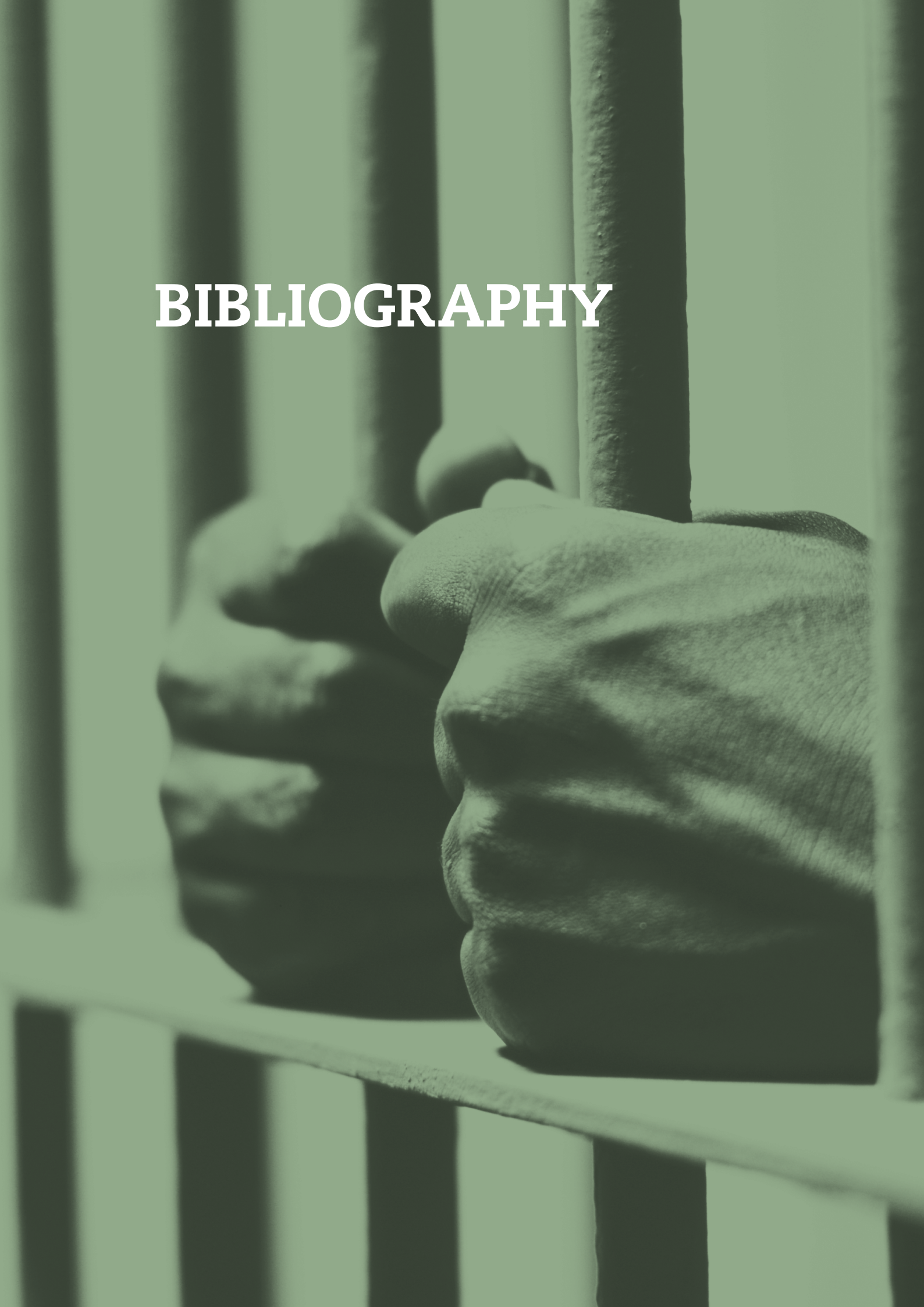
³⁴ Extract from a joint statement issued by Agnes Callamard (Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on discrimination against women), Felipe Gonzalez Morales (Special Rapporteur on the human rights of migrants), Philip Alston (Special Rapporteur on extreme poverty) and Mutuma Ruteere (Special Rapporteur on racism; and the Working Group on people of African descent) marking World Day Against the Death Penalty on Tuesday 10 October 2017 [Available at: rb.gy/irxhid]

The present study could be seen as a rigorous pilot study, and the data suggest that a comprehensive study of death sentenced prisoners in Bangladesh is sorely needed. Our experiences suggest several potential directions for future research in this area. Because of time constraints, we could not attempt to obtain official permission for interviewing prisoners under sentence of death in prisons and had to rely on their family members. A detailed study with a larger sample size can enhance the reliability of data if prisoners themselves are interviewed. This study uncovers some important dimensions on personal and family-level impacts of death penalty litigation. These issues deserve further exploration. Moreover, the study did not assess several other important aspects, such as the socio-economic profiles of victims, living conditions of prisoners in prisons, the quality of legal representation at appellate stage of the proceeding, and the mental health of death sentenced prisoners. These should all be included in future studies.

**“Sentencing people to death in a system which is plagued with recurrent and persistent problems at each stage of the legal process presents concerns that cannot and should not be underplayed by a comparison with the general state of affairs”
(Ambasta, 2017: 138).**

We firmly believe that rigorous data on the criminal process in capital cases and the many impacts of the death penalty regime in Bangladesh are needed to challenge assumptions about the administration of the death penalty, and expose its numerous flaws. Ignoring the gravity of the situation will only result in more detrimental effects on prisoners and their families. The sacrifice of fairness and justice in pursuit of executions cannot be a morally defensible position for any society.

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