JOURNAL OF CRIMINOLOGY AND CRIMINAL JUSTICE

Vol.2, No.1 2026 E-ISSN. 3137-0543. P-ISSN. 3137-0535 OPEN ACCESS

RESEARCH ARTICLE // DOUBLE-BLIND PEER REVIEWED

Retain, Restrict or Abolish: Understanding Death Penalty Support and Opposition among Legal Professionals in India

Amit Kumar[1] **Harsh Mahaseth**[2.] **Ifat Shafi**[3]

[1] Rajiv Ghandi School of Intellectual Property Law, Kharagpur, India. E-Mail: amit3821kmr@gmail.com

[2] Law School, O.P. Jindal Global University, Sonipat, Haryana, India. E-Mail: mahasetae9@gmail.com

[2] Research Officer, Federal Constitutional Court of Pakistan. Email: ifatshafi913@gmail.com

ABSTRACT

Most research on death penalty attitudes has surveyed members of the public or university students, and much of it comes from the United States. Far less is known about the people who actually work the capital system: the lawyers who prosecute and defend capital cases and the judges who decide them. This article asks how legal professionals in India view the death penalty, and which reasons for supporting or opposing it appear most often in what they say and do. It uses a qualitative documentary and secondary-analysis design. A purposive corpus of 14 publicly available sources published between 2008 and 2025 was analysed: the Law Commission of India's 262nd Report, an interview study of 60 former Supreme Court judges, a published survey that included 107 practising lawyers, the national Death Penalty India Report, five annual sentencing reports, the Justice Verma Committee report, earlier student surveys, and contemporary reports of collective positions taken by bar associations. Each source was coded against ten reason themes drawn from the attitude literature: law and order, cost, retribution, deterrence and incapacitation on the support side, and brutalisation, innocence, morality, emotional opposition and unfair application on the opposition side. The analysis suggests that Indian legal professionals largely favour keeping the death penalty, mainly for reasons of deterrence and retribution, while many also accept that the system that imposes it is affected by wrongful convictions, custodial torture, poor legal aid and class and caste bias. This awareness rarely turns into support for abolition. The article calls this gap "retention with reservations" and argues that it helps explain why India hands down well over a hundred death sentences a year yet has carried out only a handful of executions since 2004. Directions for a primary survey of Indian advocates are proposed.

01 ARTICLE HISTORY

Received 02-08-2026
Accepted 06-10-2026
Published 10-10-2026

02 KEYWORDS

death penalty; capital punishment; legal professionals; lawyers; judges; India; rarest of rare; retribution; deterrence; wrongful convictions

03 CORRESPONDING AUTHOR

Amit Kumar
amit3821kmr@gmail.com

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https://doi.org/10.68740/jjccj25

1. Introduction

Few questions in criminal justice divide people as sharply as the death penalty. In India the debate returns every time a crime shocks the country. After the gang rape and murder of a young woman in Delhi in December 2012, crowds in the street demanded hanging, Parliament broadened the offences punishable by death, and the four men eventually convicted were executed in Tihar Jail on 20 March 2020. Those were the last executions in India to date. Yet trial courts have kept sentencing people to death at a steady pace, and at the end of 2024 there were 564 prisoners on death row, the highest number since the turn of the century (Project 39A, 2025).

This article grew out of an earlier study of my own on how lawyers in Pakistan understand the death penalty. That study asked a simple question: what do lawyers think about capital punishment, and why? It borrowed a well-known set of statements used in American research to measure the reasons people give for supporting the death penalty (law and order, cost, retribution, deterrence and incapacitation) and for opposing it (brutalisation, the risk of executing the innocent, morality, emotional discomfort and unfair application). Reading for that study, I kept returning to the work of Sethuraju et al. (2016), who used the same kind of instrument with 135 criminal justice and law enforcement students at a university in Minnesota. Their study was careful and useful, but like most of this literature it was about students in the United States, not about the professionals who actually make capital punishment work.

I wanted to know whether the same framework could help us understand legal professionals in a different country, one that shares Pakistan's colonial-era penal code and much of its legal culture but has developed its own death penalty jurisprudence. India was an obvious choice. It retains the death penalty, its courts impose it regularly, and, importantly for a researcher working at a distance, it has produced an unusually rich public record on what judges and lawyers think about it. The Law Commission of India (2015) devoted a full report to the question. Researchers at National Law University Delhi interviewed 60 former Supreme Court judges about their views (Centre on the Death Penalty, 2017), and the same group has published national data on death row prisoners and annual statistics on death sentences since 2016. There is also at least one published survey that included practising lawyers (Marigowda & Nagarajamurthy, 2021).

This study draws these sources together. I did not collect new survey or interview data. Instead, I analysed what Indian legal professionals have already said, in published research and official documents, and coded it against the same reasons for support and opposition that structured my original study. The aim is to give a clearer picture of where the Indian legal profession stands, why it stands there, and what this means for the future of capital punishment in a country that hands down many death sentences but carries out very few.

The article is organised as follows. Section 2 reviews the literature on death penalty attitudes and the reasons people give for them. Section 3 sets out the Indian legal framework and recent sentencing trends. Section 4 states the research questions, and Section 5 describes the method. Section 6 presents the findings, organised by reason theme, and Section 7 discusses what they mean. Sections 8 and 9 deal with limitations, future research and conclusions.

2. Literature Review

2.1 Who Supports the Death Penalty, and Why It Matters

Public opinion research on the death penalty began in earnest in the United States in the 1970s. Early studies focused on who supports capital punishment, and they found fairly consistent patterns. Men tend to be more supportive than women, white Americans more supportive than Black Americans, Republicans more than Democrats, and people with less formal education more than those with more (Ellsworth & Gross, 1994; Zeisel & Gallup, 1989). Studies of university students have reported similar differences by gender and race, and mixed findings by year of study and academic major (Sethuraju et al., 2016).

Knowing who supports the death penalty, however, tells us little about why. From the 1980s, researchers began asking people for their reasons, and a fairly stable list emerged (Bohm, 1987; Ellsworth & Ross, 1983). This shift matters because reasons are where policy arguments live. A person who supports the death penalty because they believe it deters murder may change their mind when shown the evidence on deterrence; a person who supports it because murderers deserve to die probably will not (Ellsworth & Ross, 1983; Tyler & Weber, 1982).

2.2 Reasons for Supporting the Death Penalty

Retribution is usually the most common reason given for supporting capital punishment (Bohm, 1987; Ellsworth & Gross, 1994). It can take two forms. The first is "just deserts," the idea that the punishment should match the harm done, so that a person who deliberately takes a life forfeits their own. The second is closer to revenge, an emotional response to the suffering of victims and their families. Statements such as "I become angry when a convicted murderer does not receive the death penalty" are meant to capture this second form.

Deterrence is the second major reason. Supporters argue that the threat of execution discourages potential murderers more effectively than life imprisonment (Ellsworth & Ross, 1983). The research evidence for this claim is weak. A review by the National Research Council (2012) concluded that existing studies were not informative about whether capital punishment increases, decreases or has no effect on homicide rates, and should not be used to inform policy. Even so, belief in deterrence remains widespread.

A third reason is law and order. Here the death penalty is valued less for what it does to individual offenders than for what it says about the state's willingness to fight crime. Tyler and Weber (1982) described this as partly an instrumental response to fear of crime and partly a symbolic attitude tied to broader social values. A fourth reason is incapacitation: the belief that murderers will kill again if given the chance, and that execution is the only certain way to prevent this. Support often falls when respondents are offered a real alternative of life imprisonment without release (Ellsworth & Gross, 1994). Finally, some people support the death penalty because they believe it is cheaper than keeping someone in prison for life. American studies have repeatedly found the reverse, but public awareness of this is low (Ellsworth & Ross, 1983).

2.3 Reasons for Opposing the Death Penalty

On the other side, the most common reason is moral: the belief that it is wrong for the state to kill, or that responding to violence with violence only adds to it (Ellsworth & Ross, 1983). A second reason is the risk of executing an innocent person. This concern has grown as DNA testing and appellate review have exposed wrongful convictions in capital cases (Radelet & Borg, 2000). A third reason is unfair application: the claim that the death penalty falls most heavily on the poor and on minorities, who are least able to afford good lawyers. A fourth is brutalisation, the argument that executions do not deter violence but legitimise it and may even increase homicide in the period after an execution (Bowers & Pierce, 1980). Finally, some opposition is emotional rather than principled. People report feeling sad when anyone is executed, whatever the crime.

Sethuraju et al. (2016) measured all ten of these reasons using statements of the kind listed in Table 2 later in this article. They found that law enforcement majors and criminal justice majors did not differ significantly in their reasons, but that students further along in their studies tended to give somewhat different answers from those just starting out. This hints at something important for the present study: that education and professional socialisation might shape how people reason about capital punishment.

2.4 Studies From India

Research on death penalty attitudes in India is thinner, but it exists. Lambert et al. (2008) surveyed students at a public university in Andhra Pradesh using a version of the American instrument. Their respondents were split almost evenly: about 43% expressed some level of support for the death penalty, about 44% some level of opposition, and 13% were unsure. Retributive views were the strongest predictor of support, followed by instrumental beliefs about crime control. Strikingly, about 80% agreed that innocent people are sometimes sentenced to death, yet this belief was not linked to opposition. The authors suggested that some students saw wrongful convictions as an acceptable cost of punishing the guilty. A majority also said they would feel angry if a convicted murderer escaped the death penalty, while a majority said they felt sad when anyone was executed. In a later study with 95 students in Karnataka, Kamble and Mullet (2014) found relatively high support that varied with the circumstances of the crime: it was highest for rape and homicide, where culpability was clear, where the offender showed no remorse, and for repeat offenders.

Only one published study I could find compared lawyers directly with other groups. Marigowda and Nagarajamurthy (2021) surveyed 420 respondents in the Mysuru region of Karnataka, including 107 lawyers, 101 academics, 107 police personnel and 105 members of the public. I return to their findings in Section 6.

2.5 Why Legal Professionals Deserve Separate Study

Lawyers and judges are not simply better-informed members of the public. They are the people through whom the death penalty is actually imposed. Prosecutors decide whether to seek it, defence lawyers decide how hard to fight it at the sentencing stage, and judges decide whether a case falls within the narrow category in which death is permitted. Their attitudes therefore have direct practical consequences. They are also a group that might be expected to know more than most about the weaknesses of the system: about coerced confessions, poor legal aid and appellate reversals. Ellsworth and Ross (1983) found that among the American public, knowledge about the death penalty did little to change attitudes that were held for retributive reasons. Whether the same is true of professionals who see the system from the inside is an open question, and it is the question this study tries to answer for India.

Professional bodies in other countries have taken formal positions. The American Bar Association (1997) called for a moratorium on executions until jurisdictions could ensure fairness and due process, and the Japan Federation of Bar Associations (2016) adopted a declaration calling for abolition. In India, as Section 6 shows, the organised bar has not adopted a comparable national position, and the collective positions that have been taken pointed in the opposite direction.

3. The Death Penalty in India

3.1 The Legal Framework

India inherited the death penalty from the Indian Penal Code of 1860. After independence, its constitutionality was challenged several times. In *Jagmohan Singh v. State of U.P.* (1973), the Supreme Court upheld it. Then, in *Bachan Singh v. State of Punjab* (1980), a Constitution Bench again upheld the death penalty for murder but held that life imprisonment is the rule and death the exception, to be imposed only in the "rarest of rare" cases when the alternative option is "unquestionably foreclosed." Courts were directed to weigh aggravating and mitigating circumstances relating both to the crime and to the offender. *Machhi Singh v. State of Punjab* (1983) then offered categories of crime that might qualify, and *Mithu v. State of Punjab* (1983) struck down the mandatory death sentence for murder by a life convict.

In the decades since, the Supreme Court itself has repeatedly acknowledged that the "rarest of rare" test has been applied inconsistently. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009), it described a lack of uniformity in its own precedents. In *Shatrughan Chauhan v. Union of India* (2014), it held that unexplained delay in deciding mercy petitions could justify commutation. In *Union of India v. V. Sriharan* (2016), a Constitution Bench confirmed that courts may impose a life sentence with a fixed term, or for the rest of the offender's life, beyond the reach of remission, giving judges a middle option between ordinary life imprisonment and death. In *Manoj v. State of Madhya Pradesh* (2023), the Court directed trial courts to collect information about the accused's background, mental health and conduct in prison before imposing a death sentence. On 19 September 2022, a three-judge bench referred the question of how to ensure a real sentencing hearing in capital cases to a five-judge bench (*In Re: Framing Guidelines Regarding Potential Mitigating Circumstances*, 2022).

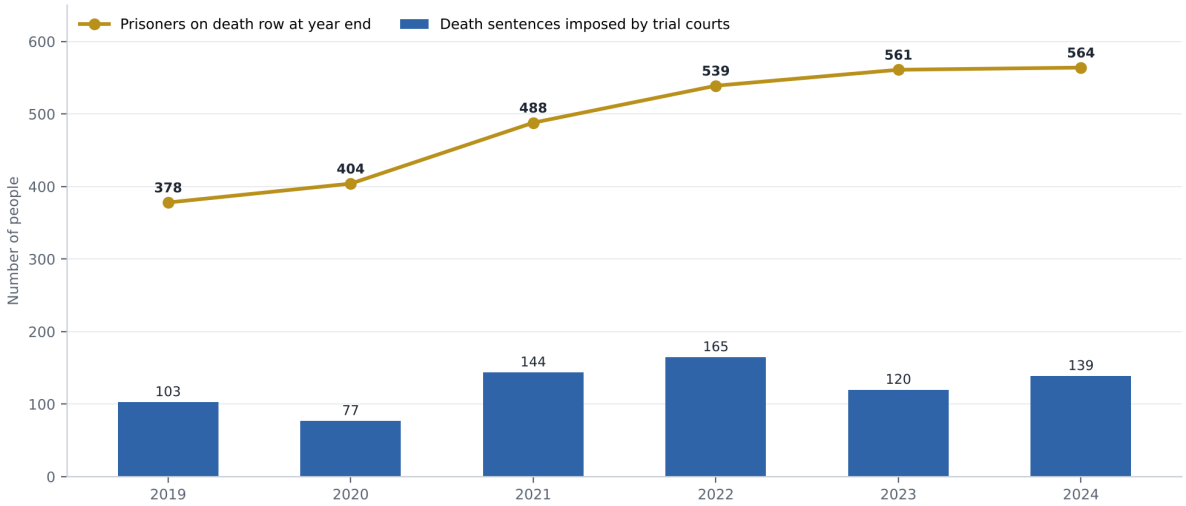
At the same time, Parliament has moved in the other direction. The Criminal Law (Amendment) Act 2013 and the Criminal Law (Amendment) Act 2018 introduced death as a possible punishment for certain repeat and aggravated rape offences and for the rape of a girl under 12. The Bharatiya Nyaya Sanhita 2023, which replaced the Indian Penal Code from 1 July 2024, retains these provisions and adds the death penalty for murder by a group on grounds such as race, caste or community (section 103(2)). Internationally, India has consistently voted against the United Nations General Assembly's resolutions calling for a moratorium on executions, even as support for those resolutions has grown; the tenth resolution, adopted on 17 December 2024, passed by 130 votes to 32 (World Coalition Against the Death Penalty, 2024).

3.2 Sentencing in Practice

A second feature of the Indian system is the gap between the number of people sentenced to death and the number executed. Figure 1 shows the number of death sentences imposed by trial courts each year from 2019 to 2024, alongside the number of prisoners on death row at the end of each year. Trial courts imposed between 77 and 165 death sentences a year in this period, with the 2020 low reflecting court closures during the pandemic. The death row population rose by about half over the same years. Meanwhile, appellate courts confirmed very few sentences. The Supreme Court did not confirm a single death sentence in 2023 or in 2024, and in 2024 it commuted seven and acquitted one prisoner (Project 39A, 2024, 2025).

Figure 1

Death Sentences Imposed by Trial Courts and Year-End Death Row Population in India, 2019 to 2024



Note. Data from Project 39A annual statistics reports (Project 39A, 2021, 2022, 2023, 2024, 2025). Each year's figure is taken from the report covering that year (for 2019, the 2020 report). Later editions occasionally revise earlier counts by one or two; for example, the 2021 report gives 78 for 2020 and the 2022 report gives 146 for 2021. The 2020 low reflects court closures during the COVID-19 pandemic.

The annual reports also show what kinds of cases now attract death sentences. From 2018 to 2022, around half or more of the cases in which trial courts imposed death involved sexual offences, compared with under a third in 2016 (Project 39A, 2023). And in at least 90.5% of the death sentences imposed in 2024, trial courts neither sought nor relied on any information about the accused person, such as a psychiatric evaluation or a report on conduct in prison, despite the Supreme Court's direction in *Manoj*. Nearly a third were imposed on the day of conviction or within a day of it (Project 39A, 2025).

This is the system within which Indian lawyers and judges form their views. It is one in which death is formally exceptional but in practice frequent at trial, rarely confirmed on appeal, and almost never carried out.

4. Research Questions

Following the structure of my earlier study, and building on the reason-based approach of Sethuraju et al. (2016) and Lambert et al. (2008), this study asks one main question and three subsidiary questions:

1. What is the perception of legal professionals in India regarding the death penalty?
2. Which reasons for supporting the death penalty (law and order, cost, retribution, deterrence and incapacitation) appear in the views of Indian legal professionals, and how strongly?
3. Which reasons for opposing the death penalty (brutalisation, innocence, morality, emotional opposition and unfair application) appear in their views, and how strongly?
4. Do these reasons differ between the main groups of legal professionals for whom evidence exists, namely judges, practising lawyers and the bar as an organised body, and how do they compare with the views of law and other students?

5. Method

5.1 Research Design

The original version of this study was designed as a survey of lawyers. Conducting such a survey in India was not possible for this article, and I did not want to present invented responses as if they were data. Instead, I adopted a qualitative documentary and secondary-analysis design. Documentary analysis treats published records as a source of evidence in their own right, to be selected, read and interpreted systematically (Bowen, 2009). It is well suited to a question like this one, because Indian legal professionals' views on the death penalty are already recorded in several substantial public sources, including one large interview study and one survey. Where those sources report numbers, I report them as published, with their original denominators. I have not combined numbers from different studies into new statistics.

5.2 Sources

Sources were chosen purposively. To be included, a source had to (a) concern the death penalty in India, (b) be publicly available, and (c) either report the views of legal professionals (judges, lawyers or bar bodies) directly, or provide the factual context against which those views must be read. I searched the websites of the Law Commission of India and Project 39A at National Law University Delhi, Google Scholar, and Indian legal news services for material published between 2008 and 2025. The final corpus of 14 sources is listed in Table 1. Supreme Court judgments and legislation were read as legal background, as set out in Section 3, but were not counted in the corpus, because judgments express the institutional position of the court rather than the personal views of the judges who write them.

Table 1

Sources Analysed in the Study (N = 14)

Layer	Source (in-text citation)	n	What it contributes
Direct evidence of legal professionals' views	Centre on the Death Penalty (2017), interviews with 60 former Supreme Court judges	1	Reasons for retention and abolition; views on deterrence, wrongful conviction, torture, sentencing discretion
	Marigowda and Nagarajamurthy (2021), survey of 420 respondents including 107 lawyers	1	Lawyers' agreement with eight statements on capital punishment, compared with academics, police and public
	Law Commission of India (2015), Report No. 262	1	Institutional position of senior judges and lawyers after a national consultation
	Legally India (2013); Global Legal Post (2013), reports of bar resolutions	2	Collective positions of organised groups of lawyers after the 2012 Delhi gang rape
System context	National Law University Delhi (2016), Death Penalty India Report	1	Social profile, legal representation and custodial experiences of 373 death row prisoners
	Project 39A annual statistics reports, 2020 to 2024 (Project 39A, 2021, 2022, 2023, 2024, 2025)	5	Death sentences, death row population, appellate outcomes, sentencing practice
Comparison	Justice Verma Committee (2013)	1	Considered view of a committee of senior judges and lawyers on the death penalty for rape
	Lambert et al. (2008); Kamble and Mullet (2014), student surveys	2	Comparison with Indian students using reason-based measures

Note. Supreme Court judgments and legislation (Section 3) were read as legal background and are not counted in the corpus. Full details of each source are given in the References.

The corpus has three layers. The first layer contains direct evidence of legal professionals' views: the interview study with 60 former Supreme Court judges, who between them had decided 208 death penalty cases from 1975 to 2016 (Centre on the Death Penalty, 2017); the survey including 107 lawyers (Marigowda & Nagarajamurthy, 2021); the Law Commission report, written by a commission of judges and

lawyers after a national consultation that included eminent lawyers and judges (Law Commission of India, 2015); and contemporary news reports of two collective positions taken by bar bodies in January 2013. The second layer contains context: the Death Penalty India Report (National Law University Delhi, 2016), based on interviews with 373 of the 385 prisoners then on death row, and five annual statistics reports. The third layer contains comparison data from two student surveys and the Justice Verma Committee (2013) report, which was written by a former Chief Justice of India and two senior members of the legal profession.

5.3 Analysis

Each source was read in full where it was available, or in its published summary where the full text could not be accessed. I coded the material deductively against the ten reason themes in my original instrument (Table 2). For each theme I recorded whether a source contained evidence of support for that reason, rejection of it, or nothing relevant, and noted any figures reported. I then read across the sources to identify patterns within each theme and differences between groups. In the spirit of reflexive thematic analysis (Braun & Clarke, 2006), I also stayed open to themes that did not fit the original framework. The most important of these, the gap between professionals' awareness of the system's flaws and their continued support for the death penalty, became central to the discussion.

5.4 Trustworthiness and Ethics

Two steps were taken to make the analysis more dependable. First, wherever a figure was reported in a news summary, I checked it against a second source and, where possible, against the original publication. Where figures differed between sources, I say so. Second, I have tried to keep a clear line between what sources report and what I infer from them. Because the study used only published material and involved no human participants, ethical approval was not required.

6. Findings

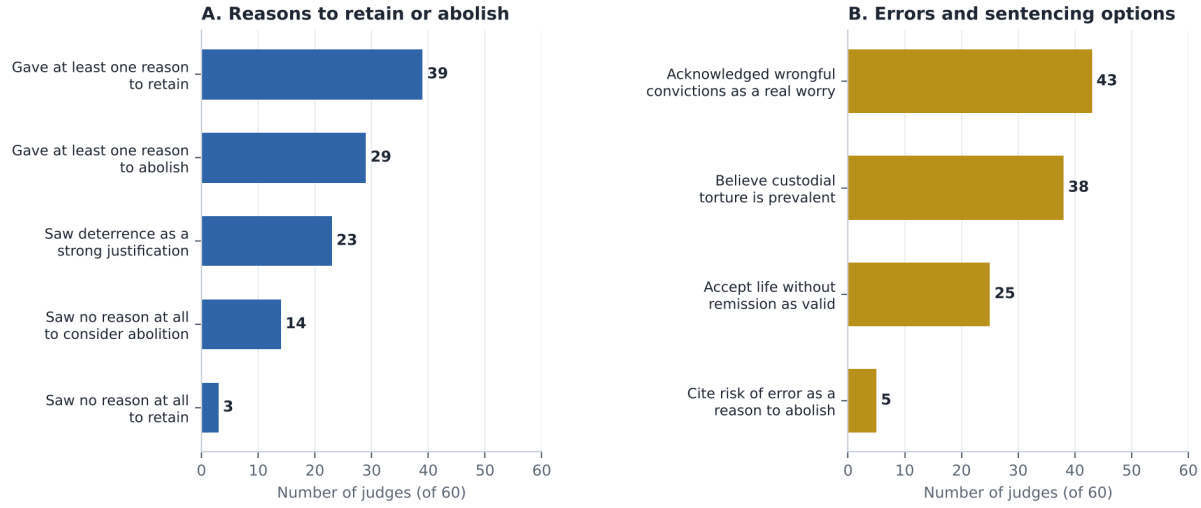
6.1 Overall Position: Retention With Reservations

The clearest finding is that Indian legal professionals, taken as a whole, lean towards keeping the death penalty. In the survey by Marigowda and Nagarajamurthy (2021), 83.2% of the 107 lawyers agreed that a capital punishment law is required in a democratic country like India, and 75.7% agreed that the law should be amended so that executions can be carried out sooner. Lawyers were not significantly different from academics, police officers or members of the public on most items.

The judges interviewed for *Matters of Judgment* present a more complicated picture (Figure 2). Of the 60 judges, 39 identified at least one reason for keeping the death penalty and 29 identified at least one reason for abolishing it, which means that many judges held both kinds of view at once. Only 14 judges saw no reason at all to consider abolition, and only three saw no reason at all to keep it (Centre on the Death Penalty, 2017). The researchers who led the study summarised the overall picture by saying that most judges supported the death penalty (Gambhir, 2017). This is not the image of a judiciary firmly committed to capital punishment. It is closer to a reluctant, conditional retentionism.

Figure 2

Views of 60 Former Supreme Court Judges on the Death Penalty and the Criminal Justice System



Note. Number of judges out of 60. Categories overlap; a judge could give both retentionist and abolitionist reasons. "Torture is prevalent" counts the 38 of 39 judges who discussed custodial torture. Data from Centre on the Death Penalty (2017), as reported by the Centre and in LiveLaw (2017) and Gambhir (2017).

The Law Commission of India (2015) is the main exception. Writing as a body of senior judges and lawyers, it recommended abolishing the death penalty for all crimes except terrorism-related offences and waging war against the state. Even here, however, the profession was divided. Three members of the Commission, a retired judge and the two ex officio government secretaries, declined to sign the report and recorded their own notes. And the Commission itself admitted that it was retaining the death penalty for terrorism despite there being "no valid penological justification for treating terrorism differently from other crimes," because of the national security concerns of lawmakers.

Taken together, these sources suggest that the dominant position among Indian legal professionals is neither full support nor opposition but what I call retention with reservations: support for keeping the death penalty on the statute book combined with real doubts about how it works in practice.

6.2 Reasons for Supporting the Death Penalty

Deterrence

Deterrence was the most frequently cited justification among the judges. Twenty-three of the 60 judges saw deterrence as a strong reason to retain the death penalty (Centre on the Death Penalty, 2017). This is notable because, as was pointed out when the findings were presented, there is no empirical evidence to support this belief (Mantri, 2019), and the wider research literature does not support it either (National Research Council, 2012). The Law Commission of India (2015) reached the opposite conclusion, finding that "the death penalty does not serve the penological goal of deterrence any more than life imprisonment." The lawyers in the Karnataka survey were less convinced of the deterrent or educative value of executions than other groups: 67.3% agreed that capital punishment "creates awareness about criminals in modern society," significantly fewer than among academics, police and the public (Marigowda & Nagarajamurthy, 2021). This is one of the few items on which lawyers stood apart, and it suggests that practising lawyers may be somewhat more sceptical about deterrence than the people around them.

Retribution

Retributive reasoning appears in a different form among Indian legal professionals than among American students. It is rarely expressed as personal anger. Instead it is expressed through the language of the crime itself. *Matters of Judgment* found that for many judges, the "rarest of rare" test came down to how brutal or shocking the crime was, and had little to do with whether life imprisonment was truly "unquestionably foreclosed" as *Bachan Singh* requires (Centre on the Death Penalty, 2017; Gambhir, 2017). In the lawyers' survey, 78.5% agreed that capital punishment should be imposed for criminal acts driven by a "pervert mindset" (Marigowda & Nagarajamurthy, 2021). Both findings point to a "just deserts" form of retribution focused on the nature of the offence. This sits uneasily with the offender-focused balancing that Indian law formally requires, and it may help explain why so few trial courts collect mitigation information before sentencing (Project 39A, 2025).

Law and Order

The law-and-order reason appears most clearly in the collective behaviour of the bar after high-profile crimes. In January 2013, following the Delhi gang rape, the Saket Bar Association resolved that its roughly 2,500 members would not represent the accused, in order to secure "speedy justice" (Legally India, 2013). In the same week, the Women Lawyers Association in Tamil Nadu welcomed a state government proposal to introduce the death penalty and chemical castration for rapists, describing it as a step towards making a "safe-zone for women" (Global Legal Post, 2013). These were not expressions of individual opinion but formal positions taken by organised groups of lawyers, and they framed capital punishment as a response to a crisis of public safety.

It is worth noting that the Supreme Court had already held, in *A. S. Mohammed Rafi v. State of Tamil Nadu* (2011), that bar resolutions refusing to defend particular accused persons are "wholly illegal, against all traditions of the bar, and against professional ethics." The collective positions of 2013 therefore show how strongly the law-and-order reason can pull, even against the profession's own ethical rules. By contrast, the committee chaired by former Chief Justice J. S. Verma, set up after the same crime, declined to recommend the death penalty for rape (Justice Verma Committee, 2013). Senior members of the profession, writing with time to reflect, reached a different conclusion from lawyers responding in the heat of the moment.

Incapacitation

Incapacitation is less visible in the Indian sources than in American research, probably because Indian law now provides a strong alternative. Since *Sriharan* (2016), courts can impose life imprisonment without the possibility of remission. In *Matters of Judgment*, 25 judges considered this middle option legally valid, while

seven thought it unconstitutional (LiveLaw, 2017). For judges who accept it, the fear that a murderer might be released and kill again can be met without a death sentence. This may be one reason why appellate courts commute so many death sentences: in 2024, for example, the Supreme Court commuted seven and confirmed none (Project 39A, 2025). In the lawyers' survey, 57.9% of lawyers agreed that a life sentence should be awarded instead of capital punishment, a figure that sits alongside, rather than against, their general support for keeping the death penalty (Marigowda & Nagarajamurthy, 2021). Lambert et al. (2008) found a similar pattern among students, where support for life without parole went together with support for the death penalty rather than replacing it.

Cost

None of the sources in the corpus addressed the cost of capital punishment in India, and I could not find a published study estimating it. The cost argument, which features in American research, does not appear to form part of the Indian professional debate at all. Given the long time prisoners spend on death row and the multiple layers of appeal and mercy review, it is unlikely that capital cases are cheaper, but this is an inference rather than a finding, and it is a clear gap for future research.

6.3 Reasons for Opposing the Death Penalty

Innocence and Wrongful Conviction

The risk of convicting the innocent is the theme on which legal professionals' knowledge and their conclusions diverge most sharply. Forty-three of the 60 former Supreme Court judges acknowledged wrongful convictions as a worrying reality, yet only five cited the possibility of error as a reason to abolish the death penalty (Centre on the Death Penalty, 2017). Some judges, according to the researchers, weighed wrongful convictions against wrongful acquittals rather than treating them as a separate problem (Gambhir, 2017). Thirty-nine judges discussed custodial torture, and 38 of them believed it to be prevalent.

This awareness is well founded. The Death Penalty India Report found that 82.6% of the prisoners on death row who spoke about police custody said they had been tortured, and 78.3% of those who had confessed said that torture had led to their confession (National Law University Delhi, 2016). The appellate record makes the same point. In 2019, the Supreme Court acquitted six men from a nomadic community who had spent around 16 years in prison. Three of them had had their death sentences confirmed by the Supreme Court itself in 2009, a judgment the Court later recalled. It found that they had been falsely implicated and directed the state to pay each of them compensation (*Ankush Maruti Shinde v. State of Maharashtra*, 2019). In 2024, too, the Supreme Court acquitted a prisoner who had been sentenced to death (Project 39A, 2025).

The Indian evidence therefore mirrors the student finding of Lambert et al. (2008), where 80% believed innocent people are sometimes sentenced to death, but this belief did not predict opposition. It appears that among Indian judges, too, knowing that the system makes mistakes is not enough to turn someone against the punishment.

Unfair Application

The evidence that the death penalty falls most heavily on the poor and marginalised is stronger in India than almost anywhere. The Death Penalty India Report found that 74.1% of prisoners sentenced to death were economically vulnerable, and 76% belonged to backward classes or religious minorities. Twenty-three per cent had never attended school. On legal representation, 97% had no lawyer during police interrogation, and 76.7% said they had never met their lawyer outside court (National Law University Delhi, 2016). The Law Commission of India (2015) drew directly on this evidence, warning of the "disparate and maybe even discriminatory impact" of the death penalty and concluding that "there exists no principled method to remove such arbitrariness from capital sentencing."

The judges, too, recognised arbitrariness. More than half of them believed that a judge's own background, including religion and personal beliefs, influenced the choice between death and life imprisonment, and

the judges were split roughly in half between those who saw this subjectivity as a serious problem and those who regarded it as inevitable (Centre on the Death Penalty, 2017; LiveLaw, 2017). They also widely acknowledged the poor state of legal aid. Here again, however, concern about unfair application did not translate into a call for abolition in most cases. The dominant response, both in the judges' interviews and in the Supreme Court's own recent work in *Manoj*, has been to try to fix the sentencing process rather than to end the punishment.

Morality and Emotional Opposition

Principled moral opposition, the view that the state should not kill, is present but rare among Indian legal professionals. Only three of the 60 judges saw no reason at all to keep the death penalty, which is the closest measure in the corpus of an unconditional moral objection (Centre on the Death Penalty, 2017). The Law Commission's argument for abolition rested mostly on practical grounds (arbitrariness, wrongful conviction and the failure of deterrence) rather than on a moral rejection of state killing, and it also stressed the need to focus on restorative justice for victims rather than on the death penalty "as ultimate measure of justice to victims" (Law Commission of India, 2015). In the lawyers' survey, only 37.4% of lawyers thought it was justified for human rights commissions to intervene in executions (Marigowda & Nagarajamurthy, 2021).

I found no source that measured emotional opposition among legal professionals, such as sadness at an execution. Among Indian students, a majority reported feeling sad when a person was executed, even while many supported the death penalty (Lambert et al., 2008). Whether lawyers share this mix of feelings is unknown.

Brutalisation

The brutalisation argument, that executions set a violent example, was absent from every source in the corpus. This is perhaps unsurprising. With only eight executions in India between 2004 and 2025, there is little to test, and the Indian debate has been about whether people should be sentenced to death rather than about the social effects of executing them. As with cost, this is a gap rather than a finding.

6.4 Summary of Findings

Table 2 brings the findings together. It lists the statements used in my original study of lawyers, the theme each statement measures, and what the Indian documentary evidence shows about legal professionals' views on that theme.

Table 2

Reasons for Supporting and Opposing the Death Penalty: Statements, Themes and Indian Evidence

Statement used in the original study of lawyers	Theme	What the Indian evidence shows about legal professionals
Reasons for supporting		
Crime is one of the most serious social problems facing society today. We need capital punishment to provide law and order in society. Violent crime rates have been increasing during the past five years.	Law and order	Strong in collective positions of the bar after high-profile sexual violence (2013); weaker in reflective bodies such as the Verma Committee and Law Commission
It costs more money to incarcerate someone for life without parole for the crime of murder than it does to execute that person.	Cost	Absent from all sources; no Indian cost study found
I feel the death penalty should only be used for the crime of murder and no other crime such as rape. I become angry when a convicted murderer does not receive the death penalty.	Retribution	Present as offence-focused "just deserts": "rarest of rare" often judged by the brutality of the crime; 78.5% of lawyers favour death for "pervert mindset" crimes

Statement used in the original study of lawyers	Theme	What the Indian evidence shows about legal professionals
The death penalty is a more effective deterrent than life imprisonment.	Deterrence	Strongest reason among judges (23 of 60); rejected by the Law Commission; lawyers less convinced than other groups of its "awareness" value (67.3%)
Most convicted murderers would kill again if given the opportunity.	Incapacitation	Weakened by the option of life without remission (accepted as valid by 25 judges); 57.9% of lawyers favour life sentences instead of death
Reasons for opposing		
Executions set a violent example that leads to further violence.	Brutalisation	Absent from all sources; very few executions to study
There is almost no danger of sentencing an innocent person to death (reverse-scored).	Innocence	Widely acknowledged (43 of 60 judges; 38 of 39 see torture as prevalent) but rarely a reason to abolish (5 of 60)
When society executes an individual for a violent crime, it is responding to violence with violence. The death penalty serves little purpose other than to demonstrate society's cruelty.	Morality	Rare; only 3 of 60 judges see no reason to retain; Law Commission's case is mainly practical
It saddens me when a person is executed, regardless of the crime they committed.	Emotional opposition	Not measured among legal professionals; present among Indian students
The poor are more likely to receive the death penalty than the middle class and rich. Minorities are more likely to receive the death penalty.	Unfair application	Strongly documented (74.1% of death row prisoners economically vulnerable; 76% from backward classes or religious minorities); accepted by the Law Commission and many judges, usually as a reason for reform rather than abolition

Note. Statements are taken from the author's earlier survey instrument for lawyers, which follows the reason-based items used by Sethuraju et al. (2016) and Lambert et al. (2008). Figures for judges are from Centre on the Death Penalty (2017) and LiveLaw (2017); figures for lawyers are from Marigowda and Nagarajamurthy (2021), n = 107; prisoner figures are from National Law University Delhi (2016).

Three patterns stand out. First, deterrence and offence-focused retribution are the main supports for the death penalty among Indian legal professionals, as among students in India and the United States. Second, Indian professionals are very aware of the problems of innocence and unfair application, more so than students, because they see these problems at work. Third, in most cases this awareness does not lead them to oppose the death penalty. Practising lawyers and the organised bar appear more supportive than senior judges, and senior judges more supportive than the Law Commission, which suggests that distance from the immediate pressure of a case, and time to reflect on the evidence, may matter.

7. Discussion

This study set out to understand how legal professionals in India view the death penalty, using the same framework of reasons that I had used to study lawyers in Pakistan. The answer, in short, is that most Indian legal professionals want to keep the death penalty but have serious doubts about how it is applied. This section considers what this means.

The first point concerns the gap between knowledge and attitude. Earlier research suggested that people who support the death penalty for retributive reasons are not easily moved by information about its flaws (Ellsworth & Ross, 1983). It might have been expected that legal professionals, who see these flaws at first hand, would be different. The Indian evidence suggests that they are not. Forty-three former Supreme Court judges acknowledged wrongful convictions as a real problem, but only five treated the risk of error as a reason for abolition. This is very close to what Lambert et al. (2008) found among students in Andhra Pradesh. A plausible explanation is that legal professionals place the problem in the system rather than in the punishment. If torture, poor legal aid and careless sentencing are the problem, the solution is to fix them, not to abolish the death penalty. This is consistent with the view, voiced by one speaker at the launch of *Matters of Judgment*, that it is the institutions that enforce the criminal law, rather than the law itself, that have failed (Gambhir, 2017).

The second point concerns role. The sources suggest a gradient: the organised bar, at least in moments of public outrage, has taken the most punitive positions; practising lawyers in the Karnataka survey were broadly supportive but more sceptical of deterrence than others; senior judges were divided and reluctant; and the Law Commission and the Verma Committee, both written by senior lawyers and judges with time to deliberate, were the most cautious. This fits the observation of Sethuraju et al. (2016) that education and socialisation shape death penalty reasoning, and it suggests that the professional role a person occupies, and the conditions in which they form their view, may matter as much as their legal training.

The third point concerns the Indian system as a whole. The pattern of "retention with reservations" may help explain one of its most striking features: that trial courts impose well over a hundred death sentences a year while appellate courts confirm very few and executions are rare (Figure 1). Trial judges, working close to the crime and under public pressure, impose death; appellate judges, further from the case and more aware of the system's flaws, commute it; and the state rarely carries out the sentences that survive. In this sense, the Indian legal profession's reservations about the death penalty are expressed not through abolition but through attrition at each stage of the process. Johnson and Zimring (2009) have described a similar pattern of formal retention combined with infrequent use in other Asian democracies. The human cost of this pattern is borne by the hundreds of prisoners who wait on death row for years, most of them poor and many of them later acquitted or commuted.

For readers interested in comparison, the Indian findings both resemble and differ from the American research on which my original instrument was based. As in the United States, retribution and deterrence are the main reasons for support, and the risk of executing the innocent is the most powerful argument against. Unlike in the United States, cost and brutalisation play almost no part in the Indian debate, and the "law and order" reason is closely tied to sexual violence against women and children. These differences are a reminder that a survey instrument developed in one country cannot simply be transferred to another without adaptation.

8. Limitations and Future Research

This study has clear limitations. Most importantly, it does not report new data from Indian lawyers. It relies on sources that were collected for other purposes, with different samples and different questions. The 60 judges in *Matters of Judgment* were former Supreme Court judges, not trial judges, and the 107 lawyers in the Karnataka survey were drawn from one region and answered a short set of yes-or-no items. I also found some inconsistencies between the tables and the text of that survey in the reported test statistics, so I have relied on its percentages rather than its significance tests, except where both agree. Some sources were available to me only through official summaries and reliable news reports, rather than in full. Finally, no source measured emotional opposition, brutalisation or cost beliefs among Indian legal professionals, so my conclusions on those themes are necessarily tentative.

These limitations point directly to the next step. A survey of practising advocates in India, using the full set of support and opposition statements listed in Table 2, would make it possible to test the patterns suggested here. It would be especially useful to compare prosecutors with defence lawyers, lawyers who have worked on capital cases with those who have not, and lawyers in different states. Including an item on life imprisonment without remission, and a short information component on wrongful convictions, would show whether knowledge changes attitudes when it is presented directly. Interviews with trial judges, who impose most death sentences, would fill another important gap. Finally, a comparative study of lawyers in India and Pakistan, using the same instrument, would help us understand how two legal systems that share a common penal code have come to apply it so differently.

9. Conclusion

The death penalty in India is upheld by the law, by public opinion and, in most cases, by the legal profession. But the support of Indian legal professionals is conditional and uneasy. They tend to believe it deters crime and is deserved for the worst offences, and the organised bar has at times demanded it loudly. At the same time, many of them know that the system that imposes it relies on coerced confessions, offers poor legal aid, and falls hardest on the poor and marginalised. For most, these doubts lead not to abolition but to a hope that the process can be made fairer.

Whether that hope is realistic is the question that India's courts and Parliament now face. The Law Commission of India (2015) concluded that there is no principled way to remove arbitrariness from capital sentencing. The Supreme Court's own efforts, from *Bachan Singh* to *Manoj* and the pending reference on mitigation, are attempts to prove otherwise. Understanding what lawyers and judges believe, and why, is an essential part of that debate, because it is through their decisions that the death penalty is either imposed or withheld.

References

A. S. Mohammed Rafi v. State of Tamil Nadu, (2011) 1 SCC 688 (Supreme Court of India).

American Bar Association. (1997). *Resolution calling for a moratorium on executions* [Adopted by the House of Delegates, February 1997]. American Bar Association.

Ankush Maruti Shinde v. State of Maharashtra, Criminal Appeal (Supreme Court of India, March 5, 2019).

Bachan Singh v. State of Punjab, (1980) 2 SCC 684 (Supreme Court of India).

Bharatiya Nyaya Sanhita, No. 45 of 2023 (India).

Bohm, R. M. (1987). American death penalty attitudes: A critical examination of recent evidence. *Criminal Justice and Behavior, 14*(3), 380–396.

Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal, 9*(2), 27–40. https://doi.org/10.3316/QRJ0902027

Bowers, W. J., & Pierce, G. L. (1980). Deterrence or brutalization: What is the effect of executions? *Crime & Delinquency, 26*(4), 453–484.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology, 3*(2), 77–101. https://doi.org/10.1191/1478088706qp063oa

Centre on the Death Penalty. (2017). *Matters of judgment: A study of former Supreme Court judges' views on the death penalty in India*. National Law University Delhi. https://www.project39a.com/moj

Criminal Law (Amendment) Act, No. 13 of 2013 (India).

Criminal Law (Amendment) Act, No. 22 of 2018 (India).

Ellsworth, P. C., & Gross, S. R. (1994). Hardening of the attitudes: Americans' views on the death penalty. *Journal of Social Issues, 50*(2), 19–52.

Ellsworth, P. C., & Ross, L. (1983). Public opinion and capital punishment: A close examination of the views of abolitionists and retentionists. *Crime & Delinquency, 29*(1), 116–169.

Gambhir, A. (2017, December 10). NLUD's Centre on the Death Penalty releases report with interviews of 60 ex-SC judges. *Bar & Bench*. https://www.barandbench.com/news/death-penalty-nlud-report

Global Legal Post. (2013, January 2). Indian women lawyers back tough sex crime punishment. *Global Legal Post*. https://www.globallegalpost.com/news/indian-women-lawyers-back-tough-sex-crime-punishment-48648225

In Re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences, Suo Motu Writ Petition (Crl.) No. 1 of 2022 (Supreme Court of India, order of September 19, 2022).

Jagmohan Singh v. State of U.P., (1973) 1 SCC 20 (Supreme Court of India).

Japan Federation of Bar Associations. (2016). *Declaration calling for reform of the penal system, including the abolition of the death penalty* [Adopted at the 59th Convention on the Protection of Human Rights, Fukui, October 7, 2016]. Japan Federation of Bar Associations.

Johnson, D. T., & Zimring, F. E. (2009). *The next frontier: National development, political change, and the death penalty in Asia*. Oxford University Press.

Justice Verma Committee. (2013). *Report of the Committee on Amendments to Criminal Law*. Government of India.

Kamble, S., & Mullet, E. (2014). Young Indians' views on the appropriateness of the death penalty as a function of circumstances of crime: A preliminary study. *Psicológica, 35*, 601–611.

Lambert, E. G., Pasupuleti, S., Jiang, S., Jaishankar, K., & Bhimarasetty, J. V. (2008). Views on the death penalty among college students in India. *Punishment & Society, 10*(2), 207–218.

Law Commission of India. (2015). *The death penalty* (Report No. 262). Government of India. https://www.delhihighcourt.nic.in/files/reports/262.pdf

Legally India. (2013, January 2). "Immoral" for lawyers to represent rape accused, say Saket advocates, as fast-track PIL accepted and court to open. *Legally India*. https://www.legallyindia.com/the-bar-and-bench/immoral-

for-lawyers-to-represent-rape-accused-say-saket-advocates-as-fast-track-pil-accepted-a-court-to-open-20130102-3341

LiveLaw. (2017, December 12). Explained: Death penalty, matters of judgment. *LiveLaw*. https://www.livelaw.in/explained-death-penalty-matters-judgment

Machhi Singh v. State of Punjab, (1983) 3 SCC 470 (Supreme Court of India).

Manoj v. State of Madhya Pradesh, (2023) 2 SCC 353 (Supreme Court of India).

Mantri, G. (2019, September 20). Do we need death penalty in India? Many judges agree, find researchers. *The News Minute*. https://www.thenewsminute.com/article/do-we-need-death-penalty-india-many-judges-agree-find-researchers-109241

Marigowda, P., & Nagarajamurthy, B. N. (2021). Opinion towards capital punishment: A comparative study between academicians, lawyers, police and public. *International Journal of Indian Psychology, 9*(1), 58–64. https://doi.org/10.25215/0901.008

Mithu v. State of Punjab, (1983) 2 SCC 277 (Supreme Court of India).

National Law University Delhi. (2016). *Death penalty India report* (A. Surendranath, Lead Author). National Law University Delhi Press. https://www.project39a.com/dpir

National Research Council. (2012). *Deterrence and the death penalty* (D. S. Nagin & J. V. Pepper, Eds.). The National Academies Press.

Project 39A. (2021). *Death penalty in India: Annual statistics report 2020*. National Law University Delhi. https://project39a.com/annual-statistics-2020

Project 39A. (2022). *Death penalty in India: Annual statistics report 2021*. National Law University Delhi. https://www.project39a.com/annual-statistics-page-2021

Project 39A. (2023). *Death penalty in India: Annual statistics report 2022*. National Law University Delhi. https://project39a.com/annual-statistics-report-2022

Project 39A. (2024). *Death penalty in India: Annual statistics report 2023*. National Law University Delhi.

Project 39A. (2025). *Death penalty in India: Annual statistics report 2024*. National Law University Delhi.

Radelet, M. L., & Borg, M. J. (2000). The changing nature of death penalty debates. *Annual Review of Sociology, 26*, 43–61.

Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 (Supreme Court of India).

Sethuraju, R., Sole, J., & Oliver, B. E. (2016). Understanding death penalty support and opposition among criminal justice and law enforcement students. *SAGE Open, 6*(1), 1–15. https://doi.org/10.1177/2158244015624952

Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1 (Supreme Court of India).

Tyler, T. R., & Weber, R. (1982). Support for the death penalty: Instrumental response to crime, or symbolic attitude? *Law & Society Review, 17*(1), 21–45.

Union of India v. V. Sriharan, (2016) 7 SCC 1 (Supreme Court of India).

World Coalition Against the Death Penalty. (2024, December 17). *Two thirds of the United Nations General Assembly vote in favor of the 10th resolution for a moratorium on the death penalty*. https://worldcoalition.org/two-thirds-of-the-united-nations-general-assembly-vote-in-favor-of-the-10th-resolution-for-a-moratorium-on-the-death-penalty/

Zeisel, H., & Gallup, A. M. (1989). Death penalty sentiment in the United States. *Journal of Quantitative Criminology, 5*(3), 285–296.

// DECLARATIONS

▸ **Funding**	This research received no specific grant from any funding agency.
▸ **Conflict of Interest**	The authors declare that they have no known financial or personal conflicts of interest that could have influenced the work reported in this paper.
▸ **Data Availability Statement**	No new data were created. The study analysed publicly available documents and official statistics, all of which are listed in the references and can be accessed online.
▸ **Ethical Statement**	Ethical approval was not required because the study analysed only publicly available documents and published statistics and did not involve human participants.
▸ **AI Use Disclosure**	[Authors to state how generative AI tools were used in preparing this manuscript, as required by the journal's generative AI policy.]

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