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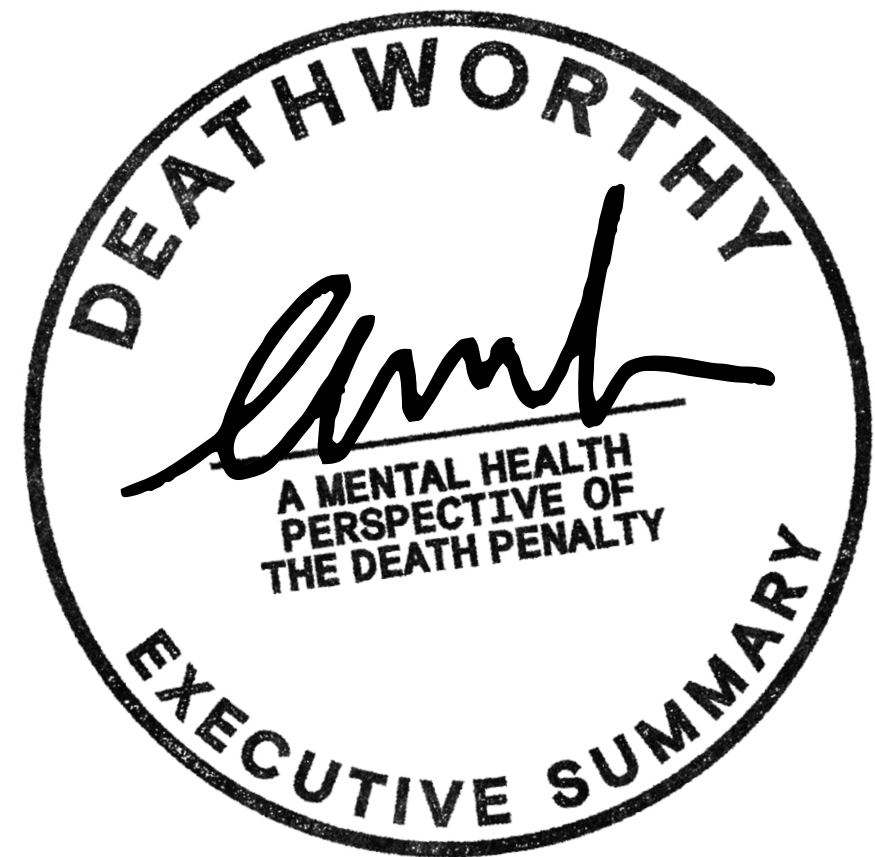
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PROJECT 39A  
EQUAL JUSTICE  
EQUAL OPPORTUNITY

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# <sup>2</sup>INTRODUCTION

This Report on mental health and the death penalty is, in many ways, a continuation of the larger project of untangling the death penalty in the Indian context. Unlike previous works, however, it places issues of mental health and the psychosocial realities of death row prisoners, front and centre. The Mental Health Research Project, findings of which are presented in this Report, was conceptualised to undertake an exploration into (a) psychiatric concerns among death row prisoners, (b) intellectual disability among prisoners sentenced to death, and (c) the psychological consequences of being on death row.

Any meaningful inquiry into the above-mentioned aims necessitates undertaking the task of first understanding the social reality and life history of the individual. This is because our social realities have an immense influence on us, particularly those that we are exposed to in our developmental and formative years. The Report thus provides a longitudinal view of death row prisoners and spans the life of the prisoners from childhood to their lives on death row. It is a modest exercise in providing an insight into the harsh and often unforgiving life that these prisoners have faced, and illustrates the web of poverty, abuse, neglect, violence, and little to no access to public goods and opportunities that is the lives of an overwhelming majority of death row prisoners.

The Supreme Court in 2014 in *Shatrughan Chauhan v Union of India*, pronounced that insanity was a supervening factor warranting commutation of the death sentence to life imprisonment. This led us to inquire into the different kinds of mental illnesses among death row prisoners. The findings indicate a crisis. Among the 88 prisoners interviewed during the course of the fieldwork, the main psychiatric illnesses found were Major Depressive Disorder (30 prisoners), Generalised Anxiety Disorder (19 prisoners) and Substance Use Disorder (18 prisoners). Three prisoners reported to have psychotic episodes in prison – one of whom had a psychotic episode while in solitary confinement. 37 prisoners had sub-clinical mental health concerns. Eight prisoners had attempted death by suicide in prison and close to 50% had considered it. The death row population is precariously vulnerable to mental illness and serious psychological harm in state custody. Through the voices of death row prisoners, the Report also brings to light what the experience of these illnesses means for the prisoners, and how these must be seen in the context of death row. These findings raise serious questions about the state's responsibility in addressing and preventing the mental health crisis among death row prisoners, and the consequences of a failure to act upon this responsibility.

The Report also fills a crucial knowledge gap in death penalty jurisprudence, i.e., intellectual disability. The death penalty sentencing framework is meant to determine the degree of responsibility

to be attributed to the accused. Barriers to decision making and judgment formation and gullibility are some key aspects of intellectual disability, which have a direct bearing on the degree of responsibility that can be attributed to a person with the disability. Persons with intellectual disability are also extremely vulnerable to victimisation and abuse within the criminal justice system. Nearly 11% of prisoners were diagnosed with intellectual disability and over 75% were found to have deficits in intellectual functioning. We have sentenced to death people, who, due to the nature of their disability, might very well be exempt from the death penalty altogether.

The Supreme Court has resoundingly rejected suffering as an aim of the death penalty and an attempt has been made to provide content to this suffering by understanding the meaning of this agony through the lens of pain and deprivations. The oscillation between hope and hopelessness, and the many deprivations and violence that death row prisoners face, which are often directly related to their punishment, paints a grim picture. By unravelling the psychological harm of the death penalty and the pains of death row due to both their treatment in prison and narratives outside, the Report urges the reader to question whether we live in a society which willingly accepts pain as punishment.

In answering who gets the death penalty, it must be borne in mind that it is not only the guilty who get the death penalty. It is not only those who are “extremely culpable” who get the death penalty. It would appear that more often than not, the court is inaccurate in its assessment. Of the 88 prisoners we interviewed, 60% either had their sentence commuted or were acquitted by either the High Courts or the Supreme Court. Death row prisoners are also not the only ones who go through this agony on a daily basis. Scant attention has been paid to a population that was never on trial: the families of death row prisoners. Held guilty by association, families of death row prisoners bear silently the social ostracization, the stigma, the loss, and grief. Their grief remains real, but unvalidated, socially and legally.

In highlighting these various issues, the Report is an endeavour to contribute to the discourse on the death penalty in India. It urges a deeper look into the lives of those who are the recipients of the harshest punishment in our criminal justice system.

# <sup>6</sup> CHAPTER I COVERAGE

# Sample

The number of death row prisoners in the country is always in flux. We froze our sample based on the number of people on death row at the time of our first prison interview, 21st December 2016. Of the 388 prisoners who were on death row on that day, we interviewed 88, across five states (Chhattisgarh, Delhi, Karnataka, Kerala and Madhya Pradesh).

We interviewed 88 prisoners in total, even though 97 prisoners were living on death row in the five states and across 16 Central Prisons and one District Prison, where the interviews were conducted. (Graph 1.1)

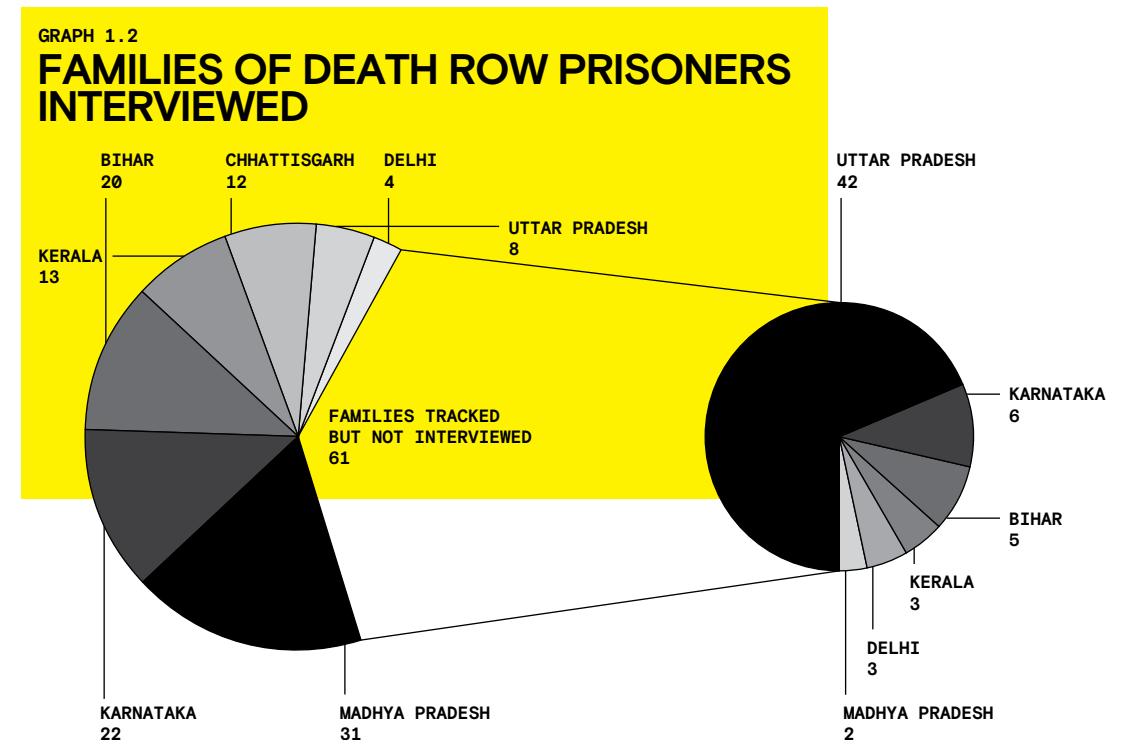
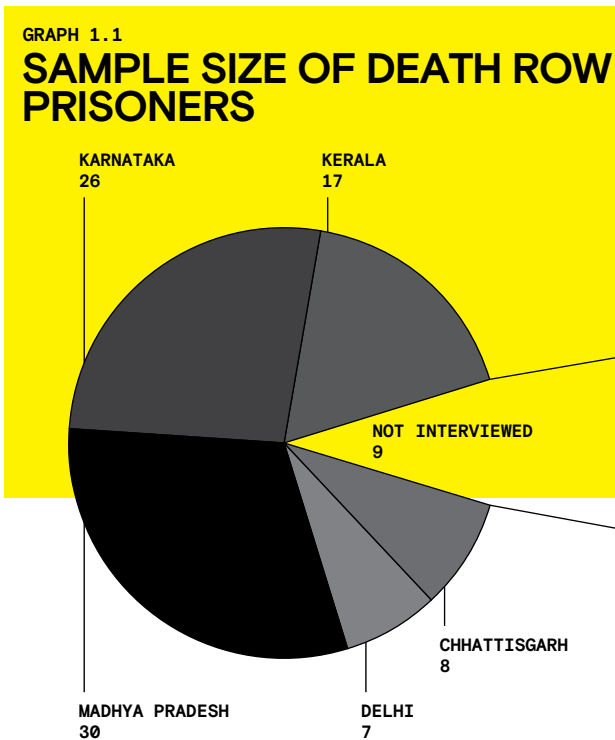
Though we interviewed 88 prisoners across five states, we tracked 171 families and interviewed 110, across seven states (Bihar, Chhattisgarh, Delhi, Karnataka, Kerala, Madhya Pradesh, and Uttar Pradesh) (Graph 1.2). The family tracking began on 31st October 2016, while the interviews began on 14th November 2016 and ended on 13th April 2018.

# Information Pertaining to Socio-Economic Demography

## ■ AGE-WISE COMPOSITION OF DEATH ROW PRISONERS

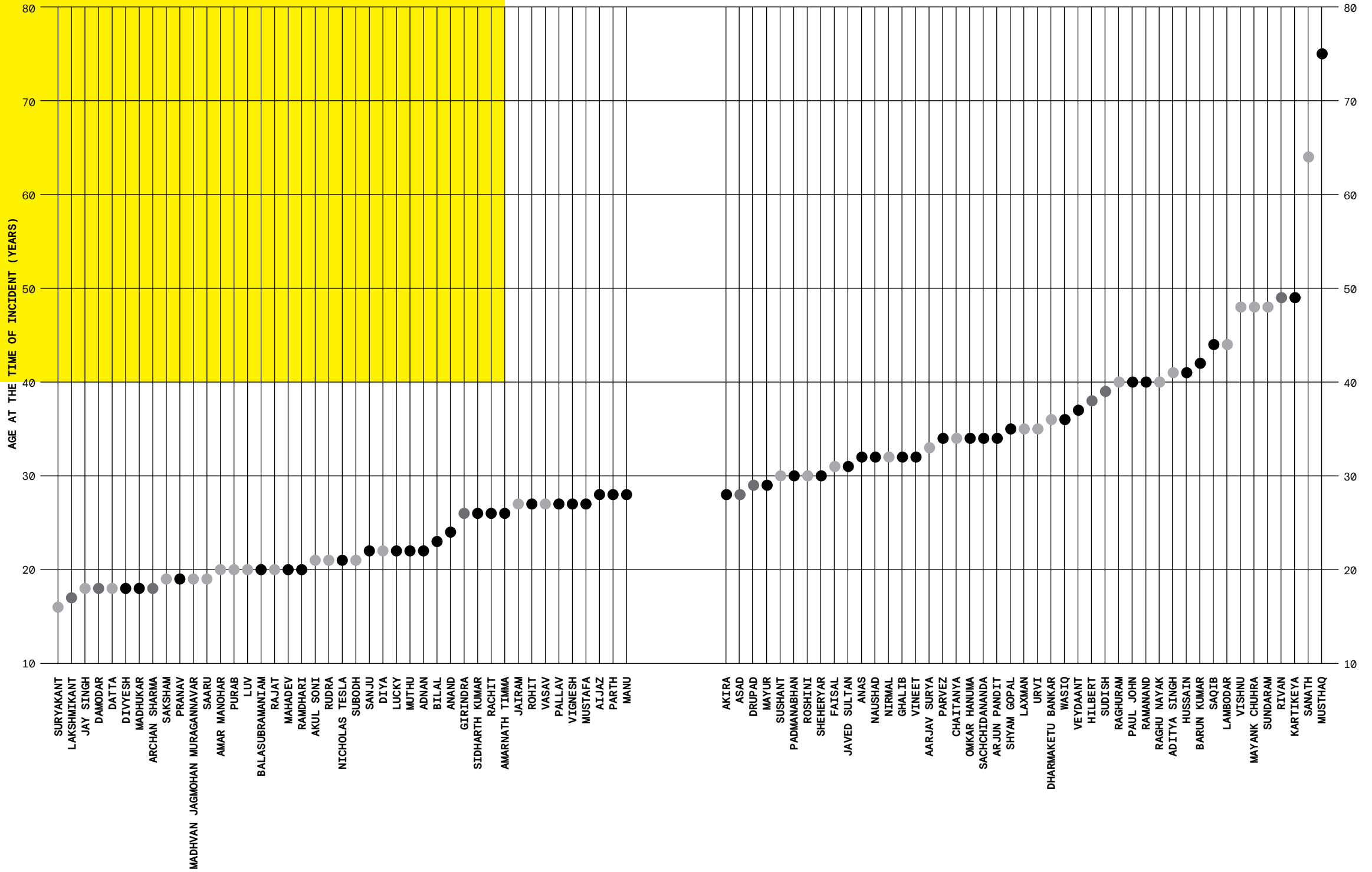
Age, particularly young age, of the accused, becomes important as a potential mitigating factor that a court may consider. Research has shown that younger people's brains are still developing, and they may have increased impulsivity, lesser maturity and a lesser ability for considered foresight.

The median age of death row prisoners at the time of the incident was 28 (16-75) years and at the time of assessment, the median age was 37 (22-78) years. (Graph 1.3)



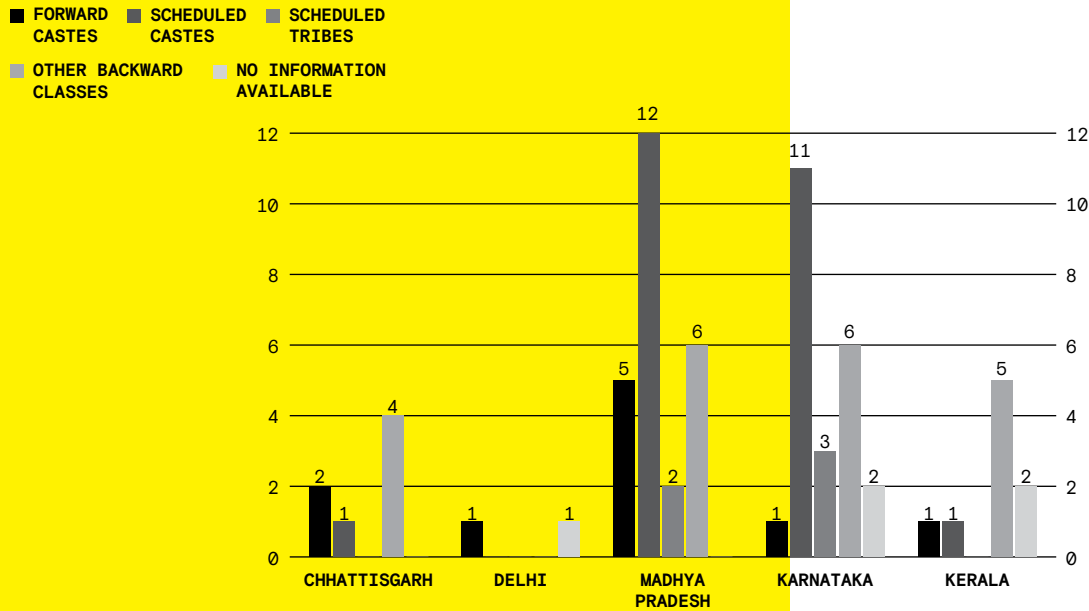
# AGE-WISE COMPOSITION OF DEATH ROW PRISONERS AT THE TIME OF INCIDENT

- DEATH SENTENCE IMPOSED BY TRIAL COURT
- HIGH COURT CONFIRMED
- SUPREME COURT CONFIRMED

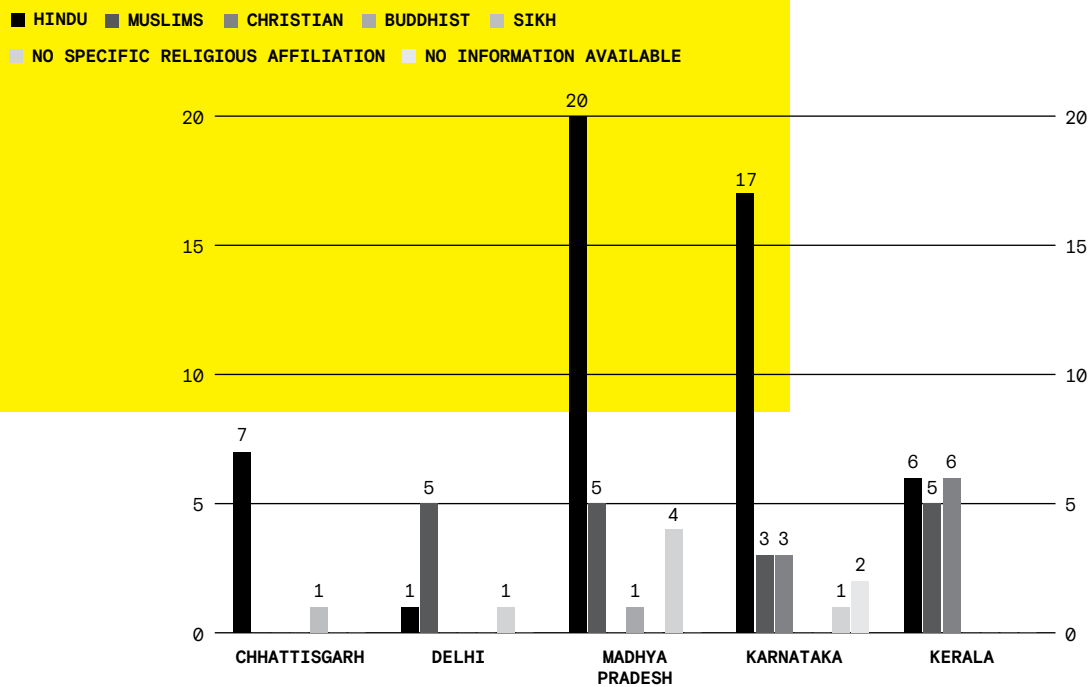




GRAPH 1.4  
**STATE-WISE DISTRIBUTION OF DEATH ROW PRISONERS BASED ON CASTE**



GRAPH 1.5  
**STATE-WISE DISTRIBUTION OF DEATH ROW PRISONERS BASED ON RELIGION**



**CASTE AND RELIGION-WISE COMPOSITION**

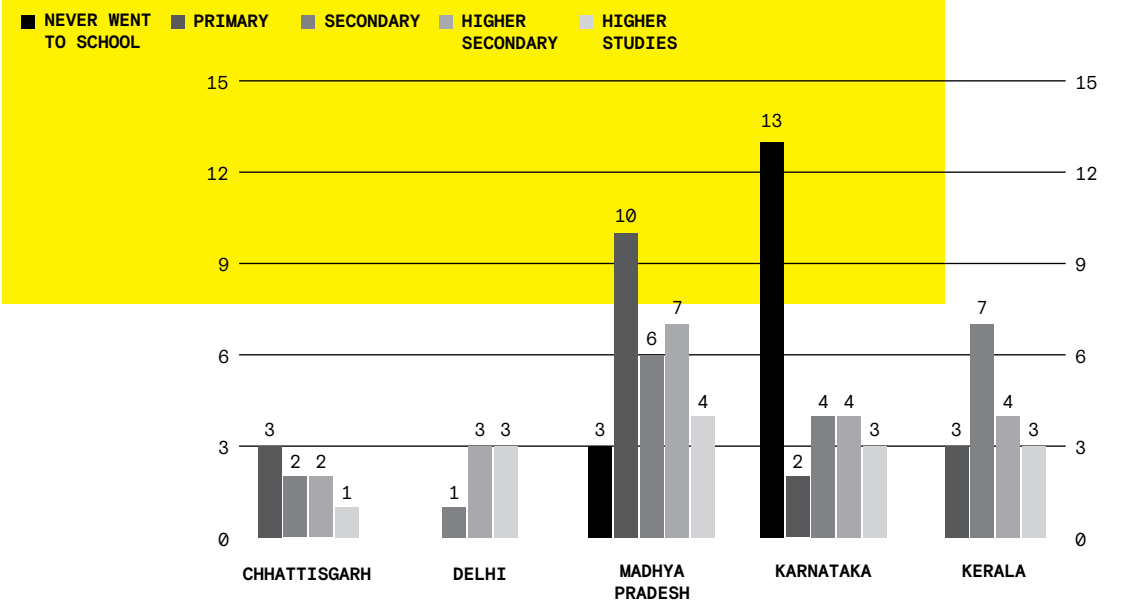
Information on the caste of the prisoner was collected through interviews with prisoners or their families, judgements, prison lists and news reports. Prisoners have been categorised into various caste groups on the basis of lists prepared by each state under the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. 25 prisoners, the largest proportion, belonged to Scheduled Castes, followed by 21 from Other Backward Classes. Only 10 prisoners belonged to the Forward Castes. (Graph 1.4)

With respect to religion, while most of the prisoners we interviewed identified themselves as Hindus (51), at 18, Muslims were the largest religious minority group. (Graph 1.5)

**EDUCATIONAL PROFILE OF PRISONERS`**

The information presented here is on education obtained by the prisoner before their arrest. Nine prisoners resumed their studies in prison, but this has not been reflected in the data presented here. 34 (38.7%) death row prisoners out of the 88 interviewed had not undertaken their secondary education at the time of offence. (Graph 1.6) A closer look at the context of the life of a majority of

GRAPH 1.6  
**STATE-WISE DISTRIBUTION OF EDUCATIONAL PROFILE OF DEATH ROW PRISONERS**

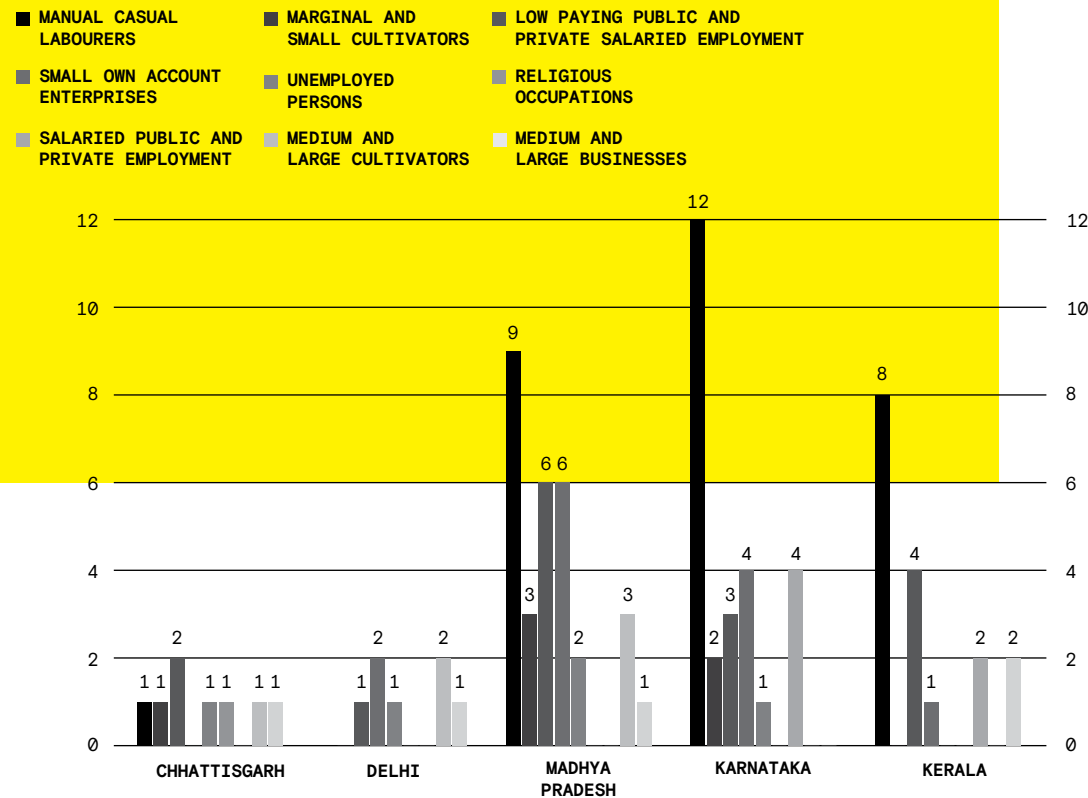


prisoners reveals extremely poor economic conditions because of which they have had to, at a young age, forego their education and get out of age-appropriate spaces into spaces meant for adults. Prisoners also mentioned a lack of teachers and well-functioning schools as reasons for dropping out. Early drop-out from school could also indicate unaddressed mental health concerns and intellectual disability, the latter often being expressed as 'disinterest in school'.

**■ OCCUPATION**

We found that a majority of the death row population entered the unorganized work sector during their adolescence. Unattended and unmentored exposure to such spaces influences the manner in which an individual makes meaning of the world around them and can have long-term consequences for an individual's social and mental health outcomes later in life. (Graph 1.7)

GRAPH 1.7  
**STATE-WISE DISTRIBUTION OF OCCUPATION OF DEATH ROW PRISONERS**

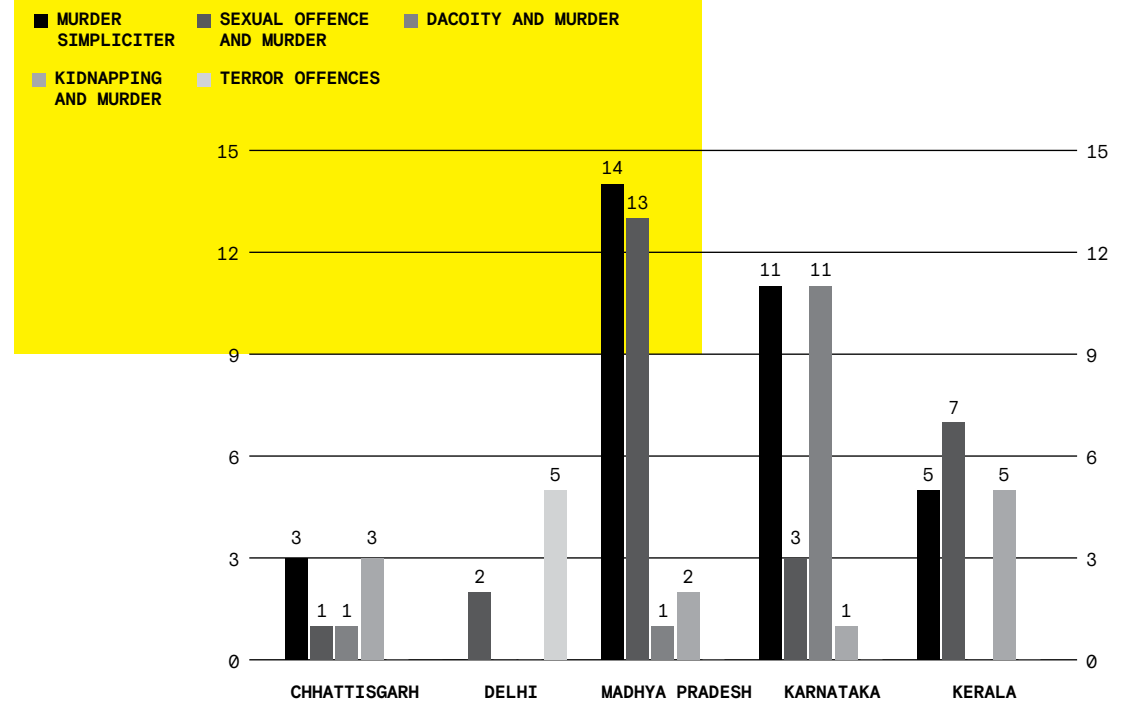


# Information Pertaining to the Criminal Justice System

**■ CATEGORIES OF OFFENCES**

33 prisoners were sentenced to death for murder simpliciter. Those sentenced to death for sexual offence and murder comprised the second largest group among the prisoners interviewed, at 26. Madhya Pradesh had the largest number of death row prisoners at 30. Prisoners sentenced to death for murder simpliciter formed the largest number of the total state death row population in Madhya Pradesh (14) and Karnataka (11). At 13, Madhya Pradesh had the largest proportion of prisoners sentenced to death for sexual offence and murder. The death sentences of seven of these 13 prisoners were commuted by the Supreme Court after the interviews. (Graph 1.8)

GRAPH 1.8  
**STATE-WISE DISTRIBUTION OF THE CATEGORIES OF OFFENCES**



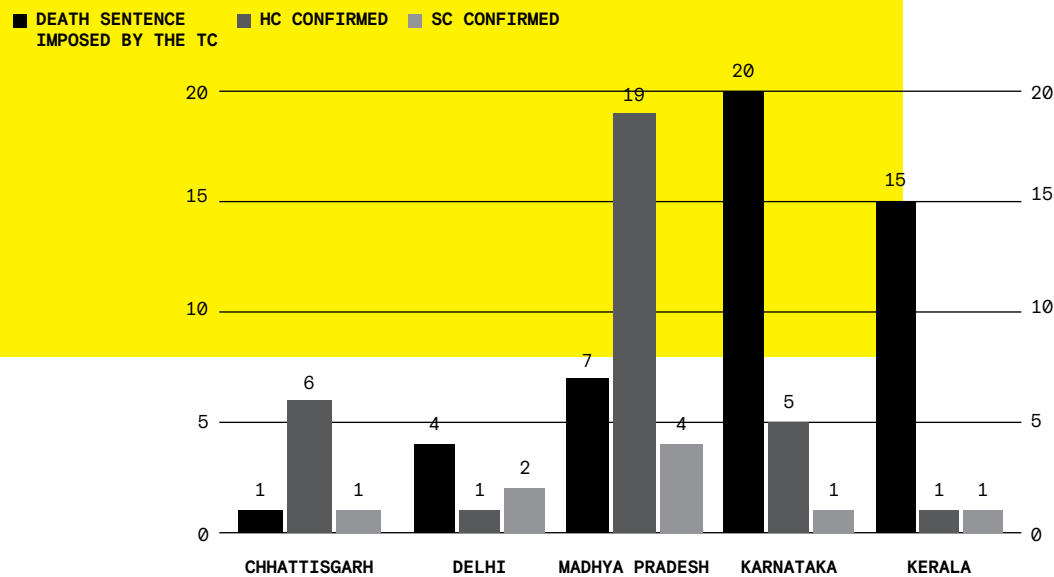
■ **CATEGORISATION BASED ON CASE-STATUS**

1. **Death sentence imposed by the Trial Court:** Prisoners sentenced to death by the trial court (TC) with the confirmation of the sentence pending before the High Court (HC).
2. **HC Confirmed:** Prisoners whose death sentence was confirmed by the HC in the mandatory appeal. This category includes prisoners whose appeal is pending before the Supreme Court (SC).
3. **SC Confirmed:** Prisoners whose death sentence was confirmed by the SC. This category includes prisoners whose review petition is pending or may have been dismissed by the SC. In our sample, this also includes the seven prisoners whose mercy petitions have been rejected by the President. (Graph 1.9)

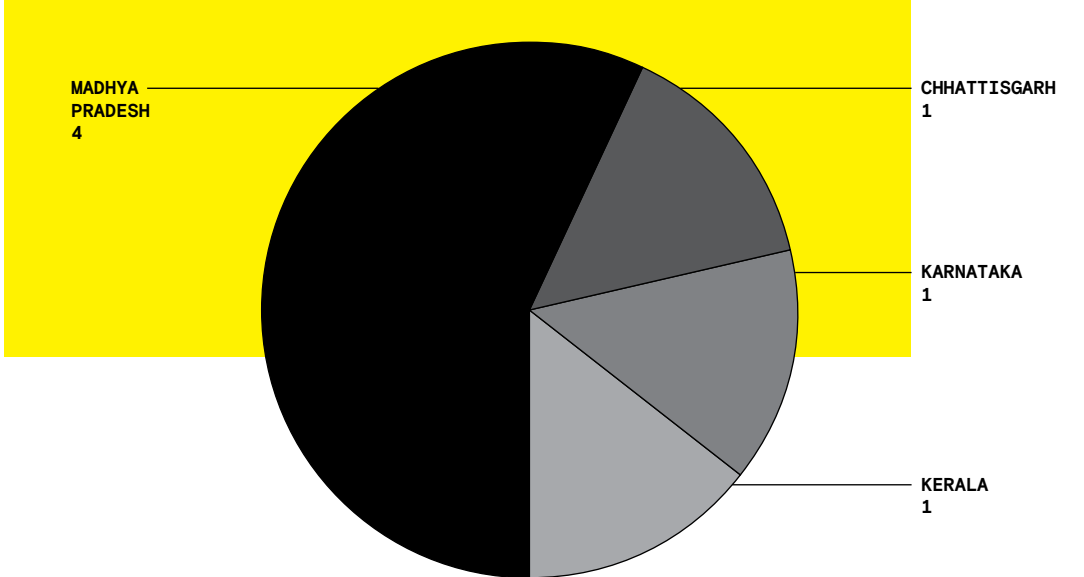
■ **MERCY PETITIONS**

After a death sentence is confirmed by either the High Court or the Supreme Court, a prisoner can file a petition for either pardon or commutation of the sentence with the Governor of a state or the President of India. In our sample group, mercy petitions of seven prisoners had been rejected by the President at the time of the interview. (Graph 1.10)

GRAPH 1.9  
**STATE-WISE DISTRIBUTION OF DEATH ROW PRISONERS BASED ON CASE STATUS**



GRAPH 1.10  
**STATE-WISE DISTRIBUTION OF PRISONERS WHOSE MERCY PETITIONS WERE REJECTED**



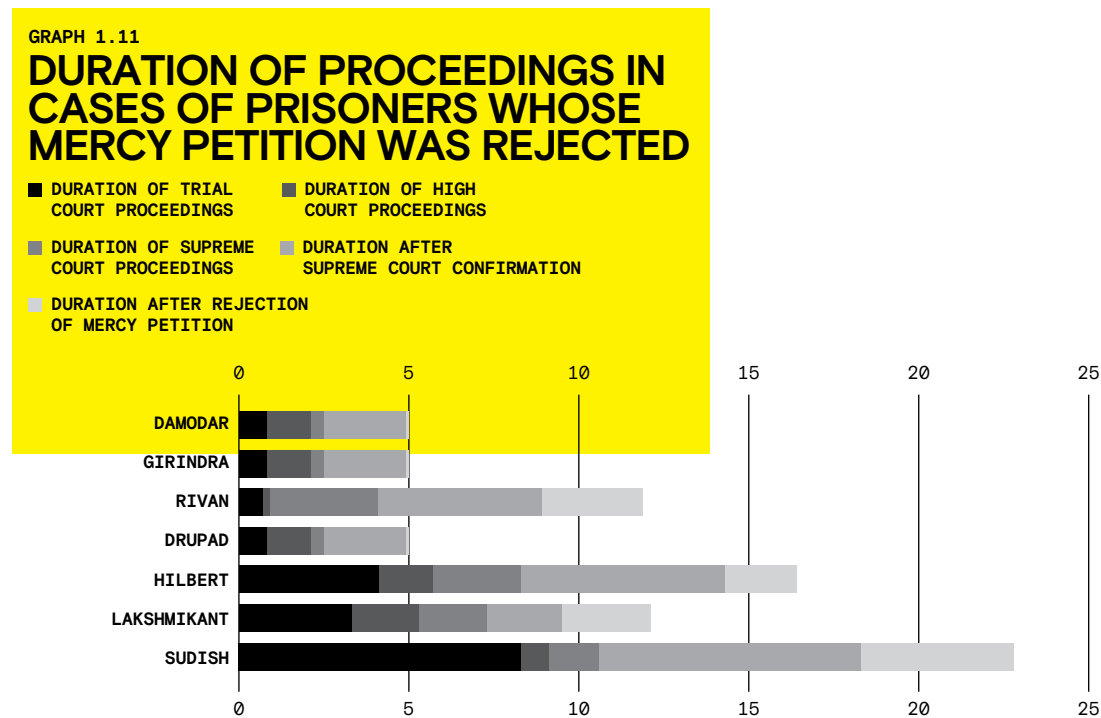
Of these seven prisoners, warrants of execution had been issued against Hilbert in 2012 and Lakshmikant in 2014, both of whom had their death sentences commuted to life imprisonment later by the Supreme Court.

As the date of filing the mercy petition is not made public, we were unable to ascertain the time spent by the prisoners waiting for a decision on their petition. This computation becomes relevant since executive delay in deciding the mercy petition makes a death row prisoner eligible to approach the High Court or the Supreme Court for commutation of their sentences on grounds of violation of the right to life. Nonetheless, we have mentioned the total time spent in prison, as well on death row, of these seven prisoners. (Graph 1.11)

**■ DURATION ON DEATH ROW**

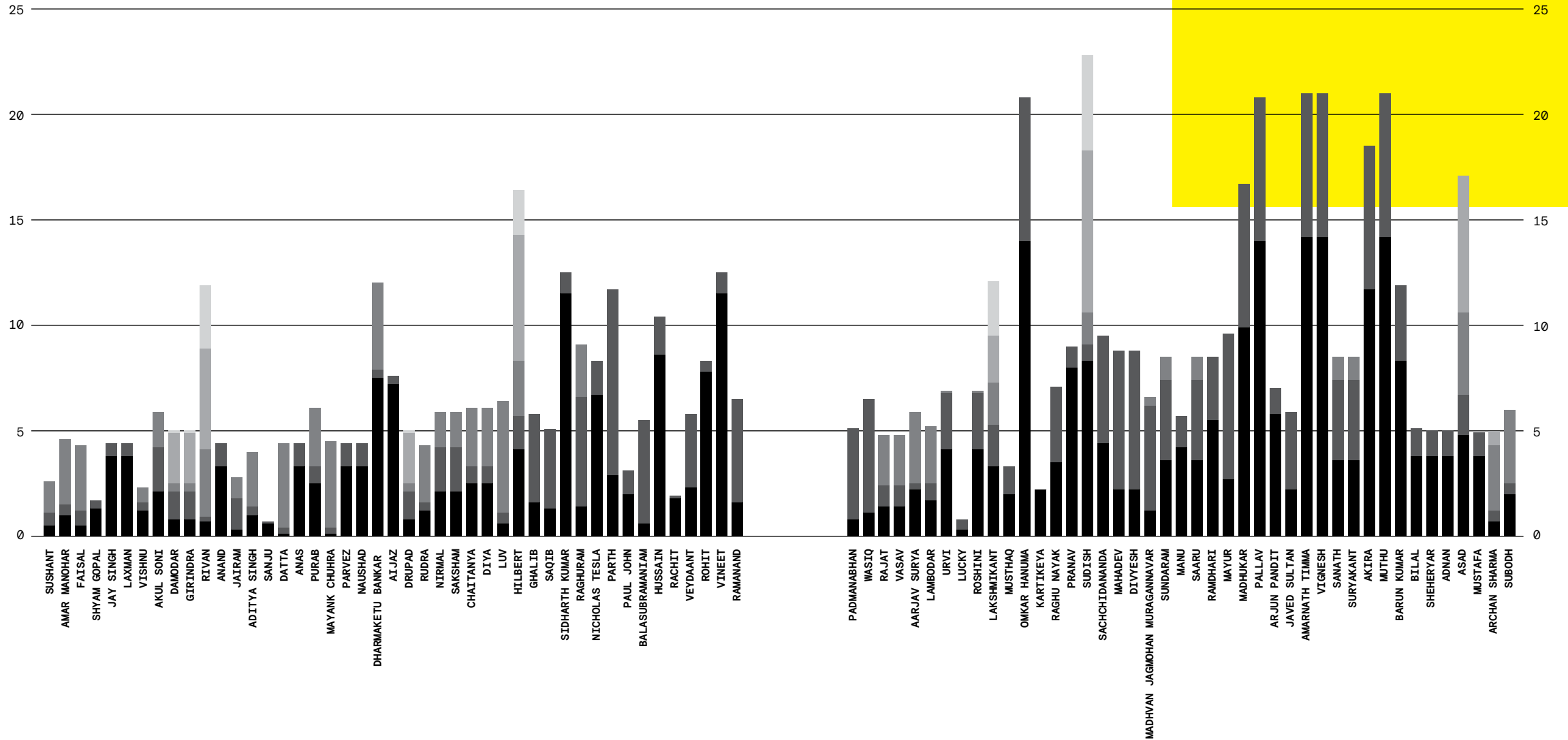
Knowing time spent in prison (including on death row) by the prisoners becomes relevant, given the known adverse consequences of long-term incarceration on mental health. The restrictive rules and living conditions of prison are risk factors for poor mental health—a fact acknowledged by the Supreme Court recently when the death sentence of a prisoner who had spent 17 years on death row was commuted on account of his mental illness. In the past too, the Supreme Court has commuted death sentences on the basis of undue, inordinate and unexplained delay by the executive in deciding mercy petitions and the mental agony of being on death row. This agony, however, begins soon after the initial imposition of the death sentence, and is not limited to the stage the judiciary seems to consider.

The median time spent in prison by death row prisoners at the time of the interview was 5.83 (0.58–22.9) years. The median time spent on death row was 3.65 (0.01–14.5) years. (Graph 1.12)



GRAPH 1.12  
**DURATION OF PROCEEDINGS**

- DURATION OF TRIAL COURT PROCEEDINGS
- DURATION OF HIGH COURT PROCEEDINGS
- DURATION OF SUPREME COURT PROCEEDINGS
- DURATION AFTER SUPREME COURT CONFIRMATION
- DURATION AFTER REJECTION OF MERCY PETITION



# LEGAL FRAMEWORK

The mental health of the accused can become relevant in a criminal trial at various stages: where there is in question the accused's fitness to stand trial and where the accused has raised the insanity defense. Within the death penalty regime, there are additional judicially developed stages where the mental health of the accused is considered by courts, including at the time of sentencing by the trial court. When assessing fitness to stand trial, the inquiry is focused on the state of the mind of the accused contemporaneous to the trial, their capacity to mount a defense and exercise their right to a fair trial. During the insanity inquiry, the question to be answered is one regarding impairments in the decision-making ability of the accused and the attendant requirements of understanding the nature or consequence of the criminal act. It is a retrospective inquiry limited to the mental state of the accused at the time of the offense. In cases involving the death penalty, the mental health of the accused is at play during (i) sentencing by the trial court (ii) the appellate or post-conviction stage, and (iii) the post-mercy litigation stage.

While upholding the constitutional validity of the death penalty, *Bachan Singh v State of Punjab* lay down the sentencing framework to be followed by courts while using their discretion to impose the death penalty. In *Bachan Singh*, the Supreme Court aimed to restrict the imposition of the death penalty to the "rarest of the rare" cases, and where the question of life imprisonment is "unquestionably foreclosed". As part of the inquiry into whether to impose the death sentence, *Bachan Singh* provides an illustrative list of mitigating factors, some of which pertain exclusively to mental health, such as emotional and mental disturbance at the time of the incident, and 'mental defect'. Unfortunately, courts have typically looked at mitigating factors as items on a checklist and have not yet formulated a principled approach to mitigation. However, if the purpose of the framework is to contextualise the individual, then applying a psychosocial lens would be a better fit for purpose, and would move towards articulating a principled basis for mitigation. A psychosocial approach considers the life history of an individual as a set of constantly interacting and intertwined variables and their relationship with the internal workings of the individual. Such an approach will also allow courts to take into consideration crucial factors about the life of the accused which are currently missing from the vocabulary of the Indian death penalty sentencing framework, such as trauma and abuse.

Before 2019, death penalty jurisprudence on mental health dealt with the two ends of the judicial journey of a death penalty case — the sentencing stage and post the President's rejection of the mercy petition. There was no guidance on the question of mental illness, the onset of which is during incarceration, or at the appellate stage. In 2019, through its ruling in *Accused X v State*

*of Maharashtra*, the Supreme Court plugged this gap and held that the onset of severe mental illness post-conviction would be a mitigating factor resulting in a commutation. The Court considered post-conviction mental illness as a mitigating factor, went on to qualify the mitigating factor (which themselves require no threshold qualifiers) and put in place a test of severity — which, in essence, is a test of executability of the person; a test that *Shatrughan Chauhan* did not articulate. As a result, the consideration of mental illness at the pre-execution appellate stage requires satisfying a much more stringent test than the one required at the execution stage.

In post-mercy litigation, i.e., litigation arising out of the rejection of the mercy petition, there are two grounds pertaining to mental health which courts have used to commute the death sentence. These grounds are (a) delay, and (b) mental illness. Filing of a mercy petition is a constitutionally protected remedy provided to death row prisoners, requesting the Governor or the President, i.e., the Executive, to commute their sentence to life imprisonment. In post-mercy litigation, the prisoner contests the rejection of the mercy petition on grounds known as supervening factors. These factors are circumstances in the course of imprisonment that potentially constitute a violation of the prisoner's fundamental rights, and those which have arisen post the final verdict.

The central claim of delay as a ground for commutation is the mental and emotional agony caused to the prisoner as a result of the undue, inordinate and unexplained delay by the Executive in deciding their mercy petition. Referring to it as dehumanising, the Supreme Court has held undue, inordinate and excessive delay to be a violation of the triad of rights under articles 14, 19, and 21 of the Constitution and falling foul of a just, fair and reasonable procedure. Such delay is presumed to constitute torture, and the burden to prove so is not on the prisoner.

While there is no statutory prohibition either on the imposition of the death sentence or on the execution of death row prisoners with mental illness, the Supreme Court, in *Shatrughan Chauhan v Union of India*, considered mental illness a supervening factor relevant for commutation. Notably, *Shatrughan Chauhan*, as opposed to *Accused X*, does not impose a threshold while holding "insanity as one of the supervening circumstances that warrants for commutation of death sentence to life imprisonment."

However, in declaring 'insanity' a supervening circumstance, *Shatrughan Chauhan* does not provide a detailed analysis as to 'why' or 'how' these violations would occur. The rationale adopted by *Accused X* in this regard is that executing people with mental illness who do not have the "capacity for understanding, rational choice, and free will inherent in human nature" would be cruel and inhuman. In connecting dignity to the capacity of a person, *Accused X* makes a 'mental state' and dignity argument.

However, another approach could be to adopt a dignity and mental health perspective and not link questions of dignity to the mental state of the person. This allows for the inquiry to incorporate issues related to the adverse impact of prison conditions on mental health and corresponding obligations on the state in terms of the right to life, but more specifically the right to health. The right to health, including of prisoners, has been recognised as part of the fundamental right to life, and death row prisoners are no exception. While the right to health is more obviously linked to the right to healthcare, the right to health framework is broader than that, and includes addressing underlying determinants which contribute to poor health, including mental health. The right to health framework does not just focus on individual rights but also provides for state aims to be taken into account when looking at incursions into the right to health. It harmonises state aims with individual rights by providing for the 'least restrictive alternative' for the state to adopt when incursions are necessary and alternatives are present. In the context of the death penalty, the general state aim is punishment and when incursions into the right to health take place, harmonisation is required to not defeat state aims while also upholding the rights (of health and life) of death row prisoners in individual cases of violations.



# CHAPTER III

# VULNERABILITIES AND LIFE EXPERIENCES— THE SOCIAL REALITIES OF PRISONERS ON DEATH ROW

There is persistent and often intergenerational social and structural exclusion, deprivation and violence that an overwhelming majority of the death row prisoners interviewed experienced since childhood. Research has indicated that many of the accounts presented in this chapter—neglect and abuse during childhood, poverty, deprivation, disturbed family environments—are among underlying determinants of violence later in life. Such hostile environments, particularly in the formative years of a person, act as ‘risk factors’ leaving the person vulnerable to the risk of poor social outcomes (such as violent behaviour) and health outcomes (poor mental and physical health) later in life. Such experiences impact the manner in which an individual makes sense of the world around them. Compounding this vulnerability is a lack of factors that could offset the negative effects of such experiences. The life experiences discussed in this chapter are also stress factors that can trigger the onset of an episode of mental illness, alter brain biology or increase the risk of developmental disorders such as intellectual disability. The onset of mental illness while living with chronic deprivation not only further complicates the experience and consequence of the illness, but also ensures that any care or treatment, though essential, remains a luxury.

*Bachan Singh v State of Punjab* formalises the structure of the death penalty sentencing framework and explicitly mentions the critical role mitigating circumstances play in determining whether the accused should be sentenced to death. An insight into the purpose of mitigating factors was provided by the Supreme Court in a case pre-dating *Bachan Singh*. The Court in *Santa Singh v State of Punjab* theorised that the need to look at the circumstances of the criminal is to understand the “subconscious reactions” of the accused. Read with *Bachan Singh’s* reference to the emotional and mental state of the accused at the time of the offence, what emerges is the importance of looking at an individual’s social surroundings, the impact it has on their psychological make-up and well-being, the framework within which they view the world, as well as their perception and responses to circumstances in their life. In effect, mitigation requires us to adopt a psychosocial lens in examining and contextualising the life of the accused.

Life experiences, particularly those that are harmful, are also relevant in understanding psychopathology as contributors to the onset of mental illness. The stress-vulnerability model of mental illness takes into account the vulnerability or resilience of individuals and views them in relation to various stressors of life to explain the onset of mental illness. It acknowledges the contribution of genetic and biological factors at play in different mental illnesses and emphasises equally on the social and environmental factors which may lead to the onset of mental illness. While a large number of life experiences during childhood and adolescence that result

in poor social outcomes overlap as contributors to poor mental health outcomes, the stress vulnerability model also requires an inquiry into life experiences as an adult. In the context of prisoners sentenced to death, this would include their lived experiences before and during incarceration, and under the sentence of death.

Many of the negative life experiences and multiple chronic stressors discussed in this chapter are present in an overwhelming majority of death row prisoners, putting them at high risk of poor social and health outcomes.

The negative life experiences of the prisoners have been considered under two categories: (a) adverse childhood experiences, and (b) traumatic life experiences. While adverse childhood experiences are chronic traumatic experiences, exposure to non-chronic adversities also needs to be examined due to their potentially negative psychological consequences, including mental illness.

#### ■ ADVERSE CHILDHOOD EXPERIENCES

For the Report, childhood abuse, childhood neglect, disturbed family environment, early behavioural problems, early onset of substance use, low educational attainment and peer pressure have been broadly considered as adverse childhood experiences. Exposure to adverse childhood experiences has been linked to disturbances in psychological, cognitive, emotional and behavioural development, including later in life. (Graph 3.1)

#### ■ TRAUMATIC EXPERIENCES

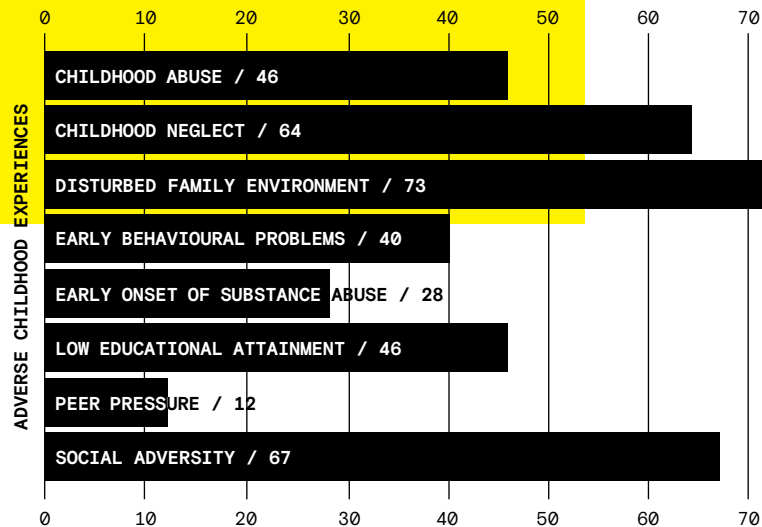
Experiencing or witnessing events such as natural disasters, accidents, exposure to toxins and violence has an important role to play in moulding psychological, emotional and mental health. Such experiences can be traumatic irrespective of the age at which they occur, though the intensity of their consequences might vary with age. The perception of events as stressful and the intensity of their impact may vary from person to person, depending on buffers and previous exposure to adverse experiences. Further, traumatic events experienced or witnessed as an adult, in addition to multiple past stressors, also increase the susceptibility to mental illness. Some of the potentially traumatic life events experienced by the prisoners, regardless of age, were found to be significantly associated with a current episode of certain mental illnesses.

Given the number of prisoners who have had multiple exposures to adversity and trauma from childhood, including in prison, there is a need to understand the complexity of trauma for effective mental healthcare services in prison. Inquiring into adversities provides an insight into the extent of vulnerabilities of the prisoner and the intensity of stress under which they have lived. Understanding social and structural vulnerabilities is important also because we know that these factors have an impact on not only our psychological

and emotional processing, but they also impact us neurologically. The serious negative effects of persistent stress, and mental and emotional health requires us to not limit our understanding of death row prisoners as demons who have sprung into being out of nothing. In fact, these are people who have had few or no real opportunities to protect themselves and their families from the incredibly harmful effects of living in a society that notices them only after it's too late.

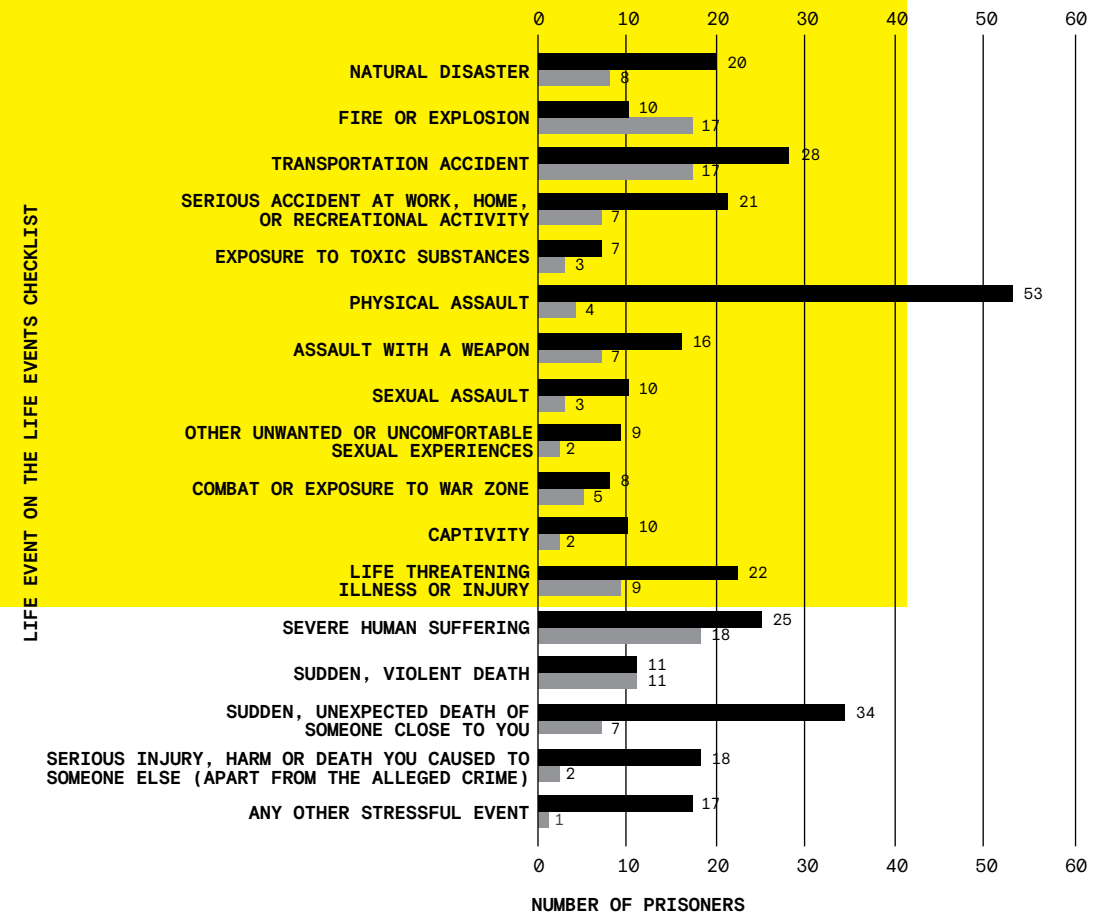
GRAPH 3.1  
**DISTRIBUTION OF ADVERSE CHILDHOOD EXPERIENCES**

■ NUMBER OF PRISONERS



GRAPH 3.2  
**DISTRIBUTION OF TRAUMATIC LIFE EVENTS**

■ EXPERIENCED  
 ■ WITNESSED



# CHAPTER IV

# PSYCHIATRIC CONCERNS ON DEATH ROW— AN INSIGHT INTO A MIND ON DEATH ROW

Some aspects of incarceration that the World Health Organization has identified as putting prisoners at high risk of poor mental health include overcrowding, lack of privacy, social isolation, insecurity about the future, lack of meaningful activity and inadequate health services. A prisoner described the experience of entering prison as “taking another birth to live in prison.” For prisoners living under the sentence of death, the more stringent restrictions, psychological and physical violence, institutional and social discrimination, and the consequent alienation create additional conditions ripe for the onset of mental illness.

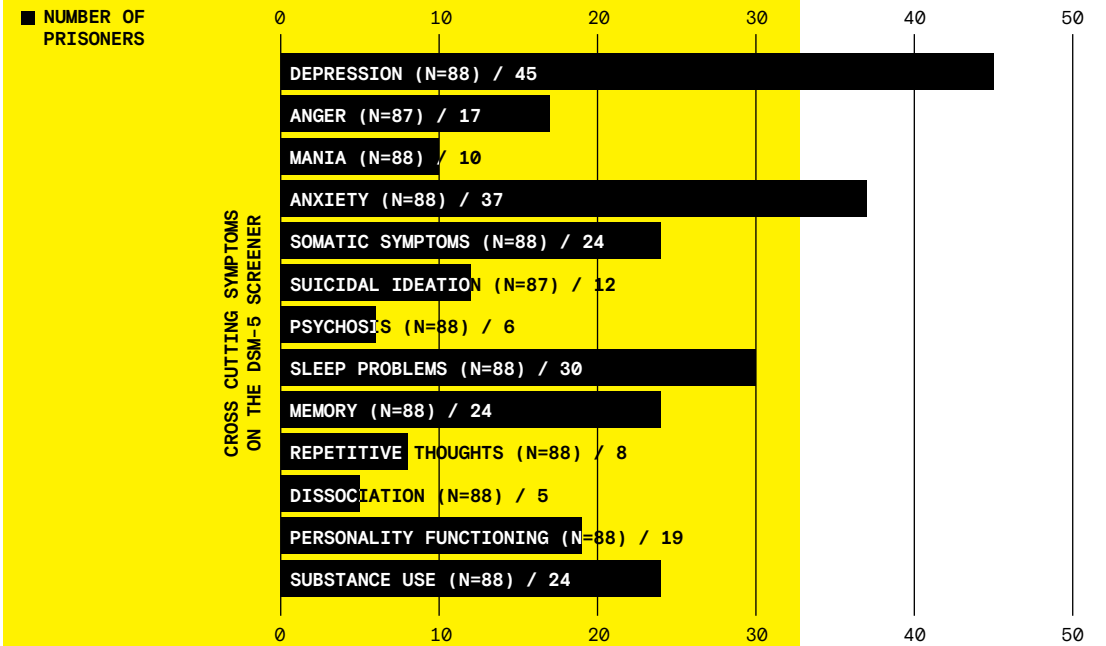
Experiences of constant surveillance, either through solitary confinement or through an ever-present guard, violence by prison authorities and prisoners alike, lack of work and the institutional and informal discrimination and stigma that death row prisoners face lead to an environment of shared psychological trauma that is a gruelling experience bearing no similarity to life outside the prison walls. The emotional, psychological and physical alienation that death row prisoners face has multiple pathways, many of which are a matter of daily occurrence and which continuously compound the adverse effects of such an existence.

Of the 88 death row prisoners we interviewed, 71 (approximately 81%) screened positive for at least one mental health domain on the DSM 5 Screener. (Graph 4.1)

Further clinical inquiry for the purposes of diagnosis was undertaken for 82 prisoners (For six prisoners, we were unable to undertake a comprehensive assessment for multiple mental illnesses for which they may have screened positive). Based on information collected through this inquiry as well as ancillary information, 51 prisoners out of 82, i.e., 62.2%, were diagnosed with at least one mental illness. (Graph 4.2)

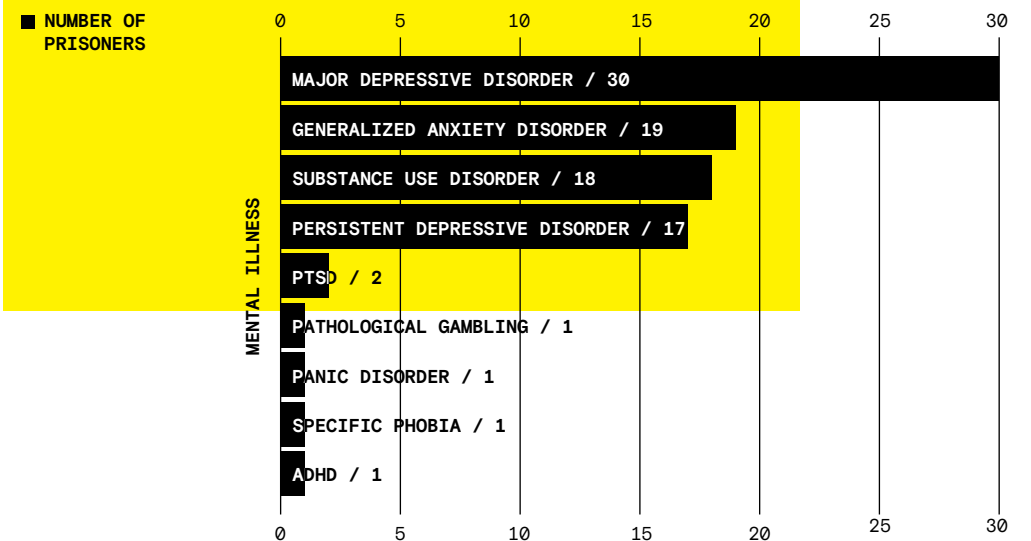
GRAPH 4.1

### CROSS CUTTING SYMPTOMS AMONG DEATH ROW PRISONERS



GRAPH 4.2

### DISTRIBUTION OF CURRENT EPISODE OF MENTAL ILLNESS



*Diagnosis of Post Traumatic Stress Disorder (PTSD), Pathological Gambling, Panic Disorder, Specific Phobia and Attention Deficit Hyperactivity Disorder (ADHD) was largely based on qualitative interviews with prisoners.*

■ MAJOR DEPRESSIVE DISORDER

Major Depressive Disorder (MDD) is a mood disorder characterised by a 'depressed mood' accompanied with a loss of pleasure or interest. Characteristics and diagnostic criteria

include pervasive feelings of sadness, emptiness and hopelessness throughout the day, markedly diminished interest in activities, significant changes in appetite, sleep problems, fatigue, feelings of worthlessness and inappropriate or disproportionate guilt, diminished ability to think, and recurrent thoughts of death, suicidal ideation or attempt. The distress is of such intensity that it results in impairment in social and occupational functioning.

The proportion of prisoners with MDD present among the 88 death row prisoners is approximately 11 times higher than that in the community population.

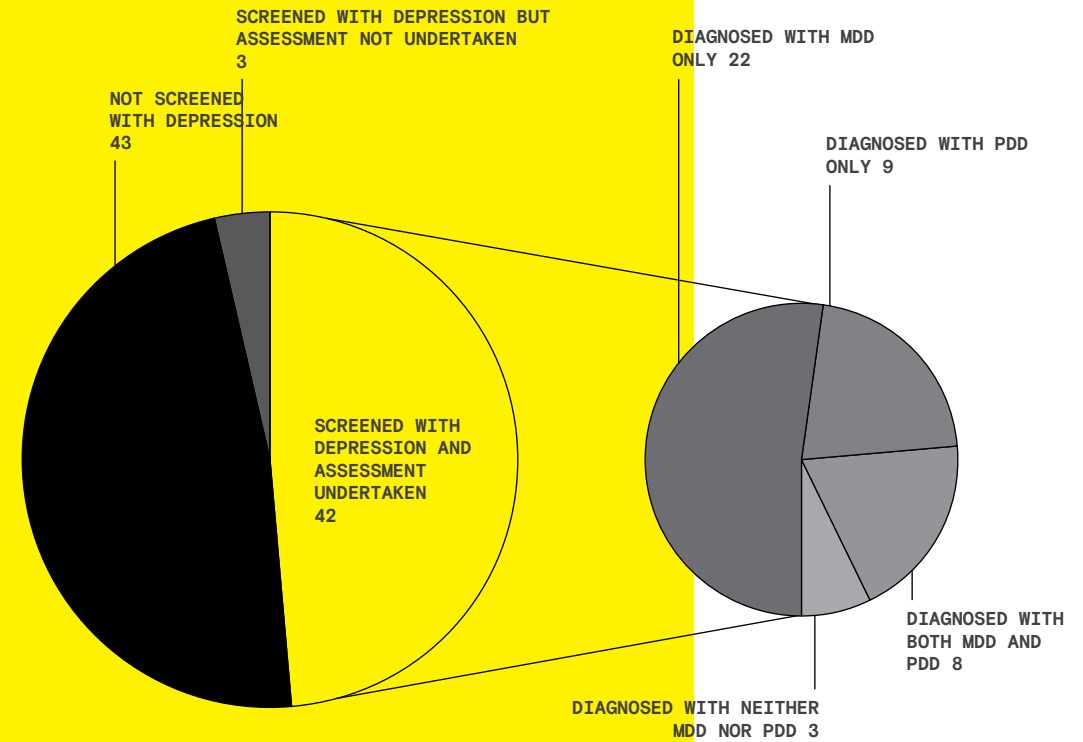
30 prisoners were diagnosed with MDD, out of which eight had a dual diagnosis of Persistent Depressive Disorder (PDD). (Graph 4.3) At the time of the interview, the median time that prisoners with MDD had spent in prison and on death row was 5.52 (0.75-12.00) years and 3.56 (0.36-11.25) years, respectively.

JAY SINGH spoke in a very soft voice and appeared quiet during the interview. He was shivering, even though it was hot. Multiple times during the interview, Jay Singh was on the verge of tears. Since coming to prison, he has lost his appetite and has lost 16 kgs. He complained of frequent headaches because of tension, particularly about his father who is a heart patient. He reported feeling sad and helpless about finding a way out of his circumstances. He often finds himself sitting idly with nothing to do, and his mind blank. He sees a very bleak future ahead of him which causes him further distress in prison. Even though he feels lonely, he does not engage in any activity and does not interact with anyone. He has difficulty sleeping and often wakes up in the middle of the night, unable to go back to sleep, because he remains fixated on his case. He cannot concentrate on conversations and can't remember the names of people around him and, sometimes, the way to his barrack. He often feels angry and irritable but can't find a reason for it.

Jay Singh was diagnosed with MDD. He had, at the time of interview, spent four and a half years in prison, out of which he had spent close to a year on death row.

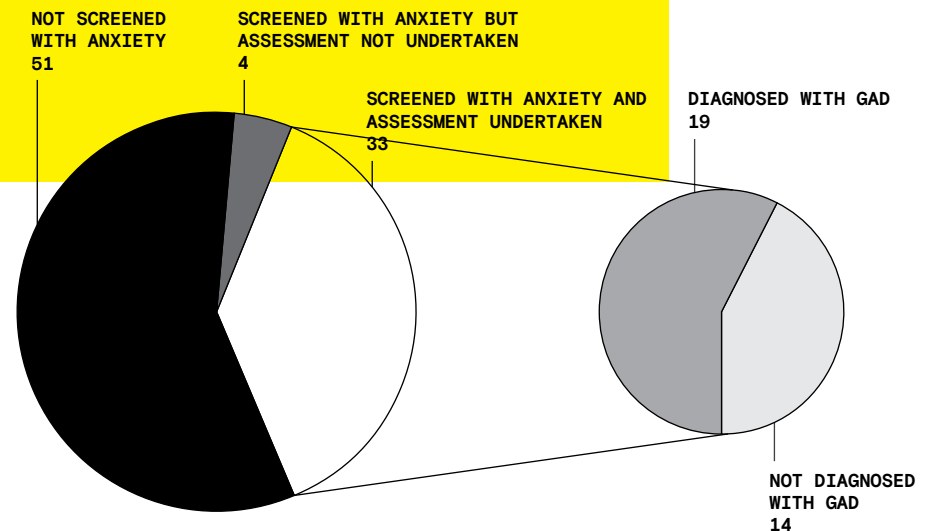
GRAPH 4.3

DEATH ROW PRISONERS DIAGNOSED WITH MDD (n=30)



GRAPH 4.4

DEATH ROW PRISONERS DIAGNOSED WITH GAD (n=19)



■ GENERALISED ANXIETY DISORDER

Marked by excessive concern and anxiety, Generalised Anxiety Disorder (GAD) envelops a person in an uncontrollable worry about their circumstances, and other events and activities, which are related or have an effect on their lives. Some of the main characteristics and diagnostic criteria, apart from excessive worry, include restlessness or feeling on edge, irritability, difficulty concentrating, muscle tension and sleep disturbances. In people diagnosed with GAD, the symptoms remain present during more days than not for at least the past six months. As with all mental illnesses, the anxiety, worry, or physical symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

**JAIRAM** was extremely tense when he was interviewed. With his hands between his legs, he was fidgety throughout the interview and constantly looked down at his hands. He did not make eye contact throughout the interview and looked scared. He was barely audible.

Jairam thinks about working in prison, but gets nervous. His heart starts beating fast and he starts to sweat even if another prisoner approaches him. He says he has a weak heart and the thought of the interview made him extremely nervous. He frequently forgets where he has kept his belongings and has trouble recalling people's names. He keeps to himself and has no friends in prison.

Jairam was diagnosed with GAD. At the time of interview, he had spent three years in prison, out of which he had spent close to two and a half years on death row.

19 prisoners were diagnosed with a current episode of GAD. (Graph 4.4) At the time of the interview, the median time spent in prison and on death row by prisoners with GAD was 4.42 (0.75-12.00) years and 3.50 (0.38-11.25) years, respectively.

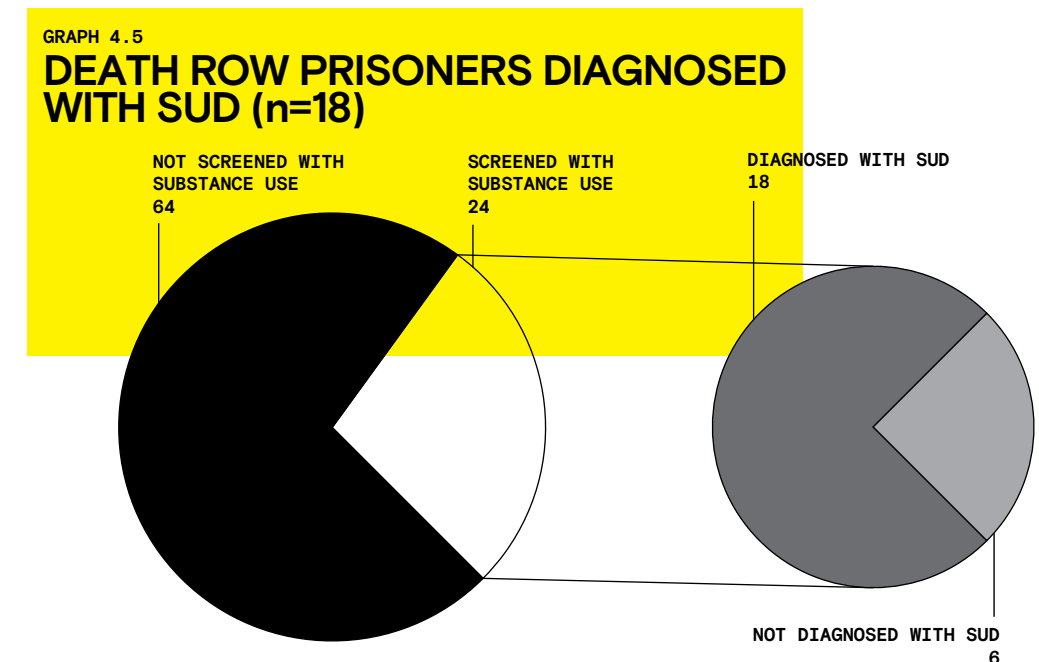
■ SUBSTANCE USE DISORDER

Substance Use Disorder (SUD) includes the consumption of substances such as tobacco, alcohol, cannabis, opioids, and an inability to regulate consumption despite several attempts. People with SUD have a preoccupation with procuring the substance and their whole day can revolve around its acquisition. There is an increased tolerance for the substance which may lead to withdrawal symptoms, which in turn pushes the person to increase their intake for relief. Despite the restriction on the availability of tobacco and other such substances, over 20% of the prisoners were diagnosed with SUD. Such high numbers can be explained by understanding substance use in prison as a form of (mal)adaptive coping mechanism employed by the prisoners to deal with the stress of living in an environment of discrimination, violence and stigma that become regular accompaniments to

**PARTH** had started smoking ganja when he was 17 years old, and his use of beedis and ganja has continued during his time in prison. 40 years old at the time of the interview, Parth reported smoking around 10 beedis of ganja a day and has a persistent cough. He smokes when he's feeling sad so he can forget his worries. When he doesn't get his daily dose of beedis, Parth feels tense and is unable to sleep.

Parth was diagnosed with SUD and, at the time of the interview, had been in prison for over a decade and on death row for eight years.

being sentenced to death. 18 prisoners were diagnosed with SUD. (Graph 4.5) The median time spent in prison and on death row by prisoners with SUD was 7.75 (3.92-20.00) years and 4.87 (0.96-8.80) years respectively.



## ■ PSYCHOSIS

While six prisoners screened positive for psychosis, none of them were diagnosed with a current episode. Of these six prisoners, one

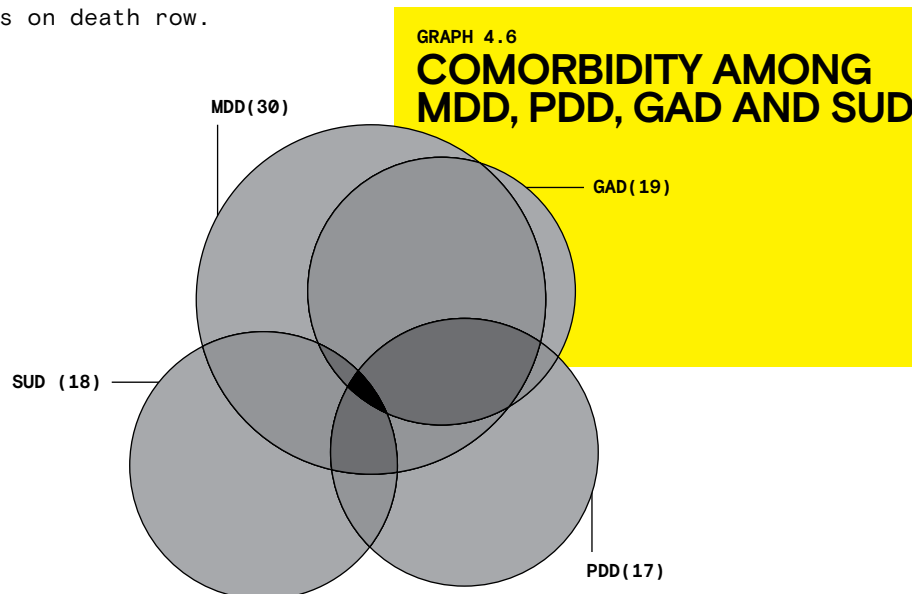
of them had been diagnosed in prison and was being treated for psychotic symptoms, but did not have a current psychotic episode, while another prisoner was being treated for “depression with abnormal behaviour”.

## ■ COMORBIDITY

Multiple symptoms of clinical significance interact with each other, making treatment difficult and complicated. Out of the 51 prisoners who were diagnosed with at least one mental illness, there were only 17 prisoners who had only one mental illness, and a disproportionate number of them were diagnosed with more than one illness. 34 (38.6%) death row prisoners were found to have more than one mental illness, out of which 26 (29.5%) had a dual diagnosis, while eight (9.1%) had a diagnosis of three illnesses. (Graph 4.6)

**RIVAN** has spent around 12 years in prison, out of which 11 have been on death row. He is being treated for his mental health concerns in prison. He started using cannabis at a very young age under the influence of his peers, which contributed heavily to the deterioration of his mental health. Even though he reported not consuming substances for some time now, he takes medicines in prison. He says that if he does not take his medicines, he loses control and starts beating and abusing people. Throughout the interview, he complained of how other prisoners would trouble him to get his land. He believes that a ‘scientific device’ has been put on him by others in order to get his land registered in their name. He has requested people to remove it from him.

Rivan was diagnosed with depression with abnormal behaviour in prison. His death sentence was commuted in 2019 by the Supreme Court after he had spent over 11 years on death row.



## ■ COGNITIVE IMPAIRMENT

Cognitive impairment is a condition where a person has difficulty remembering, concentrating or making decisions that affect everyday life. Of the 88 prisoners we interviewed, six

death row prisoners had severe cognitive impairment whereas 11 had mild cognitive impairment. Of these 17 prisoners, four prisoners with mild cognitive impairment and one prisoner with severe cognitive impairment were also diagnosed with intellectual disability, which is a developmental disorder with impairments in intellectual and adaptive functioning.

A majority of death row prisoners with cognitive impairment were of ages much younger than the standard age of onset, that is, 60-65 years. (Graph 4.7) Impaired cognition could also be a result of developmental and intellectual disabilities. Deterioration in brain functioning, which affects day-to-day functioning, memory, behaviour and independent decision-making ability, in such a young population, indicates that this deterioration is not an outcome of old age when cognitive decline commonly occurs, but of factors like the effect of incarceration.

**AKIRA** was 46 years old at the time of the interview and had spent over 16 years in prison, of which seven were spent on death row. Though Akira’s parents tried to send her to school, she never went, and is uneducated. Even though she was beaten up for not attending school, she preferred spending her days with her grandmother, where she also started chewing paan when she was around seven years old. To this day, she chews tobacco leaves when she is feeling low. She got married when she was around 12 years old and soon thereafter, she started working at a construction site and agricultural farms.

While Akira was aware of the day, she was not aware of the date, month, season or year of the interview. She also struggled with immediate and delayed memory. Though she remembered her grandmother’s name, she could not recall the name of her grandfather. She also does not remember how old she was when she was arrested.

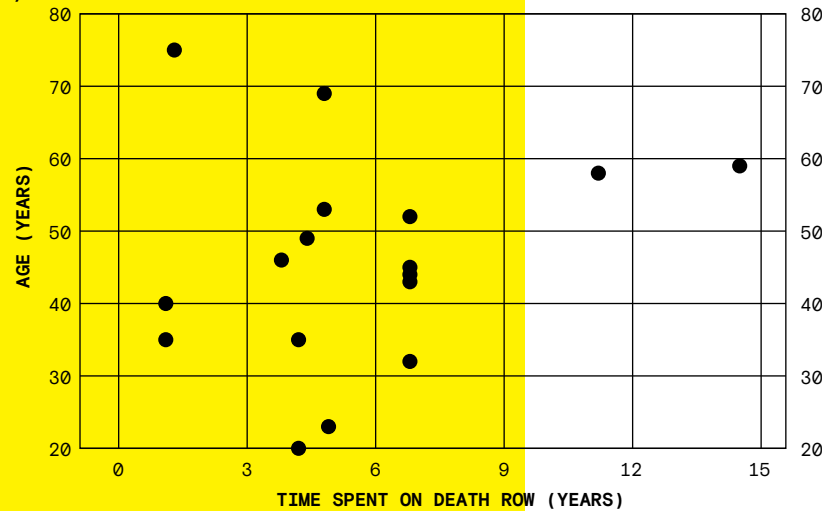
Akira scored 16 out of 30 on the test for cognitive impairment and had severe impairment in cognitive functioning.

Akira’s death sentence has been commuted by the High Court.



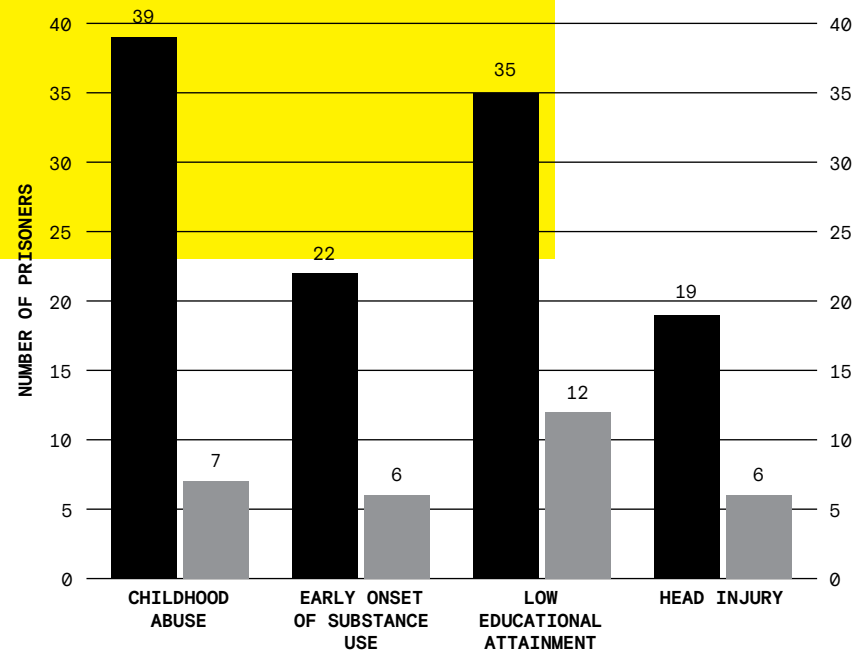
**GRAPH 4.7**  
**TIME SPENT ON DEATH ROW BY PRISONERS WITH COGNITIVE IMPAIRMENT AND THEIR AGE AT THE TIME OF ASSESSMENT (n=17)**

● AGE AT THE TIME OF ASSESSMENT (YEARS)



**GRAPH 4.8**  
**DISAGGREGATED DATA ON RISK FACTORS ASSOCIATED WITH COGNITIVE IMPAIRMENT (n=17)**

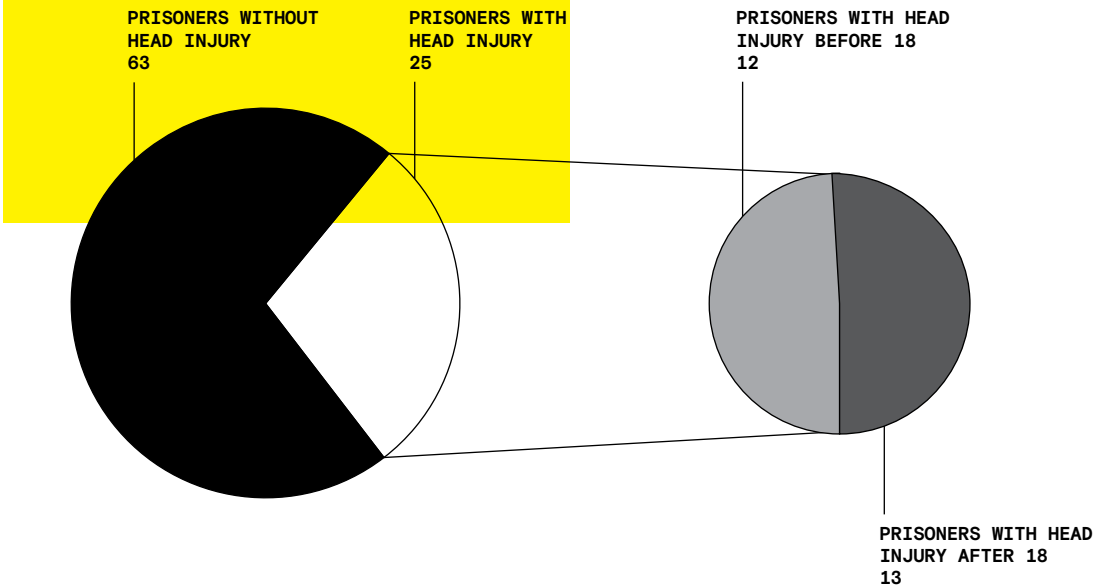
■ WITHOUT COGNITIVE IMPAIRMENT (71) ■ WITH COGNITIVE IMPAIRMENT (17)



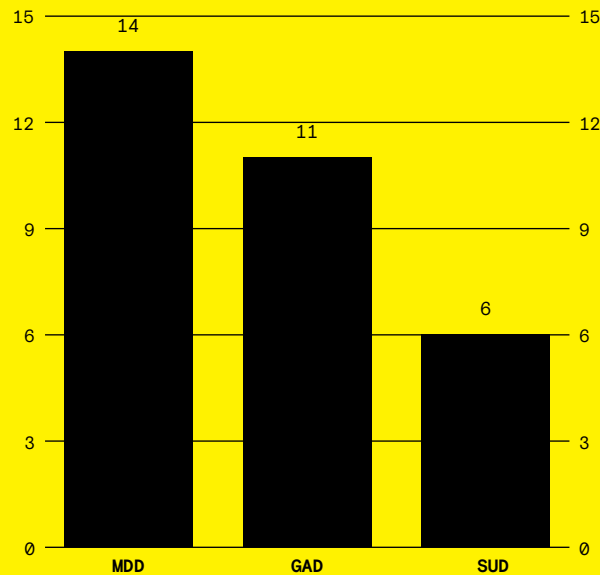
**HEAD INJURY**

Physical trauma to the head can result in a Traumatic Brain Injury (TBI) which can lead to changes in the behavioural and psychological patterns of a person, and can have a negative impact on cognitive functioning. While there are no studies documenting head injury among prisoners in India, studies in other jurisdictions have illustrated the high rate of head injury among prisoners. In terms of psychiatric morbidity of the prisoners who reported a head injury, there were only four prisoners who were not diagnosed with any mental health concerns inquired into. In our sample, head injury was found to have a positive significant association with MDD (p value = 0.037) and GAD (p value = 0.013).

**GRAPH 4.9**  
**DEATH ROW PRISONERS WITH HEAD INJURY (n=25)**

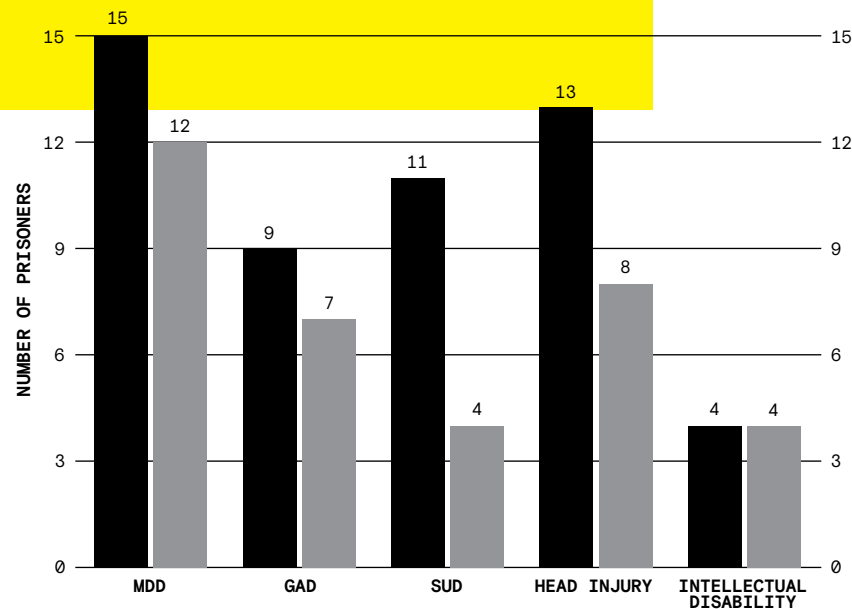


GRAPH 4.10  
**PSYCHIATRIC MORBIDITY AMONG PRISONERS WITH HEAD INJURY (n=25)**



GRAPH 4.11  
**DISAGGREGATED DATA ON PSYCHIATRIC MORBIDITY AND INTELLECTUAL DISABILITY AMONG PRISONERS AT RISK OF SUICIDE (N=63)**

■ SUICIDAL IDEATION IN PRISON  
 ■ NO SUICIDAL IDEATION IN PRISON



■ **SUICIDAL BEHAVIOUR AND IDEATION**

Of the 88 death row prisoners we interviewed, 72 prisoners volunteered information on their lifetime history of suicidal behaviour, both ideation and attempts. Out of these 72 prisoners, 63 prisoners volunteered information on suicidal behaviour in prison. 34 prisoners, i.e., over 50% had thoughts of dying by suicide in prison and eight prisoners had also attempted suicide in prison.

The median time spent on death row by the 12 prisoners who had contemplated suicide as reported under the DSM 5 Screener was 4.18 (0.01-11.25) years. The median time spent in prison by them was 5.80 (2.17-11.98) years.

Restricting the causes for suicide to mental illness would mean a failure to capture the additional complexity of life in prison and of living on death row. Suicide attempts and ideation are likely also a manifestation of mental agony, distress caused due to being on death row and the uncertainty of the judicial outcomes. The large number of prisoners at risk of suicide is evidence that intervention aimed at addressing the underlying causes is an urgent need in prison. Prisoners have reported current preventive measures employed in prison as non-existent. The problem was further compounded by the then operational s.309 of the IPC which criminalises attempts to suicide. One of the prisoners we interviewed was charged under this law when he attempted suicide.

*They said I have no right to live, I should be burnt alive. I listened to them silently. I thought of the dishonour caused to the family name. Thought it was better to die. —Sushant*

**INTELLECTUAL  
DISABILITY AND THE  
DEATH PENALTY—  
A KNOWN UNKNOWN**

*Bachan Singh v State of Punjab*, while discussing the death penalty sentencing framework, allows the accused to show as a mitigating circumstance “that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct” at the time of the offence. ‘Mental defect’ is what is today referred to as intellectual disability (ID). Despite the explicit reference to mental defect, the discourse and treatment of ID within the death penalty jurisprudence is conspicuous in its absence. There might be a few reasons for it, including the lack of documentation regarding the disability, lack of awareness among lawyers and judges alike, and the inability of field experts to directly interview prisoners. The fact, though, remains that a crucial mitigating factor has remained unexplored. Nine out of the 83 death row prisoners who agreed to be assessed were diagnosed with ID. Their disability was not brought up before any judicial or executive fora.

**Intellectual Disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains.**

*Diagnostic and Statistical Manual  
of Mental Disorders, 5th Edition*

ID is defined under the Rights of Persons with Disabilities Act, 2016 (RPWD) as “a condition characterised by significant limitations both in intellectual functioning (reasoning, learning, problem-solving) and in adaptive behaviour which covers a range of every day, social and practical skills.” While jurisprudence on criminal law and ID is nearly non-existent, the Code of Criminal Procedure (CrPC) does allow for ID to be taken into consideration at the stage of competence to stand trial (the CrPC refers to the disability as mental retardation). However, to effectively implement the guarantee of access to justice under the RPWD, there is a need within criminal justice processes, particularly and urgently within death penalty jurisprudence, to ensure that accused persons with ID are not subject to injustices in a harsh system with little to no awareness about a concern that has important implications for it. While there isn’t much guidance on how issues of ID should be treated within death penalty jurisprudence in India, jurisprudence in the US is of some help. While initially ID was recognised as a mitigating factor in the US, currently there exists a complete bar against the imposition of the death sentence on and execution of accused persons with ID.

**Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial, but, by definition, they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand others’ reactions. Their deficiencies do not warrant an exemption from criminal sanctions, but diminish their personal culpability...mentally retarded defendants in the aggregate face a special risk of wrongful execution because of the possibility that they will unwittingly confess to crimes they did not commit, their lesser ability to give their counsel meaningful assistance, and the facts that they are typically poor witnesses and that their demeanour may create an unwarranted impression of lack of remorse for their crimes.**

*The US Supreme Court when barring executions  
of persons with intellectual disability in  
Atkins v Virginia, 536 U. S. 304 (2002) 320-321*

# Findings

Nine out of 83 death row prisoners (approximately 11%) were diagnosed with ID. While this number is significant in itself, it is also important to note that 63 out of 83 prisoners were found to have low intellectual functioning among the prisoners we interviewed. In appreciating these findings, it is important to remember that persons with ID or low intellectual functioning are not more dangerous, but are more likely to be victimised by criminal justice processes.

The Perceptual Reasoning Index of The Wechsler's Adult Intelligence Scale-Fourth Edition (India Norms) [WAIS-IV] was employed to determine intellectual functioning. Information on domains of adaptive behaviour (conceptual, practical and social) was obtained through qualitative interviews with the prisoner as well as with the family members, including parents, siblings, spouses, and in some cases, caregivers who were not related to the prisoner. Information regarding the developmental history of the prisoner and the presence of head injury before the age of 18 was also gathered in the course of these interviews.

## DEFICITS IN INTELLECTUAL FUNCTIONING

63 prisoners had low intellectual functioning, i.e., their IQ scores fell within and below the range of 70-79. 19 prisoners had borderline deficits in intellectual functioning (IQ Range 70-79), 32 prisoners had mild deficits in intellectual functioning (IQ range 55-69) and 12 prisoners had moderate deficits in intellectual functioning (IQ range 40-54). While deficits in intellectual functioning alone do not lead to a diagnosis of ID, people with borderline/low intellectual functioning do face problems in multiple aspects of their lives, such as reasoning, judgment formation, abstract thinking, and decision-making.

## ■ DEATH ROW PRISONERS WITH INTELLECTUAL DISABILITY

A diagnosis of ID was made if the PRI score fell below or within the range of 70-79, and if deficits were found in any one domain of adaptive behaviour - conceptual, practical, or social. Nine out of 83 prisoners were diagnosed with intellectual disability. Three of these nine prisoners had been sentenced to death by the trial court and the death sentences of another three prisoners had been confirmed by the High Court. The Supreme Court had confirmed the death sentences of three prisoners and their mercy petition had already been rejected by the President of India, at the time of the interview.

## DEFICITS IN DEATH ROW PRISONERS WITH INTELLECTUAL DISABILITY (n=9)

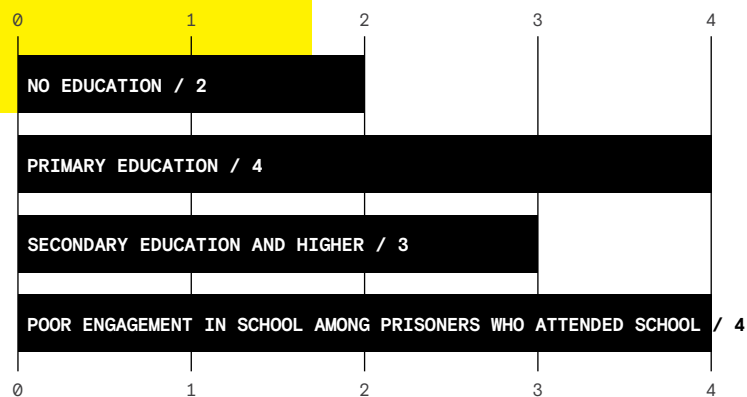
S. No.	Name	Intellectual functioning - PRI Score	Deficits in Adaptive Behaviour
1.	Shyam Gopal	55 (mild deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (no deficit)
2.	Damodar	55 (mild deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (no deficit)
3.	Dharmaketu	45 (moderate deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (moderate deficit)
4.	Saqib	55 (mild deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (moderate deficit)
5.	Rivan	48 (moderate deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (mild deficit)
6.	Girindra	50 (moderate deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (mild deficit)
7.	Jairam	46 (moderate deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (moderate deficit)
8.	Mayank Chuhra	45 (moderate deficit)	Conceptual (mild deficit) Social (no deficit) Practical (no deficit)
9.	Balasubramaniam	57 (mild deficit)	Conceptual (mild deficit) Social (mild deficit) Practical (mild deficit)

**SOCIAL DEMOGRAPHY OF DEATH ROW PRISONERS WITH INTELLECTUAL DISABILITY**

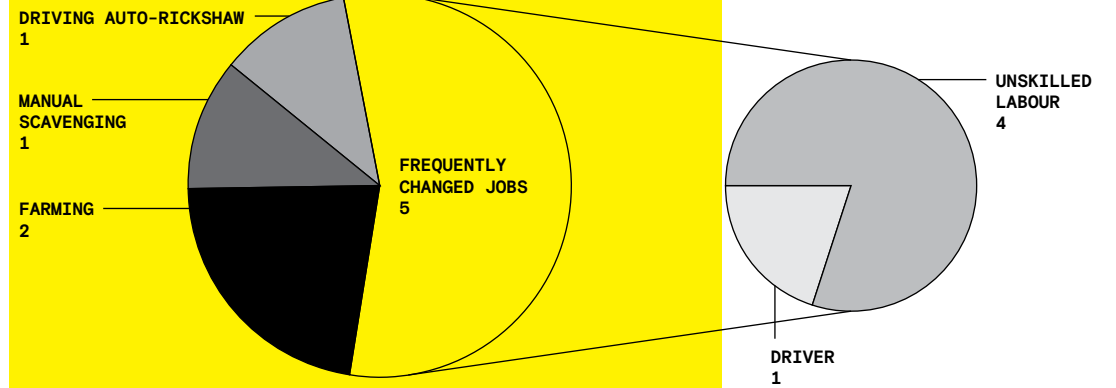
Persons with ID face multiple barriers throughout their life, including in forming social relationships. As children, they are often seen as exhibiting behavioural problems such as aggression, non-compliance, and poor impulse control, even though they show no unique observable behavioural problems when compared to children without ID. Children with ID are more gullible and suggestible, are bullied and are unable to assess risky situations. They also face problems in education and drop out of school early. (Graph 5.1) Employment rates also remain low among those diagnosed with ID. Those who are able to gain employment often work sporadically and in unskilled labour such as manual labour, and are also likely to face job insecurity. (Graph 5.2)

**GRAPH 5.1  
EDUCATION LEVELS AND ENGAGEMENT IN SCHOOL AMONG PRISONERS WITH ID (n=9)**

■ NUMBER OF PRISONERS



**GRAPH 5.2  
EMPLOYMENT TRENDS AMONG PRISONERS WITH ID BEFORE INCARCERATION (n=9)**



**GRAPH 5.3  
PREVALENCE OF CHILDHOOD ABUSE AND EARLY BEHAVIOURAL PROBLEMS AMONG PRISONERS WITH ID (n=9)**

■ NUMBER OF PRISONERS

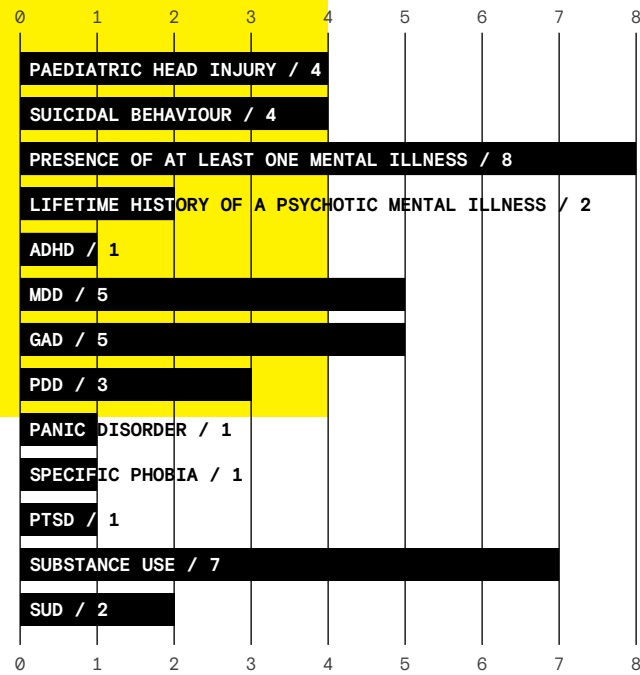


\*Information on early behavioural problems was not available for two prisoners.

GRAPH 5.4

## FEATURES ASSOCIATED WITH ID PRESENT AMONG DEATH ROW PRISONERS (n=9)

■ NUMBER OF PRISONERS



### ASSOCIATED FEATURES OF INTELLECTUAL DISABILITY

In addition to the daily and long-term impact of ID, it is important to understand the commonly associated features that often accompany ID. Knowing these features can allow for better and more comprehensive treatment for individuals with ID. These associated features include trauma, mental illness, and paediatric traumatic brain injury. Many of these features co-exist and can be comorbid with mental illness(es), also seen among the nine prisoners with ID. (Graph 5.4)

That there are persons with ID on death row sits uncomfortably with the Indian death penalty sentencing framework. The framework requires an inquiry into mitigating factors when determining whether an individual should be sentenced to death. 'Mental defect', an older term for ID, is an explicitly acknowledged mitigating factor, but has found no elaboration in Indian death penalty jurisprudence. It is a sobering thought that we may have executed or may end up executing people who should never have been given the death penalty, even if they were guilty. The "special risk" of being victimised and giving false confessions that persons with ID are vulnerable to, possibly also means that persons with ID, who may very well be innocent, have been sentenced to death.

## CHAPTER VI

LIVING WITH THE  
SENTENCE OF DEATH—  
PAINS OF DEATH ROW



Often the discourse on the death penalty is conducted in terms of the rule of law, what the purpose of punishment is or ought to be, whether public outrage is important to issues of punishment and so on. Rarely do we discuss what that pronouncement means for and does to the individual whose whole life, it has been decided, never amounted to much. Lost in legalese, public outrage at the crime, and public satisfaction of a 'successful' imposition of the death sentence, is a person amenable to experiences and emotions—a person whose life is now dictated by death always on the horizon. The Supreme Court has many times relied on an intuitive sense of the 'mental and emotional agony' and the suffering that death row prisoners go through, in order to commute death sentences. This chapter illustrates the meaning and content of that agony through narratives provided by death row prisoners and looks at them from a lens that, as outsiders, allows us to understand various aspects of the 'pains of death row'. Any inquiry into the death penalty, including the agony of death row, is incomplete without listening to those who go through that experience on a daily basis. It also helps us gain an insight into death row prisoners as individuals with consciousness and legitimate experiences.

The dehumanisation of death row prisoners is not restricted to behind prison walls. It takes place out in the open, in the media, in the public and the law. The death row prisoner becomes a receptacle for all the outrage, satisfied only when a determined, yet, unknown person is pronounced one step closer to death. The death row prisoner and the incident become forever one.

*I still remember what the judge said, "तब तक लटकाया जाए जब तक साँस छूट न जाए।" ["Hang him till his last breath leaves him"]. Why would he say that to me?*

*When I reached the barrack, I didn't talk to anyone, just listened to what the others were saying. Others said it is a disgusting act [the crime]. One said that if he had been outside, he would have shot me in the street. They all said I should be hanged straight away. —Sushant*

The narratives demonstrate that the suffering and agony due to the spectre of death begin from the moment the death sentence is pronounced and is linked to multiple factors, including the all too brief moment when the judgment of death is passed. In addition to the psychological distress caused due to the death sentence, is the slow stripping of dignity, and demonisation of death row prisoners. The law may not intend it to be so, but the pains of death row are real and palpable.

*I was not able to sleep for nearly five days after I was sentenced to death. It felt like I was dead in the white clothes. I felt like the clothes would bite me to death. I slowly got used to them. —Madhukar*

The infliction of the death sentence translates into living with the constant threat of death. It is a paradox for many. If the system has decided they must die, then why must they continue living. The psychological pain of living with the death sentence is a complicated phenomenon to unpack. It is a painful experience but the emotions and meaning-making are as many as there are judicial stages and processes. Sadness, fear, anxiety, numbness, hopelessness, frustration, shame, regret, preference of death over life are emotions that govern their lives. There are few, if any, chances at any semblance of happiness. The threat is real for as long as they remain under the spectre of death.

In addition, the pains of death row include the constant anxiety of having to wait for the next judicial pronouncement. That they will live is not a presumption anymore, and they wait at the mercy of the judicial system's idiosyncrasies, something that they are entirely unfamiliar with and therefore can't comprehend or interpret. The alienation from the system, while being at the heart of it, adds to the sense of powerlessness.

**LAXMIKANT'S** death sentence was commuted to life imprisonment, but only after he was within a few days of his hanging.

"I got news of the death warrant, I found out I had no chance, I couldn't sleep. With [after taking sleeping pills] a numb mind, I was able to sleep. Earlier, my mind would run in circles."

After the President rejected Lakshmi-kant's mercy petition, a death warrant was issued for his execution immediately, even though he had legal remedies remaining. As soon as he got to know that the preparations for the hanging had begun, he was distraught. He cried, unable to make sense of the situation, and was shifted to solitary confinement. He thought of his family and poured his feelings into his writings.

When he met his mother in the jailor's office, he could not stop himself from crying. Telling his mother to cry for the last time, he asked her to never think of or cry for him again, even in her dreams. He had accepted his fate.

Surprised at how he has been able to go through all this, he says he would not even curse his enemies with the experience of death row, even though his execution was later stayed and his sentence commuted to life imprisonment, he says he remains sad all the time because of what has been happening. "Everyone here has the same hope – maybe I'll also go home."

In some cases, warrants for executions were issued while multiple judicial remedies were still available. Not only are death row prisoners subject to the unpredictability of a correctly functioning judicial process but also a fallible justice system, which could lead to fatal consequences. In brief, prisoners not living under the sentence of death are outside the purview of yet another aspect of the pains of death row - the question of their life and death being dependent on an unpredictable and fallible system.

When and if we think of death row prisoners, we think of them as the worst of our society. Their humanness is taken away to such an extent that not only do we not care about any harm that may or has come to the person (or their family), but we may even want harm to be inflicted on them. The collective conscience of our society is often invoked when imposing the death sentence, but our social conscience must be alive to different forms of injustices. Disregarding their lives prior to or after the incident vacuums them in with neither context nor history. We, then, do not really know who we have condemned to death.

*I don't know whether he is like a hero, but he had a lot of friends. Life was really helpless. There was no joy in our life at that time, he had to take care of his mother. Parth took all the responsibility for his sister's marriage. Whatever the problem, Parth would be there, even if it was a hospital case. He was liked by everyone; he was helpful to all. —Parth's wife*

**DEATH ROW FAMILIES—  
UNINTENDED  
CONSEQUENCES OF  
THE DEATH PENALTY**

Families of death row prisoners lack the ability to materially equip themselves with the resources to adapt to the harsh realities of the justice system. The adverse experiences of the families within the justice system exacerbates their vulnerability – a reduced, and often lack of, bargaining power, renders them powerless against the system and society. Since most of these families experience poverty, the powerlessness against the system also encompasses dimensions of security, health, social relations and capabilities. They are alienated from the justice process at various levels—through non-consideration in any aspect of the judicial process, lack of communication with and exploitation by the lawyer, or the absence of redress when they are subject to violence and harassment by the police. It is the lack of space to assert and demand their rights and protest against such treatment and the exclusion that is a telling sign of the extremely skewed power equation between death row families and the justice system.

**MAYANK** Chuhra’s family was told to leave the area where they lived and go back to their village. His house was destroyed and his children received several death threats, as a result of which they ultimately moved. His wife reported, “We had heard someone say that they have a daughter and we will kill her.”

Mayank Chuhra’s daughters seldom go out, which interferes with their education. Even when they go to the market, his son accompanies them, afraid that they may be harmed. “When we go to the market with her, and she has seen this once or twice, some man will stand up threateningly, as if he will come and catch hold of her. He does that and so we feel scared.”

The sudden loss of a parent, deterioration of material conditions, and the stigma of being associated with a person condemned by society impacts children of death row prisoners in ways different from the experiences of other family members. Younger children are often lied to about their parent’s whereabouts to protect them from this harsh reality and prevent disruptions in their education. In relatively older children, the snatching of the parent by the sentence of death results in the disappearance of the “child”. The effect of the death sentence has an intergenerational impact and restricts the present prospects of upward social mobility.

The lens of ‘guilt by association’ through which society views death row families often manifests in their houses being razed, threats, physical assault and quiet alienation. It forces the identity of a “death row family” on them. This labelling leads to the creation of a stigmatized population with imagined attributes owing to their relation with the accused who has also been assigned characteristics based on speculation and stereotyping of what a ‘criminal’ should look like.

As a result, a large majority of death row families are left without community and financial support, rendering them ill-equipped to deal with the emotional and psychological consequences of their new identity and reality. Simultaneously, death row families grapple with the reality that though alive, a loved one has been taken away from them with the threat of state imposed death.

*The pain of seeing your son die like this is far worse than seeing him dying due to an illness. Killing one individual is not going to bring back the dead, he is being killed without any purpose.*  
—Bunty’s father

Loss experienced by death row families can be referred to as “ambiguous loss.” It is characterised by the feeling of a loss suffered but not clearly identifiable due to its indeterminate and uncertain nature. Due to the absence of actual loss and anxieties associated with the peculiarities of the judicial process, death row families live with stressful fluctuations in their expectations of hope and helplessness about the fate of their loved ones, and consequently their own fate.

This complication in the grieving process leaves families with acute and unresolved grief, which cannot be publicly acknowledged. This understanding of grief, also known as “disenfranchised grief” is a result of societal acceptance of norms about how, when, and for whom people should grieve. Where this loss is not validated by social norms, grief goes unrecognised as the form of death is itself considered disenfranchising. The shame and embarrassment prevent families from seeking the support required to buffer the grief. This, in turn, blocks coping and freezes their grieving process. The only support available to families is the little that they derive from each other and the prisoner. The few avenues through which they can have continued interaction and maintain an emotional bond with the prisoner, such as mulaqaats, are facilitated by the state but are riddled with barriers that prevent any meaningful interaction.

Mulaqaats, in rooms overrun by other prisoners and their families, come after hours of waiting, accompanied, at times, by humiliation. Barriers like glass, wire meshes and a no-contact policy only add to these already grim meeting conditions. Prison restrictions on time and the financial implications coupled with the dissatisfaction of a very brief mulaqaat with prisoners after elongated anticipation make it ineffective as a coping mechanism.

The lack of any social, moral and legal framework within which to respond to the experience of death row families coupled with the disenfranchisement that death row families are subject to, make them collateral damage, but not a collateral consideration in our justice system.

# CHAPTER VIII

# ACQUITTALS AND

# COMMUTATIONS

The Death Penalty India Report brought to light the fact that very few prisoners sentenced to death by trial courts see their sentence confirmed by the appellate courts. An analysis of cases from 2000-2015 revealed that only 4.9% of death sentences were confirmed by the Supreme Court. Along similar lines, as of 30.09.2020, only 35 prisoners out of the 88 were still on death row.

When categorising prisoners as acquitted or those whose sentence was commuted, there were a few prisoners who had been sentenced to death in multiple cases. In some of these cases, they were acquitted and in the remaining, the sentence was commuted. In such cases, their status has been categorised as that of a prisoner whose sentence was commuted, since they continue to remain in prison, even if off death row. In the case of two prisoners who had multiple cases against them, the High Court, while acquitting them in all other cases, sent one case back to the trial court for a retrial. The case of one other prisoner was remanded to the trial court for a retrial. All three have been considered as having been acquitted, because effectively they are undertrial prisoners now.

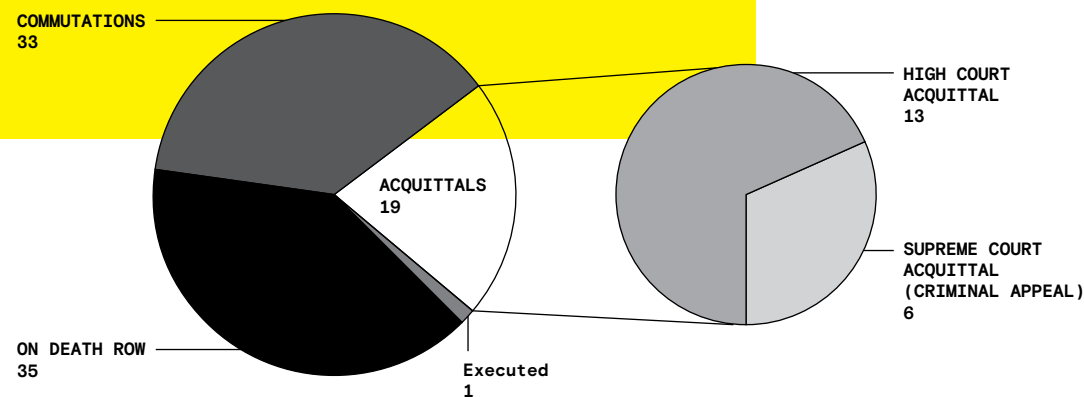
While there was no change in the status of prisoners interviewed in Delhi, except the one prisoner who was recently executed, all

the other states saw some flux among the death row population interviewed in terms of acquittals and commutations.

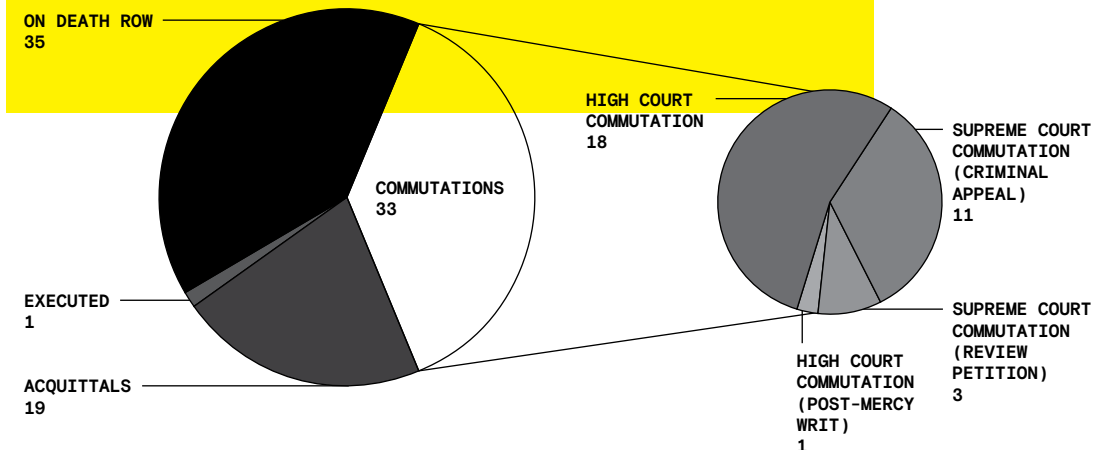
At the time of writing, only 36 prisoners out of the 88 were still on death row. 52 prisoners were either acquitted (19) (Graph 8.1) or had their sentence commuted to various terms of life imprisonment (33) (Graph 8.2). One death row prisoner in Tihar Central Prison, Delhi was executed on 20.03.2020.

Of the 19 prisoners who were acquitted, 12 were charged with murder simpliciter, six with dacoity with murder and one had been sentenced to death for murder involving sexual offence. The highest number of commutations was seen for prisoners charged with murder involving sexual offence (12). (Graph 8.3) The largest number of acquittals was from Karnataka (12) and of the 33 commutations, Madhya Pradesh accounted for the largest proportion of prisoners whose sentence was commuted. (Graph 8.4)

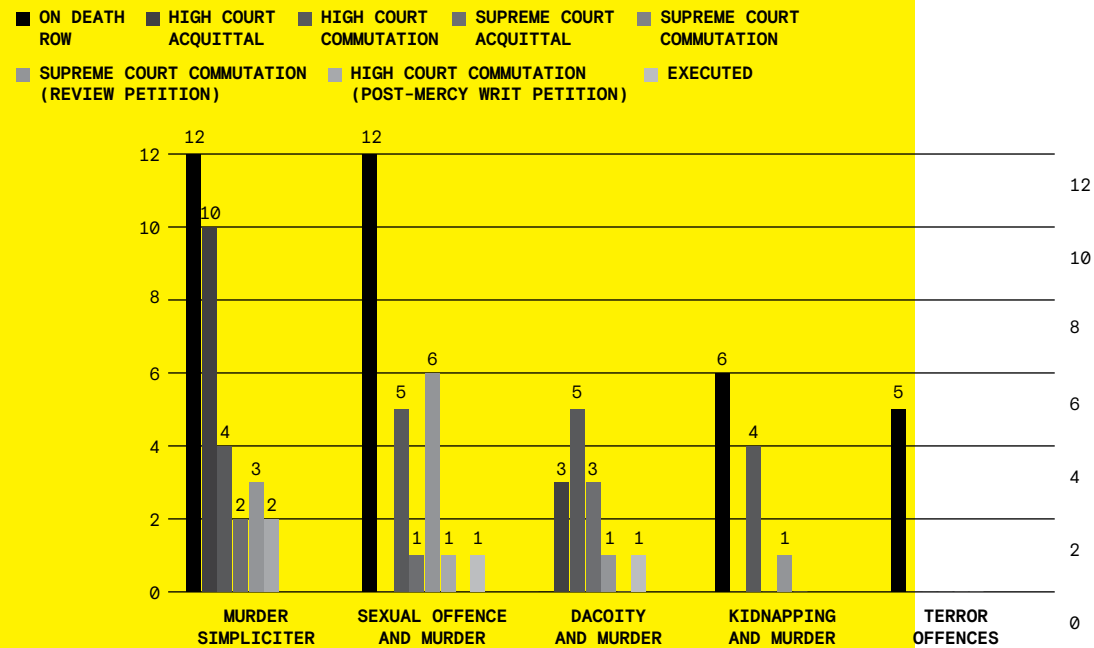
**GRAPH 8.1**  
**NUMBER OF PRISONERS ACQUITTED AT THE APPELLATE STAGES (n=19)**



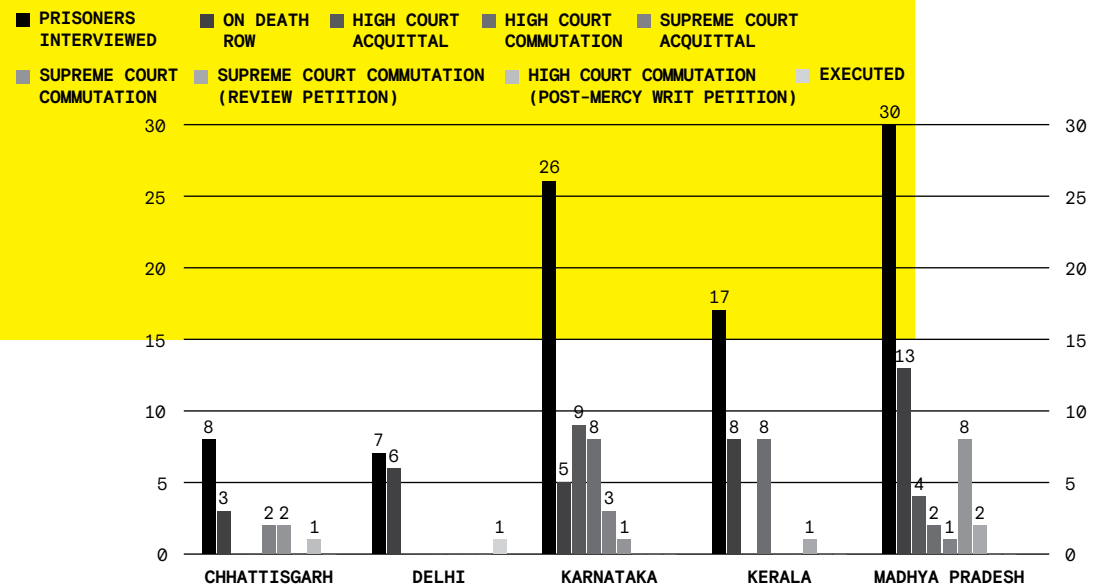
**GRAPH 8.2**  
**NUMBER OF PRISONERS WHOSE SENTENCE WAS COMMUTED TO VARIOUS TERMS OF LIFE IMPRISONMENT (n=33)**



**GRAPH 8.3**  
**CRIME-WISE DISTRIBUTION OF ALL 88 PRISONERS INTERVIEWED AND THOSE WHO WERE ACQUITTED OR WHO HAD THEIR SENTENCE COMMUTED**



**GRAPH 8.4**  
**STATE-WISE DISTRIBUTION OF ALL 88 PRISONERS INTERVIEWED AND THOSE WHO WERE ACQUITTED OR WHO HAD THEIR SENTENCE COMMUTED**

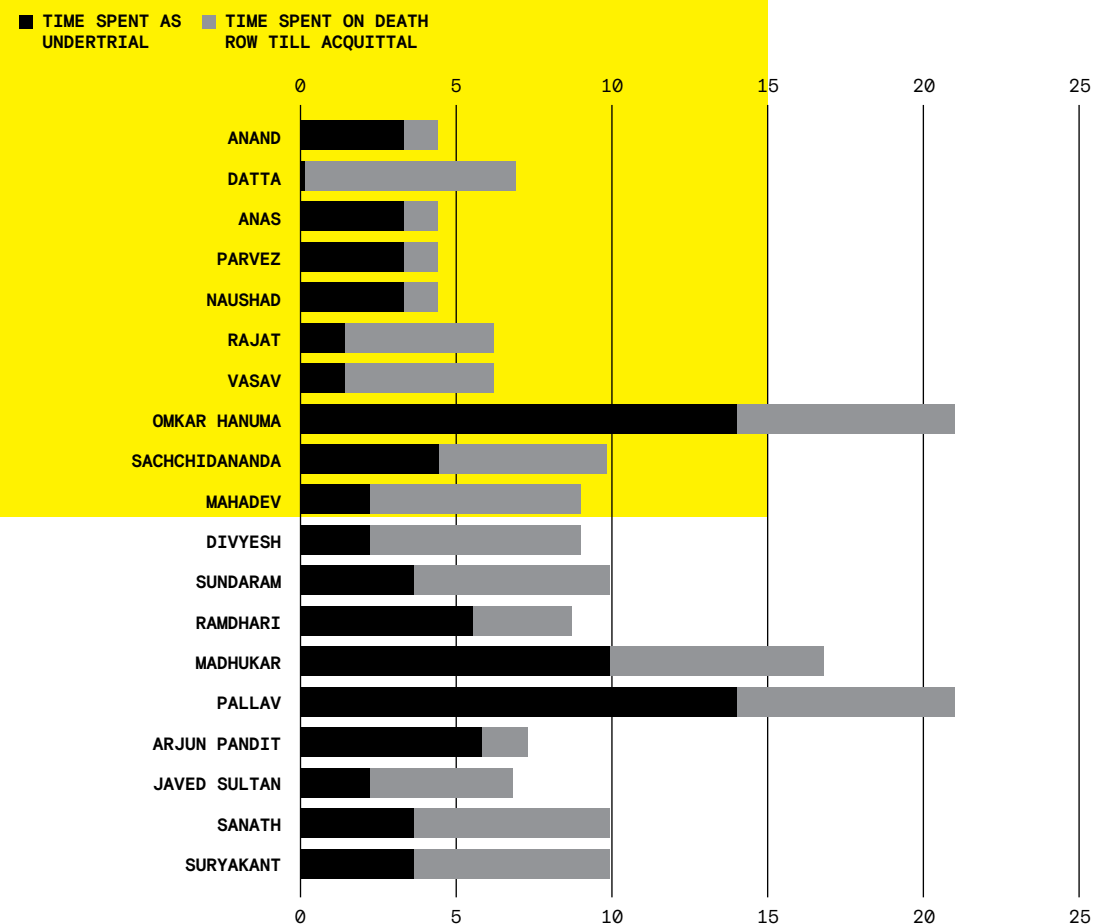


# Time Spent in Prison and on Death Row

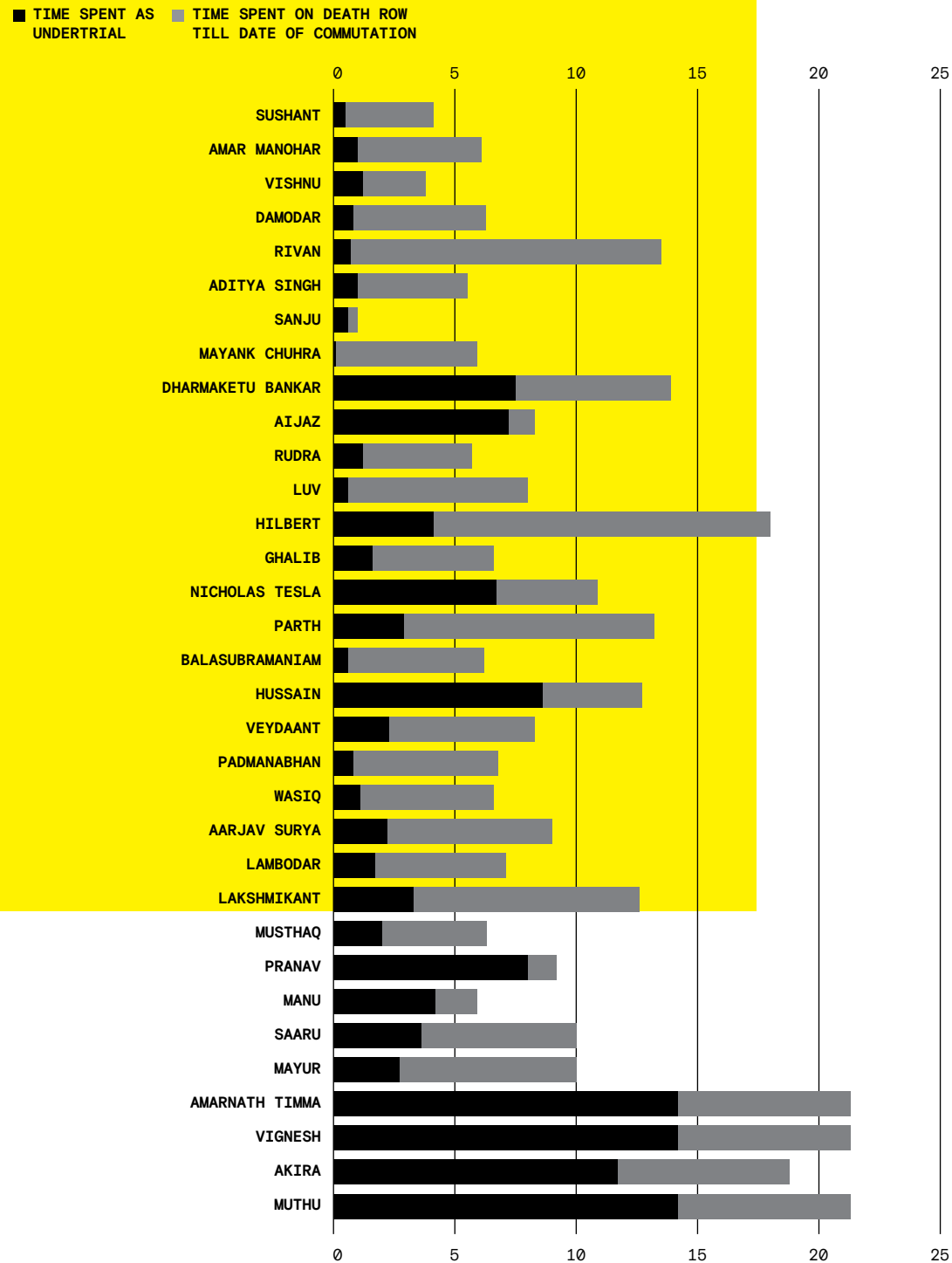
The median time spent in prison by acquitted prisoners was 8.7 (1.5-20.2) years while the median time spent on death row was 5.4 (1.1-7.0) years, respectively. (Graph 8.5)

The median time spent in prison by prisoners whose sentence was commuted was 6.5 (0.9-17.9) years. The median time spent on death row was 5.6 (0.4-13.9) years. (Graph 8.6)

**GRAPH 8.5**  
**TIME SPENT AS AN UNDERTRIAL AND ON DEATH ROW BY PRISONERS WHO WERE ACQUITTED (n=19)**



**GRAPH 8.6**  
**TIME SPENT AS AN UNDERTRIAL AND ON DEATH ROW BY PRISONERS WHOSE SENTENCE HAS BEEN COMMUTED (n=33)**



# Cross-Sectional Mental Health Concerns among Prisoners who were Acquitted or had their Sentence Commuted

13 out of the 19 prisoners who were acquitted, and 18 out of the 33 whose sentences were commuted were diagnosed with a current episode of at least one mental illness. (Graph 8.7) There were only 12 prisoners who were not diagnosed with a current episode of any mental illness.

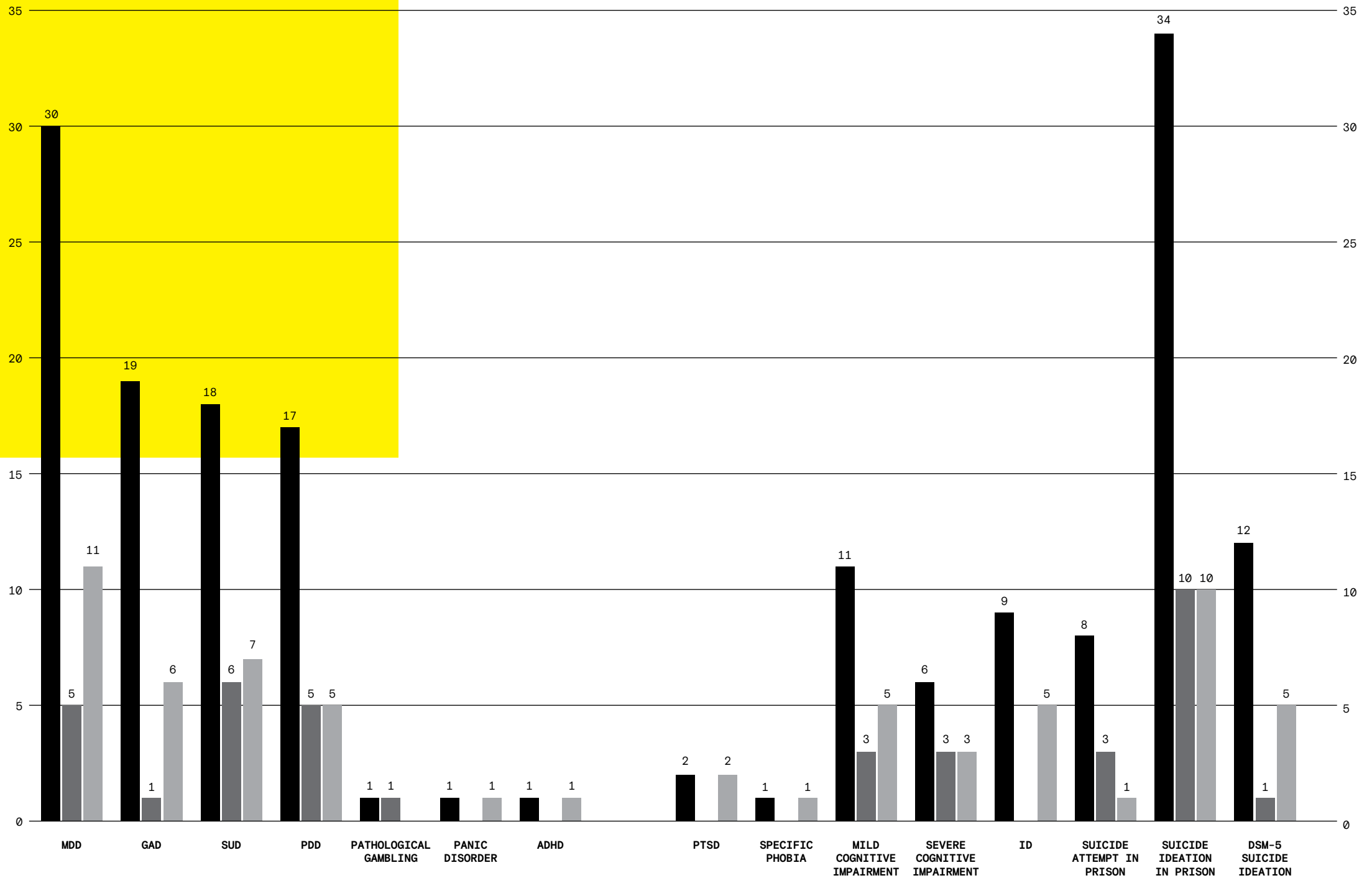
The mental health concerns of prisoners need to be looked at in the context of the state's accountability and response towards punishment as well as its implications for the right to health of prisoners. That these concerns went undetected and untreated in so many prisoners before incarceration as well as while they were in prison, is an indictment of our mental health treatment delivery systems, the prison system, and ultimately our criminal justice system.

The large number of acquittals and commutations raises questions about our responsibility towards prisoners who are reviled by the system and society but who are ultimately found not worthy of death or, worse, are ultimately held not guilty, after spending years in captivity. Left out of our imagination post-release, they are now left to their own devices to reconstruct their lives in a world which, in many cases, is drastically different from the one they had lived in all those years ago. Additionally, though acquitted by courts, they must navigate their lives potentially still guilty in the eyes of those around them. They are at liberty to live their lives, in some cases, without means, but in almost all cases, without being cared for or helped by a system which deemed them deathworthy.



**GRAPH 8.7**  
**MENTAL HEALTH CONCERNS**  
**AMONG PRISONERS WHO WERE**  
**ACQUITTED OR WHOSE SENTENCE**  
**WAS COMMUTED (n=52)**

■ TOTAL NUMBER OF PRISONERS ■ ACQUITTED ■ COMMUTED



# CONCLUSION

When talking about the lives of death row prisoners, one often encounters the ‘so what’ problem; so what if they were poor or abused or traumatised, does that excuse or justify the crime? The clear answer is, no. It neither explains, nor justifies nor excuses the crime. But knowing their lives, as the law requires, does explain to an extent the person who is going to be sentenced to death.

In detailing the experience of prisoners before incarceration, more content is meant to be provided to broad brush factors that are currently considered mitigating. For instance, when the law considers the socio-economic circumstances of a prisoner, it must also know what these circumstances mean for the prisoner. It is not just that the prisoner may be poor, but the experience of poverty, the neglect and abuse, the undernutrition, the often forced giving up of education, the untended entry into adult work spaces and ultimately, the exposure to all kinds of seen and unseen violence and the loss of opportunities are all experiences that have serious repercussions for an individual. 46 out of the 88 prisoners interviewed had been abused as children, 64 neglected, 46 had to drop out of school early, and 73 prisoners grew up in a disturbed family environment. 73 prisoners were exposed to three or more adverse childhood experiences. 56 prisoners had experienced three or more potentially traumatic events at any stage in their life.

However, our current death penalty sentencing practice is simply not equipped to gather, present, and consider such crucial details of a person whose very life is at stake. Judgments condoning the practice of same day sentencing almost ensure that information regarding the person will continue to be presented in checkboxes and the sentencing exercise will continue to lack meaning. Our sentencing practices must be seen in the context of the fact that the average prisoner sentenced to death belongs to communities whose lives and experiences are largely undocumented. Gathering and presenting information about them requires time and resources – both of which are slowly being nudged out of the system.

The death penalty sentencing framework empowers the judge to undertake a searching inquiry into an individual’s life to look at them as an individual in their own right. It is an opportunity to not ask “so what?”, but to answer “what if?”. What if the person had even some things going for them, and what if they were given a chance, even if behind prison walls?

The difficult pre-incarceration experiences continue in prison, though in a different form. Incarceration is a sudden change from past lives with significant deprivations. For death row prisoners these experiences are magnified. The social and physical exclusion, discrimination, stigma, and physical and psychological violence are often related to their status as death row prisoners. This extremely traumatic experience is further compounded by the constant narratives of evil and villainy that death row prisoners are very often

subjected to in courtrooms, in prison and much more obviously in the public. The discourse slowly takes away their humanity and dignity along the way.

The lens available to us as of now is that suffering is not the aim of the death penalty, and it is through this lens that this Report looks at the past and current lives of prisoners living with the sentence of death. Dismissing psychiatric concerns or the pains of death row as unintended consequences of the death penalty or even as intended and deserved consequence, requires us to face and revisit fundamental ideas that we hold about justice and punishment.

An additional human cost of the death penalty is the death row family – people who bear the punishment outside the legal system. There appears to be a close link between the mental agony of prisoners sentenced to death, on whom the concern for their families weighs heavily, and the actual impact felt by the family. In that sense, the mental agony caused to the prisoner because of the death sentence is interrelated with multiple other concerns which arise indirectly out of the death penalty itself. Of particular importance is the impact of the death sentence on children. The death penalty has an intergenerational impact in terms of further restricting employment and education opportunities and increasing the likelihood of serious health concerns across multiple generations.

To reduce this complexity to a battle between the experiences and lives of the accused versus the experiences and lives of the victim of the offence is to do disservice to both. Both pains are legitimate and both pains need to be addressed. Putting them in binaries and considering them as opposing forces makes for a dehumanised criminal justice system. Ensuring a fair and humane justice system for the victim need not mean an unjust and unduly harsh system for the accused. That there were 19 prisoners who were ultimately acquitted is of little service to the victim. A system that takes seriously the concerns of the victim and the accused would work towards legitimately reducing the number of people who are wrongfully convicted. These are not people who are set at liberty, these are people who continue bearing the scars of their lives as death row prisoners much after they are free.

This Report indicates the layering of adversity in society and how there needs to be a counterpoint to understand this group as particularly vulnerable – looking at them from the vantage of socio-economic disadvantage, childhood adversity, sometimes complicated by intellectual disability, brain trauma and cognitive impairment, with very poor support systems enhancing their vulnerability.

The Report does not argue similarity of experiences between the judge and the one being judged, but the similarity of the fact of humanness. We, as humans, are undeniably formed by everything that surrounds us (positive and negative), and to discount

and dismiss that would be to arbitrarily create categories of us and them. The demonisation of death row prisoners is so deeply entrenched that it is mildly surprising when they speak, think, feel, and have memories and families, like us. It is in knowing their stories, their moments of regret and pride, their hurt and disappointments that we humanise them, and in the process, ourselves.



**P39A**

**PROJECT 39A**  
EQUAL JUSTICE  
EQUAL OPPORTUNITY