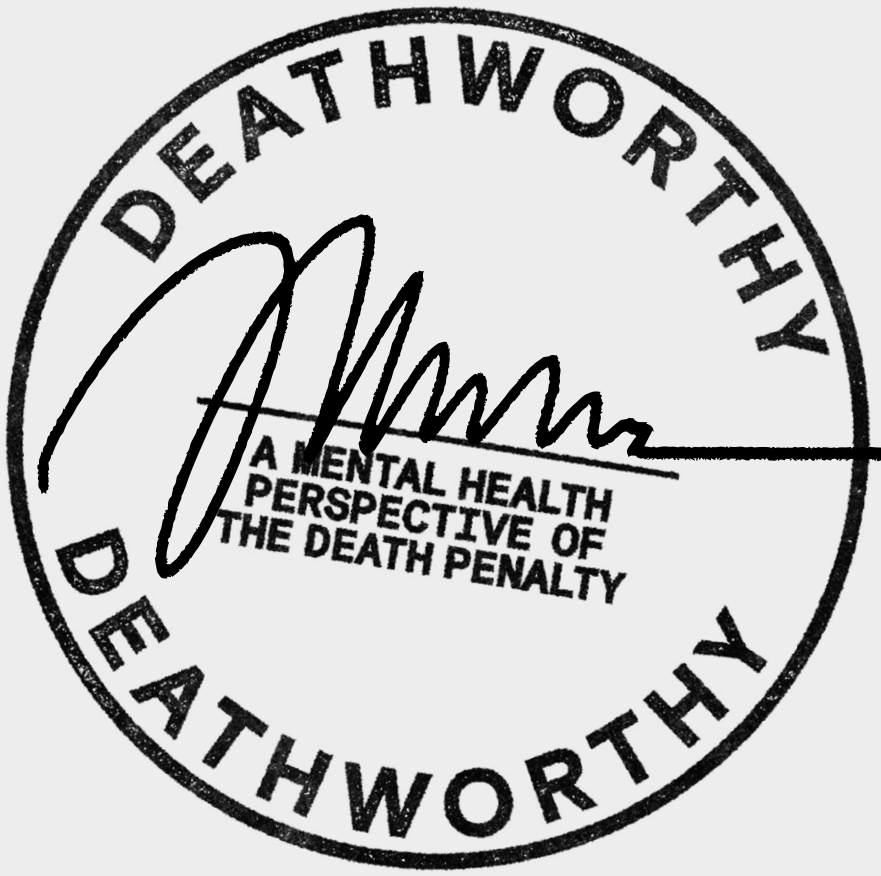

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EQUAL OPPORTUNITY

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I would be grossly remiss in not thanking my colleagues at Project 39A, current and former. Their intellectual rigour runs through the Report and their support has been the fuel necessary to sustain a task of this magnitude. I would like to specifically thank the administrative and finance officers at Project 39A who have always responded with alacrity to the urgent needs of the Project and the Report. A big thank you to Anup who had the confidence in the Project when it was just a germ of an idea and essentially let me run with it.

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And finally, my heartfelt gratitude to prisoners living with the sentence of death and their families. They gave us valuable time, honesty, and generosity and agreed to revisit traumatic experiences so that young researchers could benefit.

Maitreyi Misra
Project Head and Lead Author

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LAW, SUFFERING AND JUSTICE

MESSAGE FROM THE VICE CHANCELLOR

This Report on mental health and the death penalty contributes to the knowledge on evidence based research in the difficult domains of mental agony and suffering behind bars. The criminal justice system very rarely understands the custodial trauma, the mental agony and profound suffering of those awaiting justice in the darkness of our prisons. For prisoners living under the sentence of death, the 'brooding horror of hanging' makes the darkness that much more suffocating. I am delighted to see the uncompromising stance adopted by my colleagues at Project 39A in the realm of jurisprudence of law, life and mental health.

The interdisciplinary approach of the Report attempts to transcend the boundaries of the conventional approach of the law and legal theory while thinking about issues of punishment and the death penalty. The Report looks at punishment from a lens which is crucial to the construction of the individual who is punished - mental health. It not only builds upon the Death Penalty India Report, 2016 in looking at the socio-economic realities of those sentenced to death. The Report further takes a step forward by delving into the psychological and emotional implications on the individual living on death row. The issues that this Report engages with are a crucial addition to the discourse on the death penalty in India. The Report also draws important connections between social structures, the impact they have on individual lives, and violence.

I would like to express my heartfelt thanks to Professor Pratima Murthy (Director, NIMHANS), Professor Sanjeev Jain (Department of Psychiatry, NIMHANS) and Dr. Gitanjali Narayanan (Associate Professor, Department of Psychology, NIMHANS) who played a critical role in moulding the Report as you see it now. Their contribution is beyond the Report and shows what is necessary and what can be accomplished when the law seriously engages with fields which help us better understand individuals which are its subject. My colleague Maitreyi Misra's leadership of this project has been exceptional and Maitreyi has made tremendous contributions in making mental health perspectives on criminal justice an integral part of Project 39A's work.

NLU Delhi is committed to nurturing emerging talent that will push our boundaries in the manner in which we engage with the law and my congratulations to Project 39A, under Dr. Anup Surendranath's leadership, for bringing together exceptional talent in this regard. I am also extremely thankful to everyone who lent their invaluable time and support to this Report. The Report has also been a labour of love for many students at the National Law University Delhi who have contributed to it in ways, big and small.

Social justice should be at the heart of the pursuit of legal education. Work like this brings us closer to one of the aims of legal education, which is to gain an understanding of law in the social, political and economic context. Law schools should sensitize their students to interdisciplinary perspectives rather than just limiting them to legal pedagogy. Research Centres like Project 39A are crucial in creating a learning environment where the law is tested and considered against the realities it governs. I take immense pride in the fact that our students got an opportunity to pursue socially relevant legal education through engagement with this research. This will further push them to act as trustees on behalf of the common people in the future. This multidisciplinary approach to legal education will equip them to not only critique the law but also bring about changes in the law.

Professor Srikrishna Deva Rao
Vice Chancellor, National Law University Delhi

UNDOING A LEGAL FICTION

NOTE FROM THE EXECUTIVE DIRECTOR

The legal determination of those chosen to be sentenced to death is often characterised by a faux certainty. The law cannot afford anything less when it is made the instrument through which life will be taken. And yet, beneath that certainty lies all the complexity and danger that come with determining that an individual deserves to be executed. At the core of the conversations around 'desert', and 'blameworthiness', is the unshakeable assumption of the law that individuals act on their own, unaffected and unencumbered, free will and must be individually held responsible for such acts. Without that assumption the law cannot proceed with the kind of certainty it needs to imprison and execute people.

However, there is now extensive research to show that such an assumption in the law is necessarily false. Individual actions are influenced by a whole host of factors involving social contexts, personal histories, psychological and developmental experiences etc. This project is an attempt to develop research in India to show, through the lens of mental health, that those we have chosen to inflict the death penalty on are people with complex histories and contexts. The narrative that those sentenced to death are inherently criminal and who just chose to commit terrible crimes is a figment of the law's imagination, with very little grounding in reality. This legal fiction termed as the 'crime master narrative' by Craig Haney dominates discussions on punishment in criminal law and this report is meant as a contribution to chip away at that dangerous foundation.

The normative mayhem that characterises death penalty jurisprudence in India is in no small measure caused by flawed theoretical approaches to punishment. Both in terms of factors that are relevant for determining punishment and the manner in which such factors are considered, the legal position in India has been suffocated by the legal fiction discussed above. It has meant that criminal law in India has no meaningful engagement with ways in which factors relevant to punishment can be brought into court.

Mental health considerations of the accused before the court rarely receive the attention they deserve. While judgments like Shatrughan Chauhan v. Union of India, Accused X v. State of Maharashtra, and Mohd. Mannan v. State of Bihar moves the needle in terms of exploring the relationship between mental health and punishment, we are far from acknowledging the normative foundations of the relevance of mental health in sentencing. This report is an effort to establish the integral and intertwined relationship between mental health considerations and determination of punishment. There are a wide range of factors that interact with each other in myriad ways that should inform our understanding of responsibility and blameworthiness in the sentencing phase. It would require a serious and rigorous interdisciplinary engagement between criminal law, psychology, psychiatry, social work, and sociology. It is indefensible to sentence individuals to death or to periods of incarceration without meaningfully considering their blameworthiness from a mental health perspective. And this cannot happen unless judges and lawyers earnestly invest in such interdisciplinary learning. Issues like childhood experiences, developmental histories, trauma, abuse, mental illness, intellectual disability, substance dependence etc lie at the heart of this interdisciplinary learning and must enter courtrooms adjudicating punishments. It is convenient for the law to imagine a fiction that punishment is all about one individual at a specific point in time committing a certain act. Anything else would make it messy and take away the certainty that the law desperately craves. Though the sort of work contained in this report is scant in India, it adds to the mountain of global and comparative evidence that makes it unsustainable for criminal law to continue ignoring these interdisciplinary connections.

Maitreyi Misra's conceptualisation of this work and its implementation has been exceptional. In addition to the intellectual sophistication involved in such an endeavour, a whole host of other skills are also needed to take such powerful ideas from the drawing board and see it through across the finish line. This project has been a challenging journey for Maitreyi in multiple ways and seeing her persevere and be uncompromising about the standards she set has been inspiring. It would be remiss of me not to reflect on the processes that go into producing work like this. Empirical field-based criminal law research in India is extremely difficult. Getting access is a bureaucratic nightmare and even if such access were to be negotiated, the state of public record keeping in our criminal justice system is a huge barrier. But most of these challenges were overcome due to the tremendous efforts by people that Maitreyi brought together for this project. In particular, I want to thank Chinmayi Shrivastava, Kannan Jhunjhunwala, Varsha Sharma, and Vasundhra Kaul for staying the course with the project through all of their time in law school. As a teacher, seeing their commitment, dedication, and sacrifice left me with much hope for the future.

Dr. Anup Surendranath
Executive Director, Project 39A, National Law University Delhi

FOREWORD

Over the past few hundred years, society has become more aware of the nature and extent of psychiatric illnesses. This has also led to a better understanding of the interface between mental health symptoms and outward behaviour (including criminal behaviour). Thus, current approaches incorporate a more progressive, humanistic and humane awareness of the multiple causes and consequences that affect a person, from the biological to the social.

While the notion that mental illness is associated with crime is often exaggerated and stigmatizing, the corollary that crime is associated with a higher than general population rate of mental illness has been suspected from centuries. We now understand that a variety of factors contribute to criminal behaviours, and that these factors can all interact in a complex manner to influence how a person thinks, feels or behaves. Genetic risk, changes in brain chemistry (including exposure to drugs of abuse), aberrations in brain circuitry, and abnormalities of physiological markers may all be associated with aggression and crime. Environmental factors such as poverty, homelessness, early experiences of violence, absence of secure parenting and a hostile social environment are often superimposed on biological predisposition, and accentuate the vulnerability. The entry of substance use into this complex interplay results in a lytic cocktail of crime as well as mental health issues. Prolonged incarceration, solitary confinement and lack of medical care further complicate life after conviction, in the 'total institution' of the jail. There is thus a very complex, inter-related background of vulnerability, that is seldom identified or acknowledged. This lack of a better understanding of the factors leading to the crime, and of the consequences of the punishment, raises concerns. Particularly a crime that attracts the death penalty.

Violence attracts public attention, and violent crimes are often sensationalised. In such situations, the conversation is inevitably focused on the act, and the punishment it seemingly deserves. The starkest gaze is on people on death row, particularly those associated with violent crime, and society tends to clamour for just (even retributive) punishment. One fall-out of this is a failure of the system to look at the perpetrator from a mental health perspective, and examine from a psychosocial and biological lens the interactions of innate predisposition, vilifying environments, upbringing or the lack of it, stigma and isolation, the mental state at the time of the 'heinous crime', as well as the harsh treatment meted out within the criminal justice system. All these have the potential to aggravate psychological states and precipitate further mental distress.

Pre-existing psychiatric disorders or intellectual disability can prevent the ability to judge, or alter individual judgement of certain actions and their consequences. Thus, in the case of the person who lacks capacity and is thus potentially incapable of mens rea, how can punishment actually be pronounced and executed? Can the individual who commits a criminal act under impaired reasoning on account of delusions or hallucinations or in the context of brain damage or epilepsy be held fully culpable for a criminal act? There is, all over the world, even in countries that still retain the death penalty, a reluctance to execute those who are mentally ill. This is a particular concern, as the investigators in this study observed that in most instances, formal mental health assessments are not carried out.

Yet another issue is the fact that 'a hundred suspicions don't make a proof' (Dostoevsky). Many death row prisoners have an endless wait, dragging on years together, following which in many an instance, the person is either acquitted or the sentence commuted (many such examples are there in this Report). During that time, there are serious mental health consequences of isolation and the seemingly endless wait on death row. These circumstances of isolation and uncertainty, and maltreatment contribute to the high rates of depression and psychological symptoms.

The mental health of the families often suffers as 'collateral damage'; and their needs are often neglected, and remain unspoken and unaddressed. The mental distress, stigma and psychosocial adversity they have to endure also gets transmitted to their siblings and children, long after the events and their aftermath.

In this first of its kind in-depth exploration of mental health perspectives of persons on death row in India, the team of largely young students from the National Law University, Delhi, led by Maitreyi Misra delve into hitherto unexplored areas far beyond the courts' gaze, into lives of prisoners on death row. We have both been involved, along with Dr Gitanjali Narayanan, in various stages of the study – its conceptualisation, execution, documentation and dissemination. Working with the team has been a great learning experience for us and we consider it a privilege to have been closely involved in this body of work.

Behind the smokescreen of the prison and death row, many of the convicts emerge as thinking, feeling and suffering human beings, who have left behind traumatised families, and have themselves often been victims of a range of adversities, some inherited, others visited upon them by unfortunate circumstances. Using face to face interviews, both in the jail (and often under the watchful eyes of the jail staff); talking to the families; collecting all their records, discussing the issues with legal experts, and mental health professionals, the team members have tried to understand their personhood, factors that shaped or failed to shape their persona.

Far beyond the statistics of diagnosable mental disorder and trauma, which themselves are startling, there are many important stories to be heard and understood. There is R, coerced to use ganja at the young age of 12, thought to have "developed madness",

engaged in reckless and self-harming behaviours. Earlier scenes of harmful manipulation and coercion continued to be enacted in prison; D, who was unable to carry out simple instructions from an early age, was made to sell liquor illegally, lacked in judgment which made him seem reckless, 'behaved like an animal', had 'no concept of fear' and, yet had been abused and sexually assaulted himself.

Psychotic disorders often go unrecognised, as in the case of R who killed many family members but made no effort to conceal the act or U who committed a heinous act under the instructions of 'voices' (hallucinations).

Depression, anxiety and suicidality were common themes, both preceding prison entry and following incarceration and on death row. Whether it is the poignant story of A, who was too ashamed of talking to his sister and tried to kill himself in prison; S who was ridden with guilt about not being able to care for his children; D, who slept with the constant fear that someone would step on his neck and kill him... such stories abound. It is important to know that there is significant mental anguish and psychiatric illness which need attention within the prison.

Many early adversities and negative life events rarely occur in isolation. This is possibly best illustrated by B's story. Born with birth complications, abandoned by his father (who left the family for another woman when B was six months old), nearly killed by his uncle, scared at the sight of blood or any kind of violence, a loner with poor communication skills, left with an accidental but severe head injury leading to fits, finally landing up in prison, where he cries for 'no apparent reason' and feels suffocated and scared when someone raises their voices.

The cost to families goes far beyond just monetary deprivation. Many of the convicts have earlier lived with their families, who describe them as feeling and caring human beings. P's wife recalls that he had a lot of friends, was helpful, liked by everyone, cared for his mother and took all the responsibilities for his sister's marriage. There are many such stories of the 'human' side of such prisoners. Another aspect of the family's suffering is the gaze of society as 'guilty by association' which often manifests in their houses being razed, threats, physical assault and quiet alienation. It forces the identity of a "death row family" on them. They are also alone in their grief, which is sometimes worse than the grief of bereavement. "When a man is dead, one can easily grieve for a few days and overcome the incident, but how is one to process the loss of a man in prison for 25 years?"

Stories of violence and ill-treatment in prison abound. Horrific stories of being put inside a tyre and being beaten, denial of food, verbal and physical abuse and antagonism from other prisoners... the instances are numerous. One of the prison guards told L he had no right to live; and L attempted to hang himself while in that

prison. "They attack our honour, they touch our private parts. They beat and humiliate you. The searching of the ward is physical and psychological torture. They throw away ironed clothes, they throw away the bed and step on it. They tore my mosquito net which was in the cell where I was staying. They beat me too", recounts A. The suffocating life in 'andheri' or solitary confinement is worse than an overcrowded barrack. P describes himself 'like a cemetery', as a 'walking dead body'; while S feels an unbearable tension, and wonders if he will become 'mental' in his tiny little cell and will need admission to a psychiatric hospital.

The comprehensive nature of the use of standardised questionnaires and assessments will give the reader an understanding of various mental health perspectives. The extent and nature of mental health problems, and a better understanding of the origins of crime and mental illness are explored in some detail. The Report focuses on the legal framework as they exist, particularly upon the sentencing framework for the death penalty. It is a painstaking and commendable effort which we hope will draw the attention of a large spectrum of readers, from those involved in the criminal justice system, to students and practitioners in the fields of law, as well as mental health. We hope that it will engage and modify public perception, and draw attention to the need to look beyond the actus reus, and initiate a deeper dialogue on the subject. The role of social structures, and medical and psychiatric issues, and our civic responsibility to address the multitude of vulnerabilities associated with crime and incarceration, need to be discussed in the open. We hope that this effort would herald that the objectives set out, are indeed fulfilled!

This Report is thus an opportunity for a more nuanced gaze, incorporating perspectives from a human and social lens; and how that can become a part of the criminal justice system. This would, we hope, provide a better understanding not only of the individual in the dock, but also of the wider social canvas in which crime, punishment, madness and sadness have their tragic denouement.

Dr. Pratima Murthy
Director

Dr. Sanjeev Jain
Senior Professor and former Head, Department of Psychiatry

National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore

INTRODUCTION

In many ways, this Report is a continuation of the larger project of untangling the death penalty in the Indian context[1]. Unlike previous works, however, the Report, for the first time, places is sues of mental health and the psychosocial realities of death row prisoners, front and centre. The Mental Health Research Project, findings of which this Report presents, was conceptualised to undertake an exploration into (a) psychiatric illnesses among death row prisoners, (b) intellectual disability among prisoners sentenced to death, and (c) the psychological consequences and the pains of death row.

The Report provides a longitudinal view of the life of death row prisoners from their childhood to their lives on death row. In doing so, it unpacks many concepts that already exist in Indian death penalty jurisprudence, particularly those that relate to the death penalty sentencing framework and the mental and emotional agony of living on death row, while also introducing newer perspectives.

This Report first provides information on the socio-economic demography of the prisoners and also touches upon aspects that pertain to the legal journey of the cases (Chapter I). As shown in the chapter, prisoners interviewed as part of this Project were representative of the death row population interviewed for the Death Penalty India Report. In discussing the death penalty, it is important to understand its legal context and Chapter II provides an overview within which criminal law, but more specifically the death penalty, interacts with issues of mental health. From a constitutional law perspective, the Report introduces a new discourse on the death penalty. It discusses the implications for the state's responsibility in cases of violations of the right to health, a fundamental right guaranteed under the right to life, and its effect on the continued application of the death penalty in cases where these violations take place.

Though all three aims that the Project was conceptualised to fulfil pertain to mental health, the motivations for each were different. The first aim (Chapters IV and V) was a direct result of a watershed moment in Indian death penalty jurisprudence. The Supreme Court in 2014 in *Shatrughan Chauhan v Union of India*[2], 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 and what the experience of these illnesses meant in the context of death row. 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 having psychotic episodes in prison – one of whom had a psychotic episode while in solitary confinement. 37 prisoners had sub-clinical mental health concerns. While this itself is a major cause for concern—more worryingly, 8 prisoners had attempted to die by suicide and close to 50% had thoughts of dying by suicide. The death row population is precariously vulnerable to mental illness and to severe psychological harm in state custody. It raises serious questions about the state's responsibility in addressing and preventing the very real mental health crisis among death row prisoners, and the consequences, legal and social, of a failure to act on this responsibility.

The second aim on intellectual disability (Chapter VI) fills a crucial knowledge gap in death penalty jurisprudence. It is a gap that has found no attention, even after four decades of the elucidation of a constitutionally permissible death penalty sentencing framework in *Bachan Singh v State of Punjab*[3]. The death penalty sentencing framework is meant to determine the degree of responsibility to be attributed to the accused. Barriers in decision making, judgment formation and gullibility are some key aspects of the disability, which necessarily have a bearing on the degree of responsibility that can be attributed to a person with intellectual disability. The disability also makes them extremely vulnerable to victimisation and abuse in the criminal justice system. Nearly 11% of the prisoners were diagnosed with intellectual disability and over 75% were found to have deficits in intellectual functioning. That their disability was not brought to the notice of the court does not exempt the state from responsibility, but is an indication of our current legal system's inability to grasp wide-ranging issues not directly related to the law, but which impact the law nonetheless. We have sentenced to death people, who, due to the nature of their disability, might very well be exempt from the death penalty altogether.

At its merciful best, the Supreme Court has paid attention to the mental agony of prisoners while awaiting a decision of life and death and has resoundingly rejected suffering as an aim of the death penalty. Chapter VII delves into the lived experience of death row prisoners to understand the psychological and emotional upheavals of a life on death row. 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, reveal a dark picture. Powerlessness, a meaningless life and the othering make for dehumanising conditions to live with. The narratives of prisoners on death row both inside and outside the courtroom paint a dehumanising picture of villainy. Some prisoners internalise this and some continue the fight for their dignity. Death row is accepted as purgatory where evil belongs. By unravelling the psychological harm of the death penalty due to both their treatment in prison and narratives outside, the chapter urges the reader to question whether we live in a society which willingly accepts pain as punishment.

However, it is impossible to inquire into these aims as the neat categories that they appear to be. As with any of us, lives of death row prisoners defy categorisation, and each of the above aims necessitated a much broader inquiry into their lives, pre- and post-incarceration. Their 'now' is inextricably linked with their past and future, and as the Project progressed, it bloomed into a much more in-depth and richer understanding of the lives of the prisoners.

In her paper, *Equity and Mercy,* Martha Nussbaum traces the idea of justice and punishment, mercy and equity to the thought tradition of Aristotle and Seneca. A line of thought which has continued till date – that laws must be sufficiently malleable to accommodate the realities of each case, that before deliberately inflicting punishment, the judge must be able to locate the offender in all their context. A wise judge is not a harsh judge, an equitable judge is a wise judge. And equity in punishment requires deep insights into who is being punished[4].

The death penalty framework is a continuation of this idea. It requires that the judge, before condemning a person to die, must know who is being punished; their social reality (often very different from the judge's context), their immediate and distal surroundings and the multitude of factors that have shaped the person before them. To be able to judge, we need to know. That is what the death penalty sentencing framework is meant to do. It allows the judge to sentence only after they know who it is that they are imposing the death penalty on. A task which has largely been whittled down to boilerplate, perfunctory and a checklist approach to the life of the prisoner; a process which, contrary to its original purpose, has become dehumanising itself. This Report lays bare the social realities and surroundings of prisoners sentenced to and living with the death sentence. It is a modest exercise in providing an insight into the harsh and often unforgiving life that the prisoners have faced. Chapter III illustrates the web of poverty, abuse, neglect, violence and little to no access to public goods and opportunities that is the life of an overwhelming majority of death row prisoners. This is not to say that they should not be held responsible—the scheme of our criminal justice system ensures punishment for offending acts.

Our lives and experiences mould us every step of the way, and understanding the lives of prisoners who are to be sentenced to death is an invitation to appreciate and consider their lives and experiences which in turn have shaped them. An equitable and wise judge, an equitable and wise society, must extend this courtesy to people it condemns to death.

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"[5] who get the death penalty. It would appear that more often than not the court is inaccurate in its assessment[6]. Of the 88 prisoners who were part of the Project, 60% of the prisoners either had their death sentence commuted or were acquitted by either the High Court or the Supreme Court. If we accept pain as punishment, 60% of the prisoners went through that pain needlessly (Chapter IX).

But death row prisoners are not the only ones who go through this agony on a daily basis. We, our legal system, have paid scant attention to a population which was never on trial—families of death row prisoners. The scheme of punishment is such that it only focuses on the person on trial (guilty or otherwise). The punishment is meant for that one person, but people who face the punishment are many more. 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 (Chapter VIII).

The Report is a culmination of five years of work, including conceptualising and designing the study, obtaining permissions to conduct interviews with death row prisoners, fieldwork, and analysis. The findings presented in this Report are based on interviews with 88 death row prisoners and 110 families of death row prisoners. These interviews were conducted with the intention of collecting information on the life-history of the prisoners, from childhood and their experience as well as their family's experience of the criminal justice system, particularly of the death sentence and were guided by semi-structured qualitative questionnaires. Psychometric tools and clinical interviews were administered to death row prisoners for enquiring into the extent of psychiatric concerns and intellectual disability present in this population. All the interviews were conducted in the language understood and spoken by the prisoner and their families and the transcripts translated into English before analysis. The data presented here was obtained after coding the transcripts based on a codebook generated for this purpose, and analysing the codes and code-groups through software used for statistical and qualitative analysis.

The Report does not delve into the moral and social imperatives for the death penalty. It does, however, show the many hurdles and obstacles that death row prisoners repeatedly hit against and are moulded by during their formative years, their adolescence and their early and late adulthood. In addition to answering "who gets the death penalty," (for the prisoner as for their families) the Report also answers, "what the death penalty means". It does not look to philosophical underpinnings of the death penalty, or what it means for us as judges, for that obscures the actual experience of the death penalty. It turns to death row prisoners themselves to understand "what is it like to be a prisoner living with the sentence of death?", to borrow from Nagel's seminal paper on consciousness and subjective experience[7].

This Report is an invitation to delve into the lives of prisoners sentenced to death, past and present. It requests of the reader only one thing – to believe, as true, the story of death row prisoners and their families.

CHAPTER I
COVERAGE

The phrase ‘prisoner sentenced to death’ or ‘death row pris oner’ for the purposes of the Report encompasses prisoners sentenced to death by the trial court, including those whose sentence is pending confirmation by the High Court. Though the law considers only those prisoners to be ‘under sentence

of death' whose mercy petition has been rejected by the Pres ident[1], in reality, as soon as the death sentence is imposed by the trial court, prisoners are treated and seen differently not just by prison administrators and other prisoners, but institu tionally as well. It is the reality and experience of being treated as a death row prisoner (even if it is not what the law mandates) and of living under the threat of state sanctioned death that we accorded primacy.

After outlining the nature of our sample, including death row prisoners and their families, the chapter provides information on parameters that were found to be representative of India's death row population, as tested against details documented in the Death Penalty India Report. The chapter then details the socio-economic background of death row prisoners interviewed, and provides a bird's eye view of the cases against the prisoners and the criminal justice system.

Sample

Our first interview with a death row prisoner was on 21st December 2016 in Central Prison, Raipur, Chhattisgarh. On that day, there were a total of 388 prisoners living under the sentence of death in India. But the death row population does not remain static for long and the numbers change rapidly. For instance, on the last date of our interview with the prisoners, i.e., 13th February 2018, there were 365 prisoners under the sentence of death. However, in order to compare proportions, we needed to freeze the number of prisoners and for this purpose, we used the number of death row prisoners as on the first day of the prisoner interviews. We interviewed 88 death row prisoners, including three female prisoners, across five states—Chhattisgarh, Delhi, Karnataka, Kerala and Madhya Pradesh.

■ PRISONERS SENTENCED TO DEATH

Interviews with prisoners sentenced to death were conducted in five states—Chhattisgarh, Delhi, Madhya Pradesh, Karnataka and Kerala—between 21st December 2016 and 13th February 2018. Though the maximum number of death row prisoners that we could have interviewed across the five states was 97, we were able to interview 88. With respect to Karnataka, the permission itself was contingent on us not interviewing one death row prisoner whose mercy petition was rejected by the President in 2013. Seven prisoners refused to interview with us for reasons of media and community backlash, concern for the family's well-being and disinterest in participating in the Project. One prisoner was medically unfit to sit for the interview. (Graph 1.1)

Interviews for the 88 prisoners were conducted across 16 Central Prisons and one District Prison. (Table 1.1)

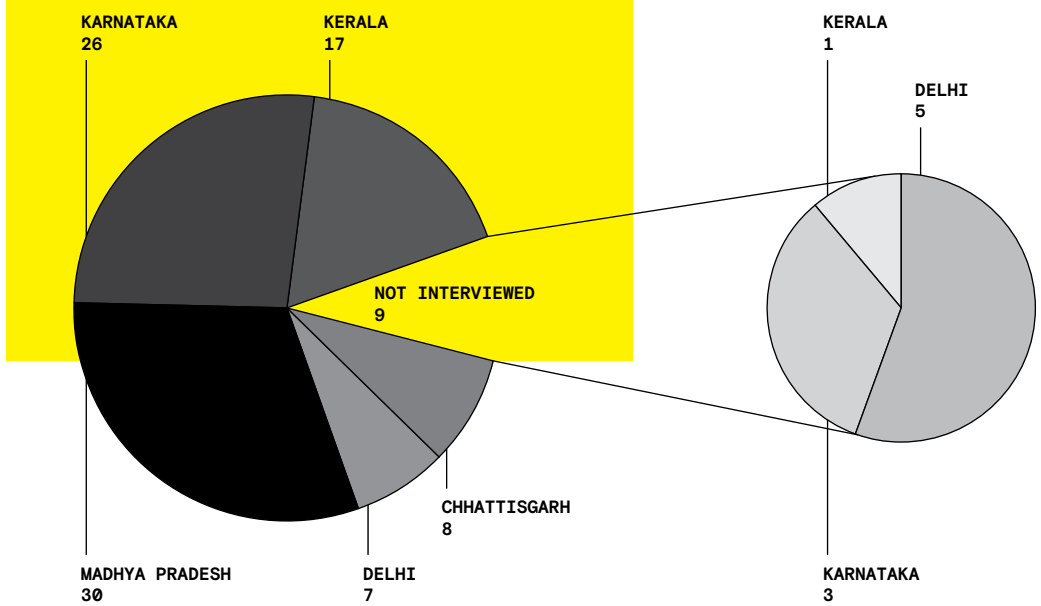
■ FAMILIES OF DEATH ROW PRISONERS

Families of death row prisoners were interviewed across seven states, i.e., Bihar, Chhattisgarh, Delhi, Karnataka, Kerala, Madhya Pradesh and Uttar Pradesh. The family interviews were conducted between 14th November 2016 and 13th April 2018. The family tracking began on 31st October 2016 in Chhattisgarh.

Though we interviewed 88 prisoners across five states, 171 families were tracked and 110 were interviewed across seven states. The large discrepancy between the number of prisoners interviewed and families tracked and those interviewed is because in two states, Bihar and Uttar Pradesh, we tracked the families while awaiting responses from the Prison Department. While we were not given permission to interview prisoners in Bihar, the Prison Department in Uttar Pradesh eventually stopped responding to our requests. We stopped our interviews with families when the permission from these two states did not come through.

GRAPH 1.1

SAMPLE SIZE OF DEATH ROW PRISONERS



In the five states where death row prisoners were also interviewed, we were unable to track three families, while four families refused to be interviewed. Stigma, fear of media and community backlash, cultural barriers with respect to women and severed ties with the prisoners were some of the reasons for families to deny consent. We did not interview four families because the prisoners, whom we had approached before the family in these cases, requested us to not interview them. Eight prisoners did not have family in the same state. In this group, we were able to track down and interview five families. (Graph 1.2)

TABLE 1.1

State-wise break-up of prisons where interviews were conducted

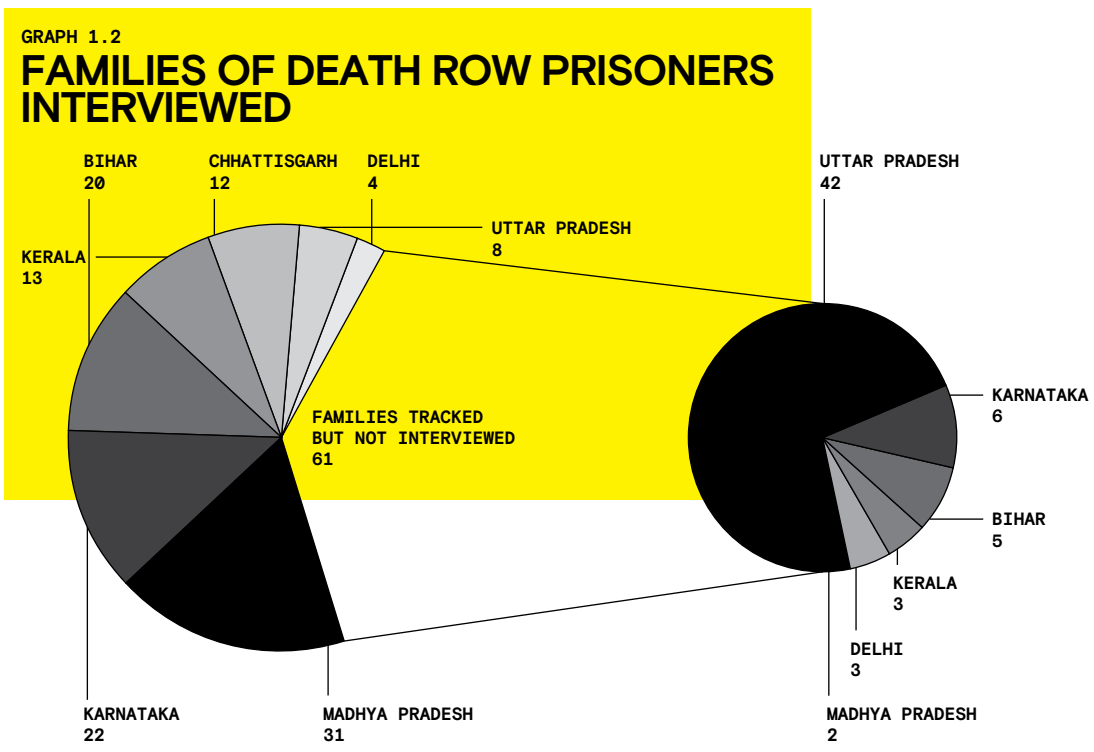
S.No.	Name of the State	Prisons Covered	Number of Prisoners Interviewed	Gallows Present
1.	Chhattisgarh	Central Jail, Raipur	8	Yes
2.	Delhi	Central Jail, Tihar	7	Yes
3.	Madhya Pradesh	New Central Jail, Bhopal	2	No
		Central Jail, Hoshangabad	1	No
		Central Jail, Jabalpur	7	Yes
		Central Jail, Indore	11	Yes
		District Jail, Indore	1	No
		Central Jail, Gwalior	3	No
		Central Jail, Ujjain	5	No
4.	Karnataka	Hindalga Central Jail, Belgaum	26	Yes
5.	Kerala	Central Prison, Kannur	6	Yes
		Central Prison, Poojappura (Thiruvananthapuram)	9	Yes
		Central Prison, Viyyur	2	No

Representative Nature of the Population Interviewed

As the 88 prisoners interviewed for the Project are only a proportion of the total number of death row prisoners, it was important to consider the extent to which it is representative of India's death row population. Accordingly, we compared the socio-economic profile of the sample under consideration and information related to their cases with the data presented by the Death Penalty India Report. Though its data pertains to 2013-2015, it is the only study to have documented the socio-economic characteristics as well as information on the criminal justice system with respect to all of India's death row population. The sample in this Project was considered representative of the death row population along a parameter if the p value was greater than or equal to 0.05[2]. Our sample was found to be representative of key indicators of the socio-economic status of the death row population. These include age at the time of offence (p value = 0.33) and interview (p value = 0.64), sex[3] (p value = 0.9), education (p value = 0.06), employment (p value = 0.92), and caste (p value = 0.14). The population was also found to be representative along the parameters of offence (p value = 0.15) and nature of legal representation (p value = 0.56).

GRAPH 1.2

FAMILIES OF DEATH ROW PRISONERS INTERVIEWED



Socio-Economic Profile of Prisoners Sentenced to Death

■ AGE-WISE COMPOSITION OF DEATH ROW PRISONERS

Before imposing the death penalty, courts are meant to inquire into factors that may be considered mitigating, such as the age of the prisoner at the time of the incident, with "extreme youth" being of "compelling importance"[4]. Recent developments in the field of mental health and neuroscience provide some answers as to why young age is important when attributing responsibility and deciding the degree of blameworthiness for certain actions. Research suggests that our brain continues to develop in areas critical to our daily functioning, including impulse control, decision making and risk assessment, until around the age of 25[5]. Increased impulsivity and reactivity to situations, lesser maturity and a not yet fully formed ability for considered foresight explain the importance of young age as a mitigating factor. (*See Chapter III on Vulnerabilities and Life Experiences*).

Given the widespread lack of documentation among the prisoners and families we interviewed, we relied on their narratives for information on the prisoners' age. Where the prisoner or the family was not able to give a definitive answer or gave a range, we cross-checked the ages with judgements and prison records, where available.

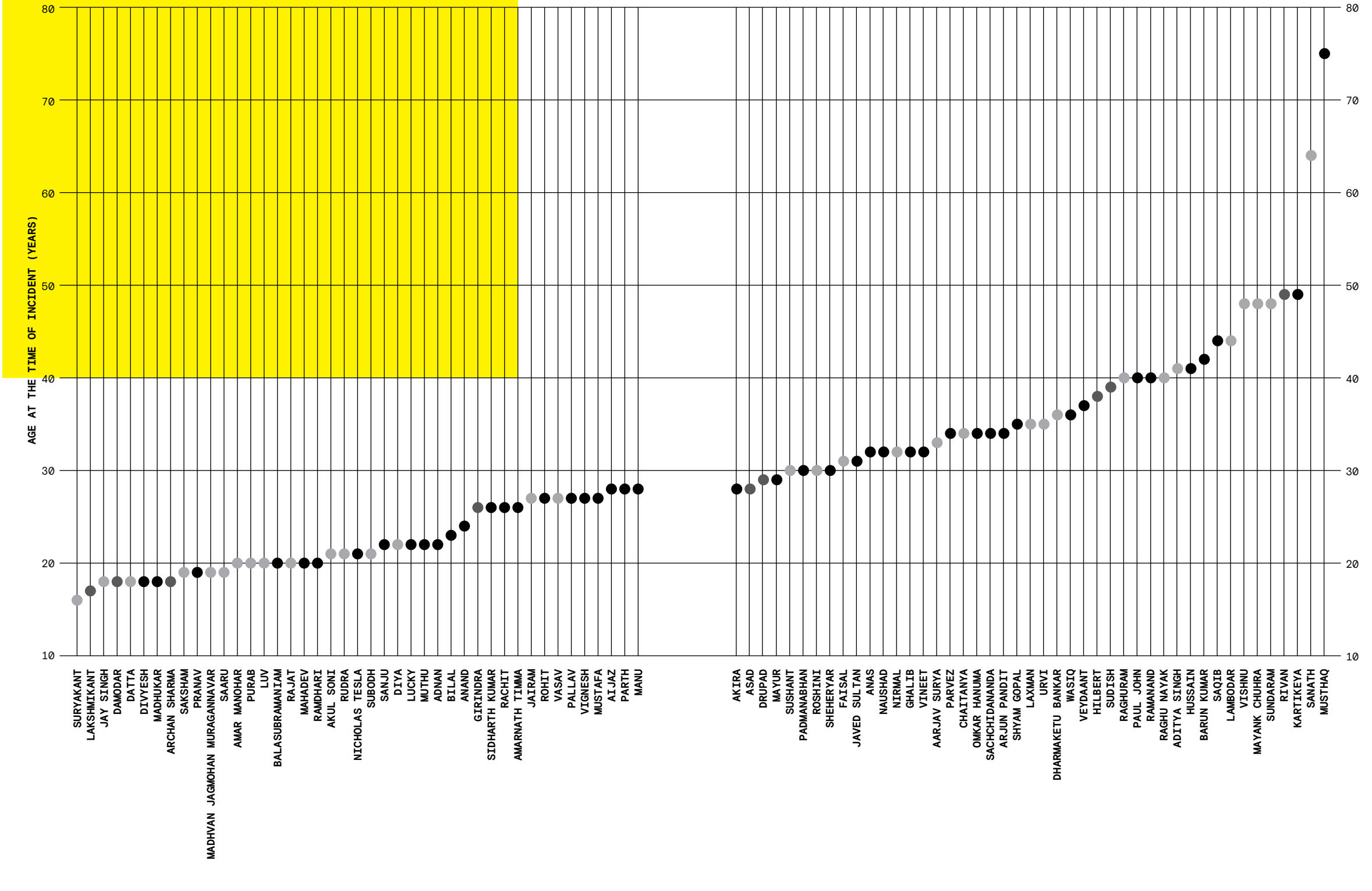
51 prisoners out of the 88 were under the age of 30 at the time of the incident, and 31 prisoners were under the age of 25. Two prisoners claimed to be below 18 years at the time of the incident, which, if true, would mean that they would have been ineligible for the death penalty in the first place. Two prisoners were above 60 years of age at the time of the incident. (Graph 1.3)

The median age of death row prisoners at the time of incident was 28 (16-75) years. The median age at the time of sentencing was 33.5 (18-77) years. The median age at the time of assessment was 37 (22-78) years.

GRAPH 1.3

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

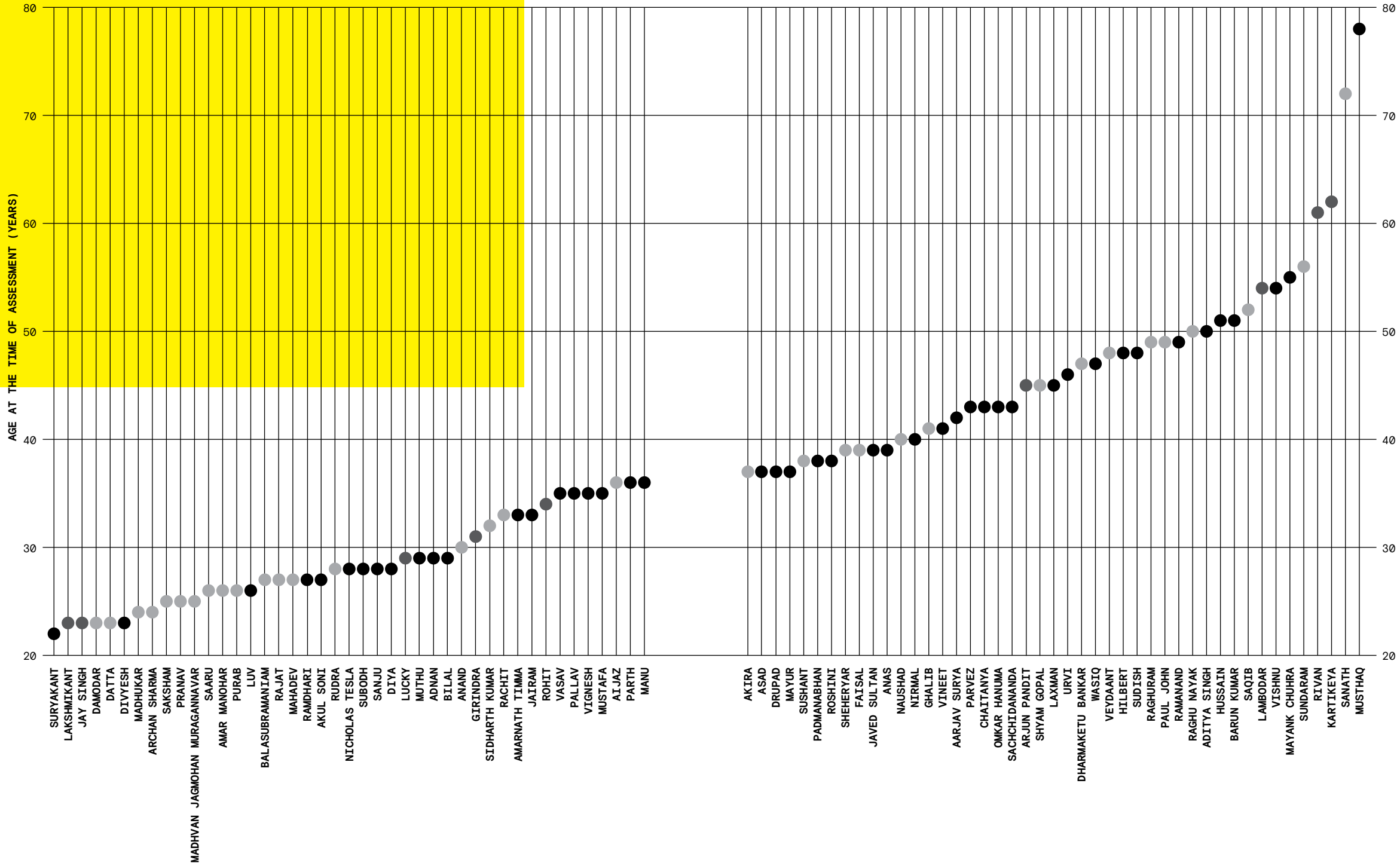
- DEATH SENTENCE IMPOSED BY TRIAL COURT
- HIGH COURT CONFIRMED
- SUPREME COURT CONFIRMED



GRAPH 1.4

AGE-WISE COMPOSITION OF DEATH ROW PRISONERS AT THE TIME OF ASSESSMENT

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



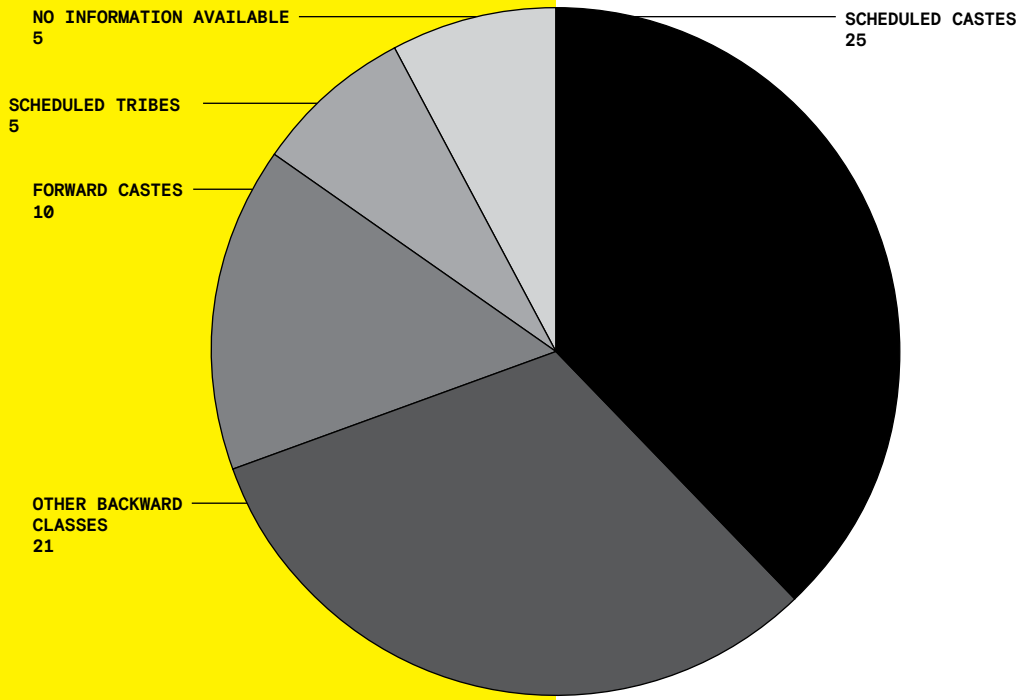
■ CASTE AND RELIGION-WISE COMPOSITION

For caste and religion, we relied on information provided by the prisoners and their families, judgements, prison lists provided by respective prisons and news reports. The graph below categorises the prisoners into various caste groups on the basis of lists prepared by each state under the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Information on caste was not available for five prisoners. Only 10 prisoners belonged to the Forward Castes, while 25 belonged to Scheduled Castes and formed the largest proportion of prisoners in our population closely followed by prisoners from Other Backward Classes (21). (Graph 1.5)

Karnataka and Madhya Pradesh had the largest number of prisoners sentenced to death who belonged to Scheduled Castes, at 12 and 11, respectively. (Graph 1.6)

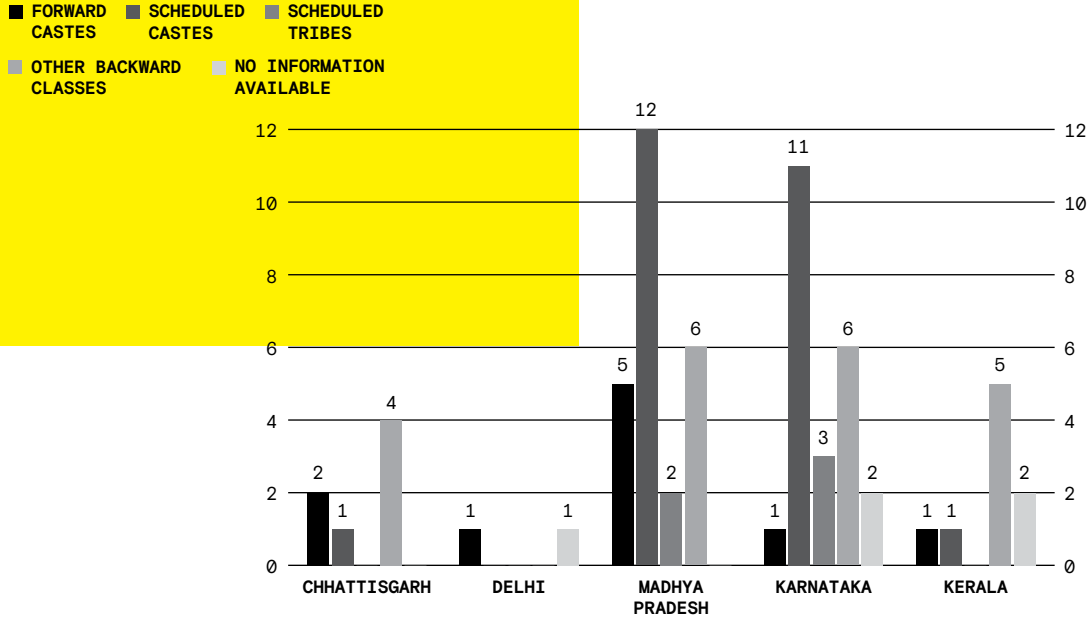
GRAPH 1.5

COMPOSITION OF DEATH ROW PRISONERS BASED ON CASTE



GRAPH 1.6

STATE-WISE DISTRIBUTION OF DEATH ROW PRISONERS BASED ON CASTE



With respect to religion, the prisoner's belief system was given primacy, regardless of the religion followed by the family. Information on religion was not available for two prisoners, and six prisoners mentioned not having any specific religious affiliations. While most of the prisoners we interviewed identified themselves as Hindus (51), at 18, Muslims were the largest religious minority group. (Graphs 1.7 and 1.8)

■ EDUCATIONAL PROFILE OF PRISONERS

Education, for the purposes of this Project, is defined as any kind of formal education in school, up until the time of arrest. Nine death row prisoners had resumed their education in prison, which has not been reflected in the data presented here.

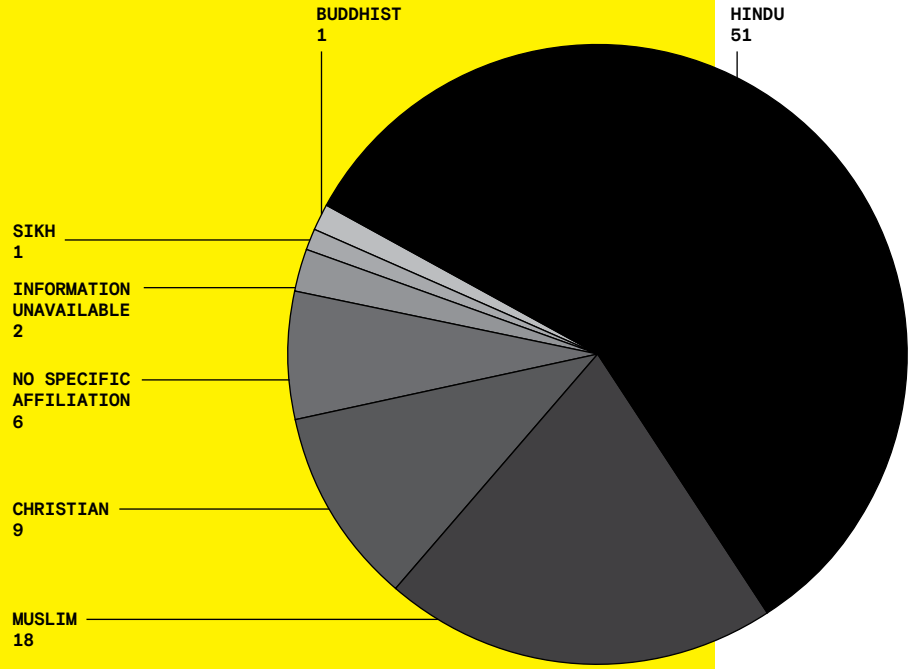
As with most other information on the socio-economic background of the prisoners, we have relied on the narratives provided by prisoners and their families, particularly due to the lack of any school records to rely on. The educational profile of prisoners has been divided into five categories. These are—

1. **Never went to school:** Prisoners who never went to school, even for a single day.
2. **Primary:** This includes prisoners who attended school up to standard 5.
3. **Secondary:** This category refers to prisoners who studied in standards 6-9.
4. **Higher secondary:** This category refers to prisoners who were enrolled in standards 10-12.
5. **Higher studies:** It includes prisoners who enrolled or have completed undergraduate, post graduate, diploma/vocational and professional courses.

34 (38.7%) death row prisoners out of the 88 interviewed had not undertaken their secondary education at the time of offence. (Graph 1.9)

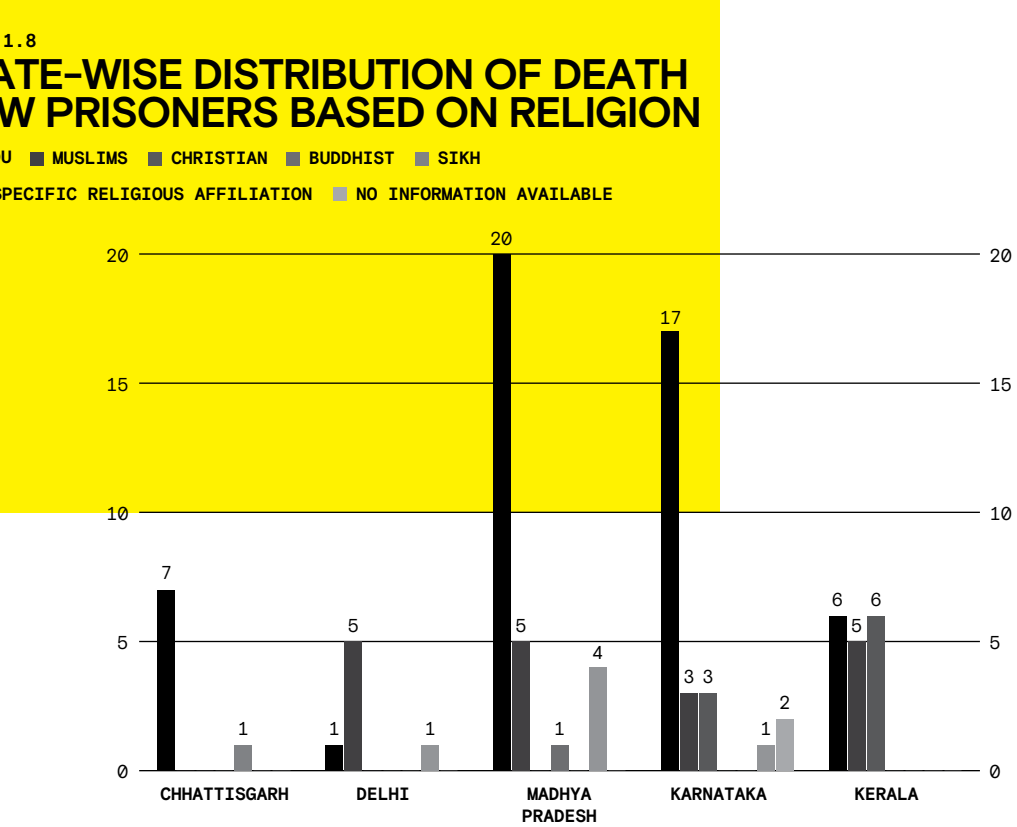
GRAPH 1.7

OVERALL DISTRIBUTION OF DEATH ROW PRISONERS BASED ON RELIGION



GRAPH 1.8

STATE-WISE DISTRIBUTION OF DEATH ROW PRISONERS BASED ON RELIGION



A closer look at the context of a majority of the 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. (*See Chapter III on Vulnerabilities and Life Experiences for an in-depth discussion*) The immediacy and urgency of the economic hardship often led to prisoners having to take up work, mostly in the unorganised sector, when they were adolescents or young adults. (*See section on Occupation*) 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 among prisoners and intellectual disability which is often expressed as 'disinterest in school'. (*See Chapter VI on Intellectual Disability and Death Penalty*)

Karnataka had the largest number of prisoners who had never been to school (13), while Madhya Pradesh had the most number of prisoners who had completed higher education (4). (Graph 1.10)

■ OCCUPATION

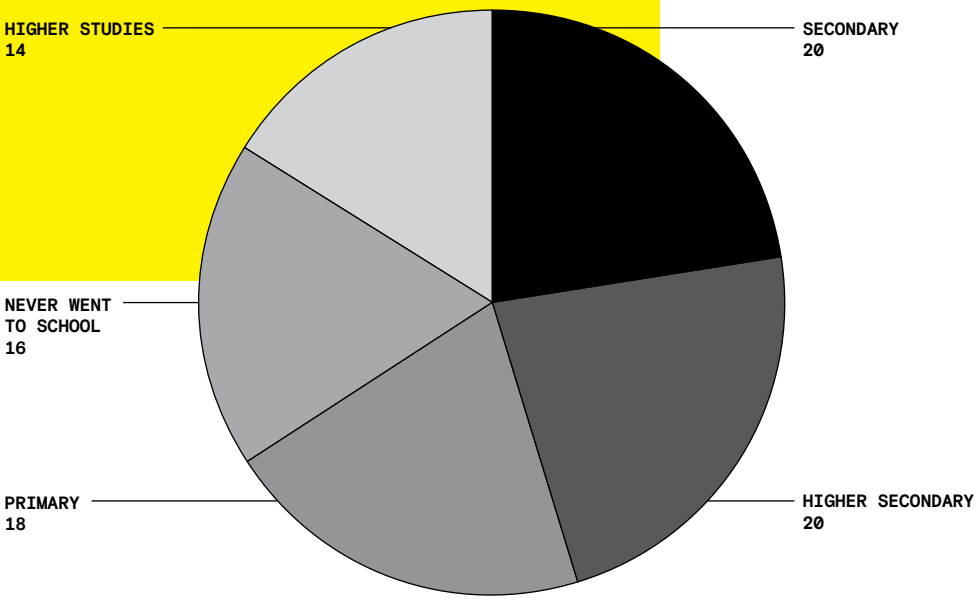
30 out of the 88 prisoners who were interviewed had found employment in the unorganised sector as manual labourers (agricultural and non-agricultural). A further six did farming on either their own, or on leased lands (marginal and small cultivators). (Graph 1.11)

The occupation of prisoners we interviewed have been categorised as following:

1. **Manual casual labourers (agricultural and non-agricultural):** Auto driver, bus conductor / cleaner, daily wage labourer, manual scavenger, scrap dealer, shop helper
2. **Marginal and small cultivators (cultivating on own or leased land measuring less than four hectares)**
3. **Low paying public and private salaried employment:** Shop assistant, driver, insurance agent, municipal karamchari
4. **Small own account enterprises:** Driver of self-owned private taxi, shop owner

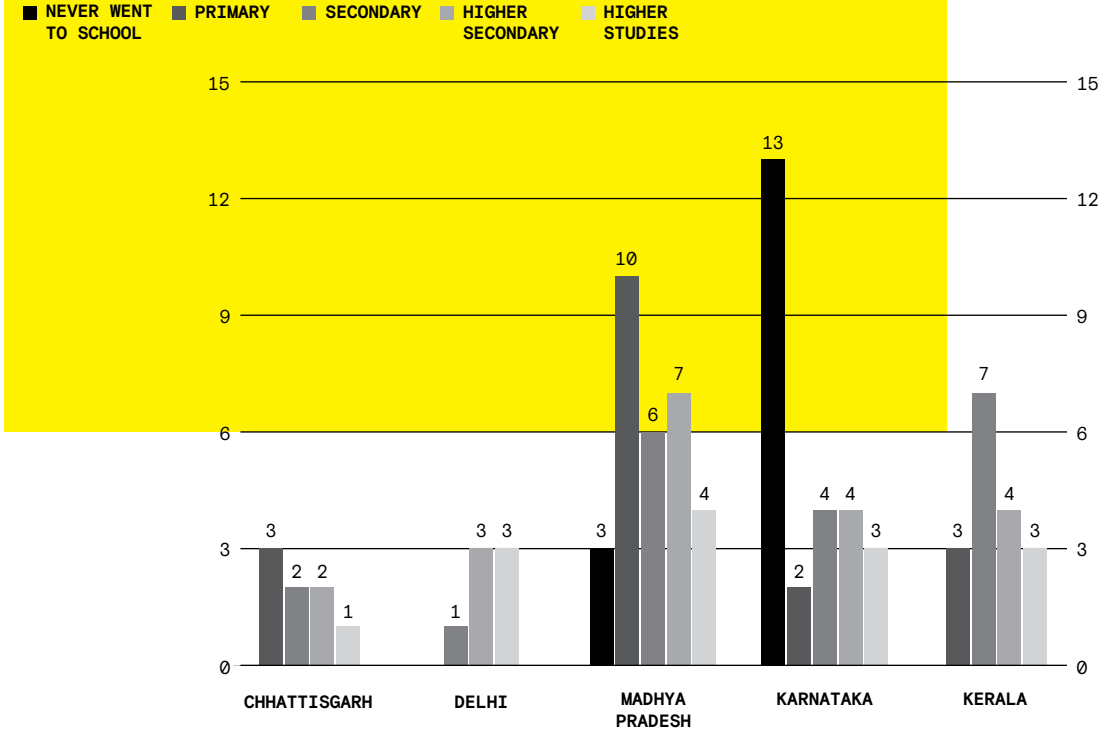
GRAPH 1.9

EDUCATIONAL PROFILE OF DEATH ROW PRISONERS



GRAPH 1.10

STATE-WISE DISTRIBUTION OF EDUCATIONAL PROFILE OF DEATH ROW PRISONERS



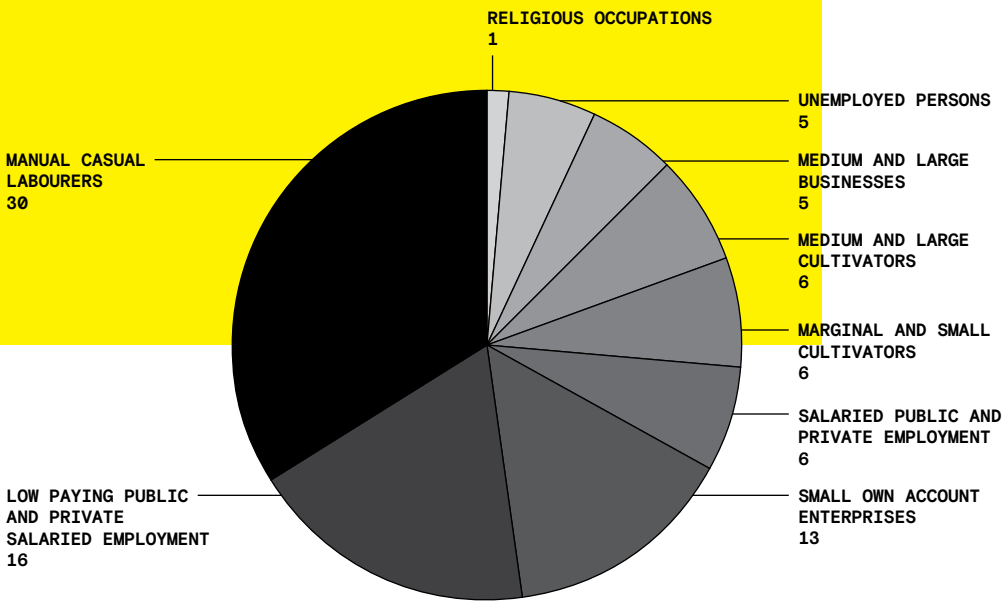
5. **Salaried public and private employment:** Government school teacher, municipal corporation employee, state transport bus driver
6. **Medium and large cultivators (cultivating on own or leased land measuring four hectares or more)**
7. **Medium and large businesses:** Engaged in real estate, owner of computer centre, owner of garment shop
8. **Religious occupation**
9. **Unemployed persons including students**

While it is important to look at a prisoner's occupation as an indicator of their socio-economic background, it is equally important to pay attention to the time when they entered these spaces. We found that an overwhelming proportion of the death row population had to assume the role and duties of an adult during adolescence, and entered the unorganised work sector. Entering unregulated, adult spaces of work at a young age can have long term repercussions for an individual in terms of poor social outcomes (including violence) and deterioration of their mental health. Unmentored exposure to adult working spaces during adolescence also adversely influences the lens through which an individual views themself, understands the world, and forms perceptions, appropriate responses and foresight[6]. (*See Chapter III on Vulnerabilities and Life Experiences for a detailed discussion*)

Karnataka and Madhya Pradesh had the largest number of prisoners working as casual labourers in the unorganised sector, at 12 and nine, respectively. Karnataka also had the largest number of prisoners who, at the time of arrest, were salaried employees, either in the public or private sector (4). (Graph 1.12)

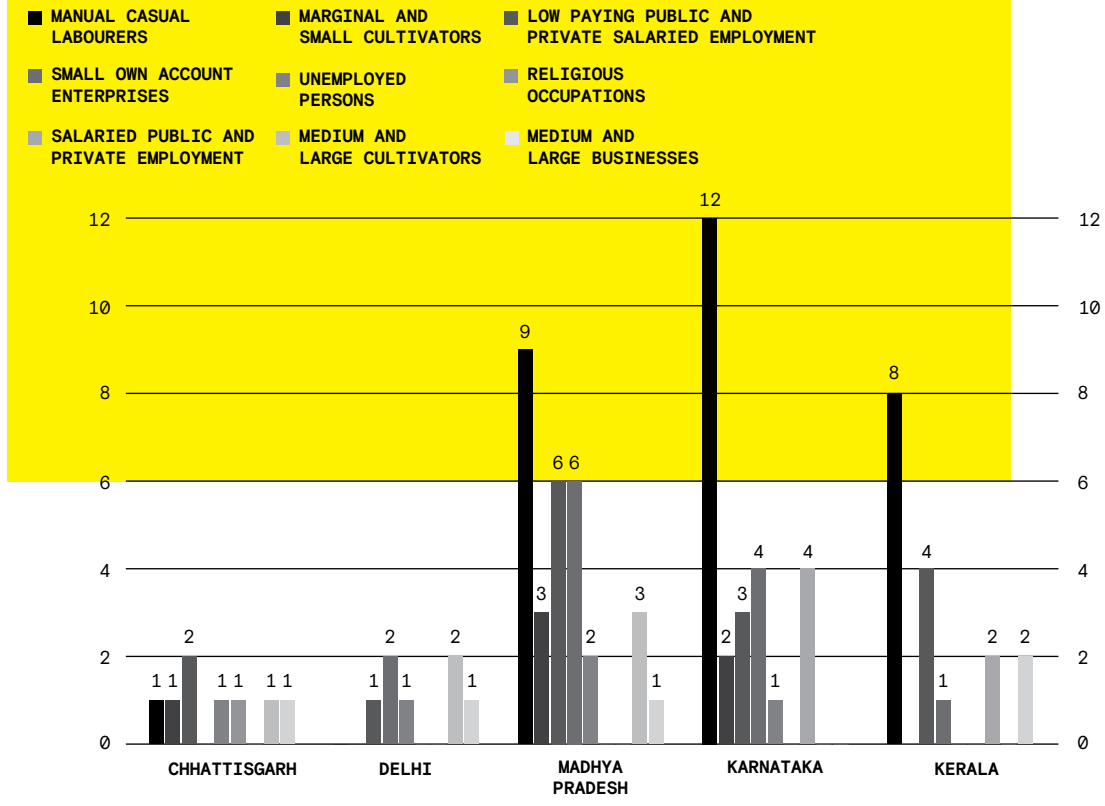
GRAPH 1.11

OVERALL DISTRIBUTION OF OCCUPATION AMONG DEATH ROW PRISONERS



GRAPH 1.12

STATE-WISE DISTRIBUTION OF OCCUPATION OF DEATH ROW PRISONERS



Information Pertaining to the Criminal Justice System

This section presents data on the prisoners' journey in the criminal justice system, and provides information on the different offences that the prisoners have been sentenced to death for, their case-status at the time of the interview and time spent by them in prison and on death row.

■ CATEGORIES OF OFFENCES

Offences for which the 88 prisoners were convicted and sentenced to death have been divided under five broad categories:

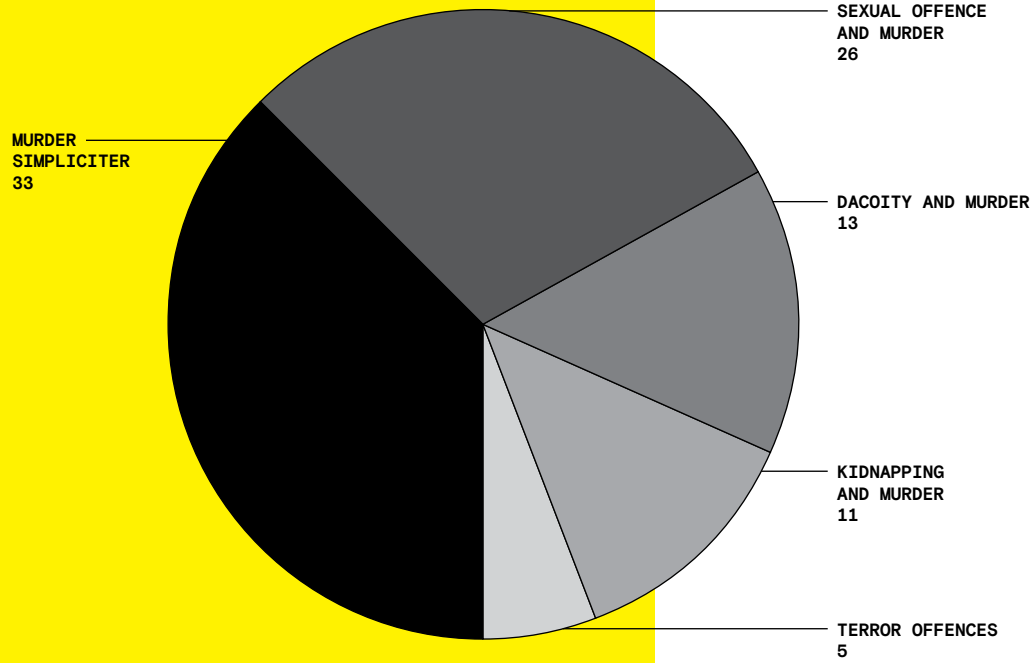
1. **Murder simpliciter:** This category includes cases where the prisoners were convicted under Section 300 of the IPC along with provisions under other legislations such as the Arms Act, 1959, the Explosive Substances Act, 1908 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. **Sexual offence and murder:** This category include cases where the main offence along with the murder charge was rape, cases punishable by death under Sections 376A and 376E, and cases under the Protection of Children from Sexual Offences Act, 2012 (POCSO), along with Section 300 of the IPC.
3. **Kidnapping with murder:** This category includes cases where the main offence along with the murder charge was kidnapping.
4. **Terror offences:** This category includes cases where the prisoners were convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987, Prevention of Terrorism Act, 2002, Unlawful Activities (Prevention) Act, 1967, and the offence of 'waging war' under Section 121 of the IPC.
5. **Dacoity with murder:** This category includes cases in which prisoners were convicted for dacoity with murder under Section 396 of the IPC.

Murder simpliciter formed the largest category comprising 33 prisoners. Sexual offence and murder formed the next largest category with 26 prisoners being sentenced to death across the five states. (Graph 1.13)

Madhya Pradesh had the largest number of death row prisoners at 30. Karnataka had 29 death row prisoners at the time of the interview, out of which 26 were interviewed, and it had the second highest number of death row prisoners. At 14 and 11, prisoners sentenced to death for murder simpliciter formed the largest number of the total state death row population in Madhya Pradesh and Karnataka, respectively. Madhya Pradesh had the largest proportion of prisoners sentenced to death for sexual offences and murder (13). (Graph 1.14) Out of these 13 prisoners though, the sentence of seven prisoners was commuted by the Supreme Court to various terms of life imprisonment. (*See Chapter IX on Acquittals and Commutations)*

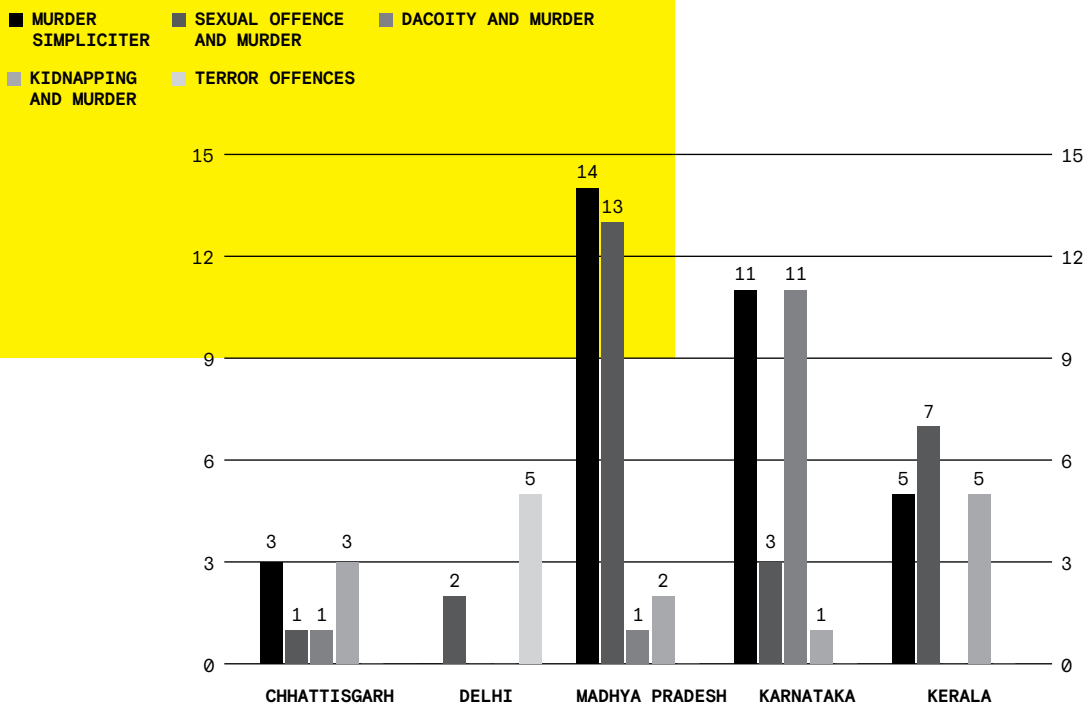
GRAPH 1.13

OVERALL DISTRIBUTION OF THE CATEGORIES OF OFFENCES



GRAPH 1.14

STATE-WISE DISTRIBUTION OF THE CATEGORIES OF OFFENCES



■ CATEGORISATION BASED ON CASE-STATUS

In death penalty eligible offences, the trial court is the court of first instance that decides between the minimum punishment of life imprisonment and the death penalty. All death sentences imposed by trial courts are mandatorily sent to the High Court for confirmation, where the Court can re-appreciate the conviction as well as the sentence[7]. Appealing the High Court decision to the Supreme Court is not mandatory, but if appealed, the Supreme Court has to, at minimum, give reasons for confirming the death sentence before dismissing the case[8]. After December 2015, the High Courts and the Supreme Court have the power to decide between life imprisonment simpliciter, life imprisonment without the possibility of remission (for whole life or a term of years), and the death penalty[9].

While there are multiple stages before a death row prisoner can be executed even after the Supreme Court confirms the death sentence, in this section, we have classified prisoners into the three judicial stages defined below:

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

The chapter presents the status of the cases at the time of the interview (Graph 1.15) which in many instances had changed at the time of writing the Report. (*For the final status, refer to Chapter IX on Acquittals and Commutations*)

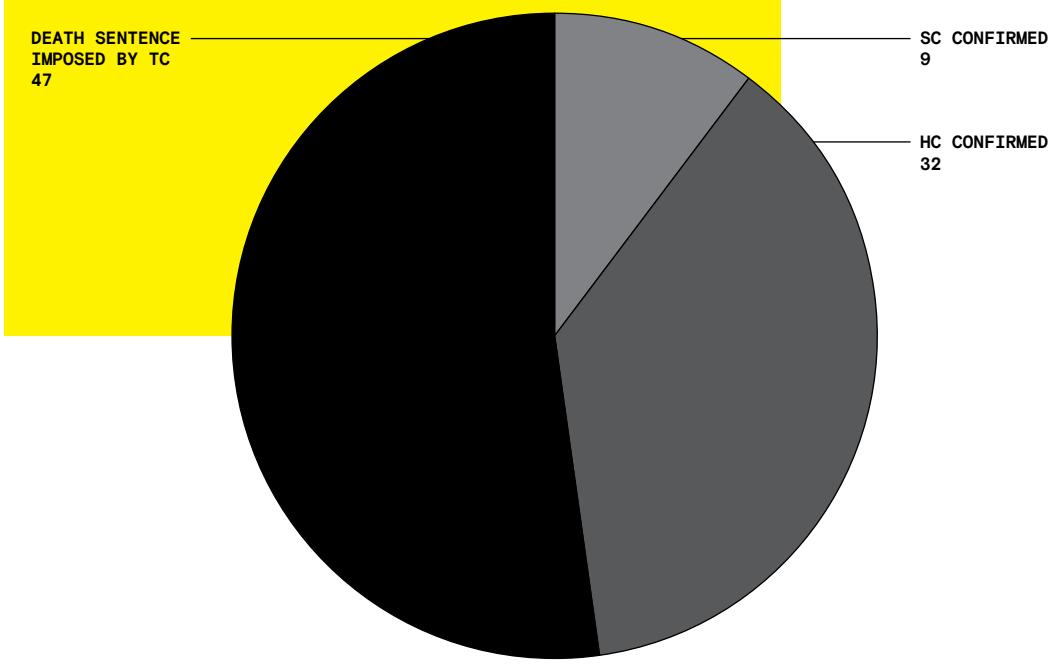
46 prisoners who had been sentenced to death by the trial court, with their confirmation proceedings pending before the High Court formed the largest majority among the prisoners interviewed. While the death sentence of 33 prisoners had been confirmed by the High Court, there were nine prisoners whose sentence had been confirmed by the Supreme Court. (Graph 1.15)

STATE WISE BREAK-UP OF CASE STATUS

Kerala had the largest proportion of prisoners whose appeals were pending before the High Court (88.2%). Chhattisgarh, on the other hand, had the largest proportion of prisoners whose death sentences had been confirmed by the High Court, with their appeals pending before the Supreme Court (75%). In absolute numbers, at 19, Madhya Pradesh had the greatest number of sentences confirmed by the High Court. Out of the nine prisoners whose death sentences had been confirmed by the Supreme Court, four were from Madhya Pradesh. (Graph 1.16)

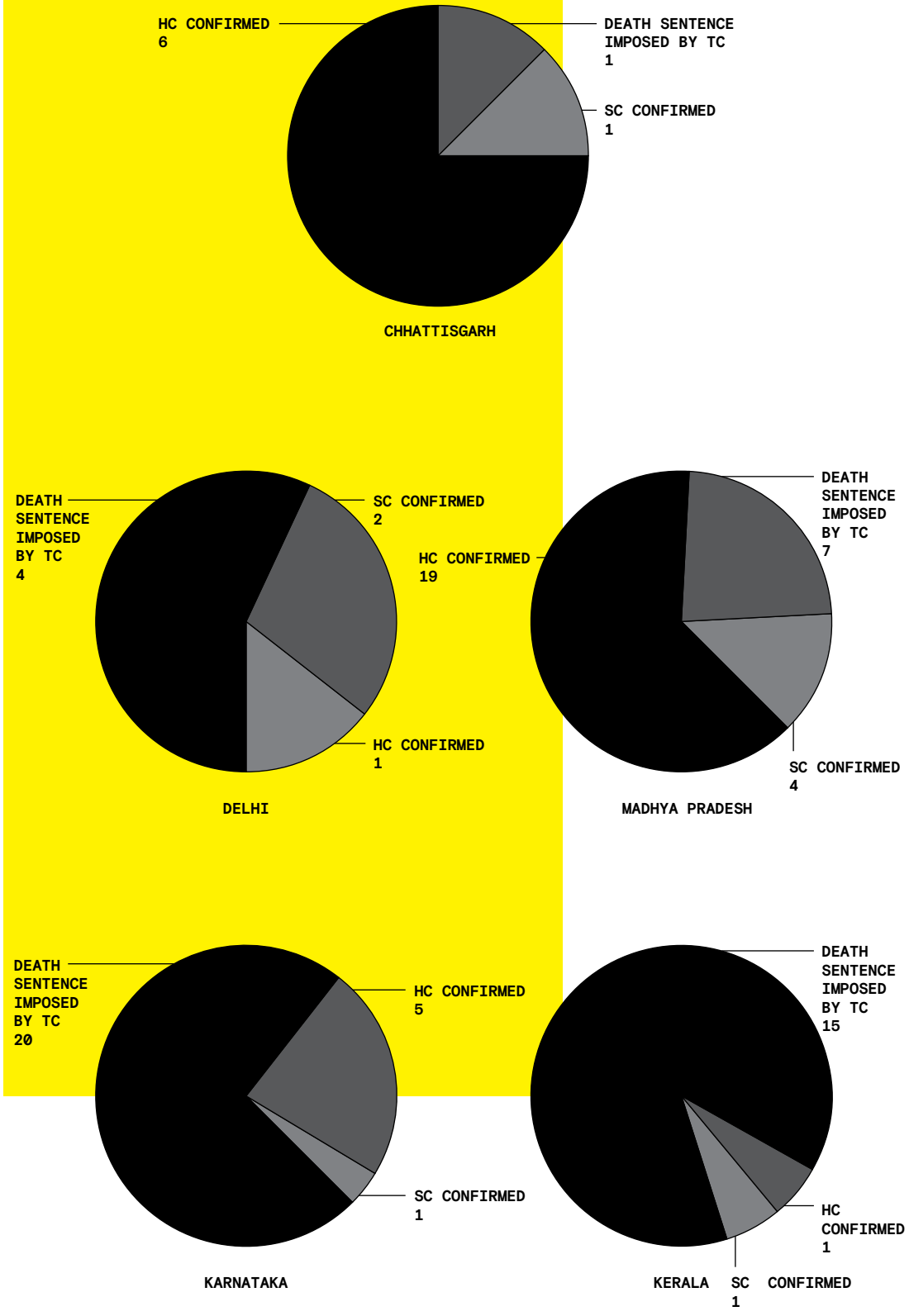
GRAPH 1.15

CATEGORISATION OF DEATH ROW PRISONERS BASED ON CASE STATUS



GRAPH 1.16

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



■ LEGAL REPRESENTATION

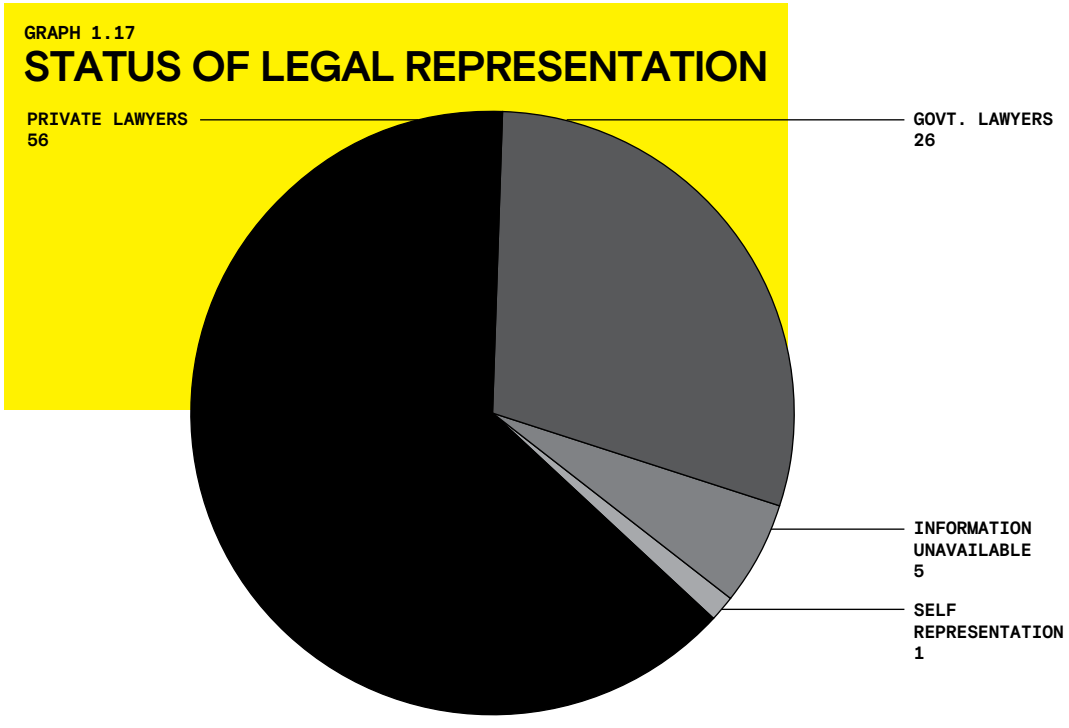
Irrespective of which stage the case was at, 56 prisoners were being represented by private lawyers, some of which included pro bono private representation. 26 prisoners mentioned that they were being represented by state appointed legal aid lawyers. One death row prisoner had represented himself throughout the process. We were unable to ascertain this information for four prisoners. (Graph 1.17)

■ MERCY PETITIONS

A person can, after the confirmation of death sentence by the High Court or Supreme Court, file a petition for pardon or for commutation of the sentence either with the Governor of the state[10] or the President of India[11]. Of the 88 death row prisoners interviewed by us, seven prisoners had their mercy petitions rejected by the President after their death sentence had been confirmed by the Supreme Court. (Graph 1.18)

GRAPH 1.17

STATUS OF LEGAL REPRESENTATION



Of these seven prisoners, warrants of execution had been issued against Hilbert in 2012 and Lakshmikant in 2014.

Though executive delay in deciding the mercy petition makes a death row prisoner eligible for approaching the High Courts or the Supreme Court for commutation of their sentences (*See Chapter II on Legal Framework*), we were unable to compute the time spent on death row by each of the prisoners while awaiting a decision on their mercy petition, as the date of filing the mercy petition is not made public. However, we have mentioned the total duration spent by these prisoners in prison as well as on death row up until the date of interview. (Graph 1.19)

■ DEATH WARRANTS

Sections 413 and 414 of the Code of Criminal Procedure, 1973 (CrPC) give the trial court that imposed the sentence of death, the power to issue a warrant of execution after the High Court confirms the death sentence. The warrant is formally called a "warrant for execution of a sentence of death" or more colloquially, a "black warrant" or "death warrant"[12]. Form No. 42 in the Second Sched-

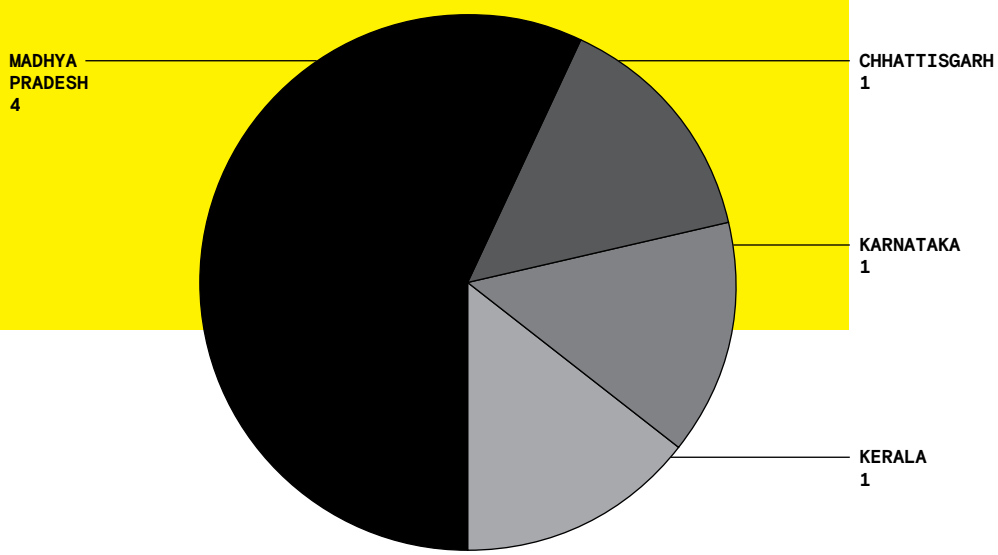
TABLE 1.2

Information on prisoners whose mercy petitions were rejected by the President

Name of the prisoner	Age at the time of offence (years)	Age at the time of rejection of mercy petition (years)	Time spent in prison (years)	Time spent on death row (years)
Damodar	18	23	5	4.2
Drupad	29	34	5	4.2
Girindra	26	31	5	4.2
Rivan	49	58	11.9	11.2
Hilbert	38	52	16.3	12.3
Lakshmikant	17	27	12	8.8
Sudish	39	58	22.9	14.5

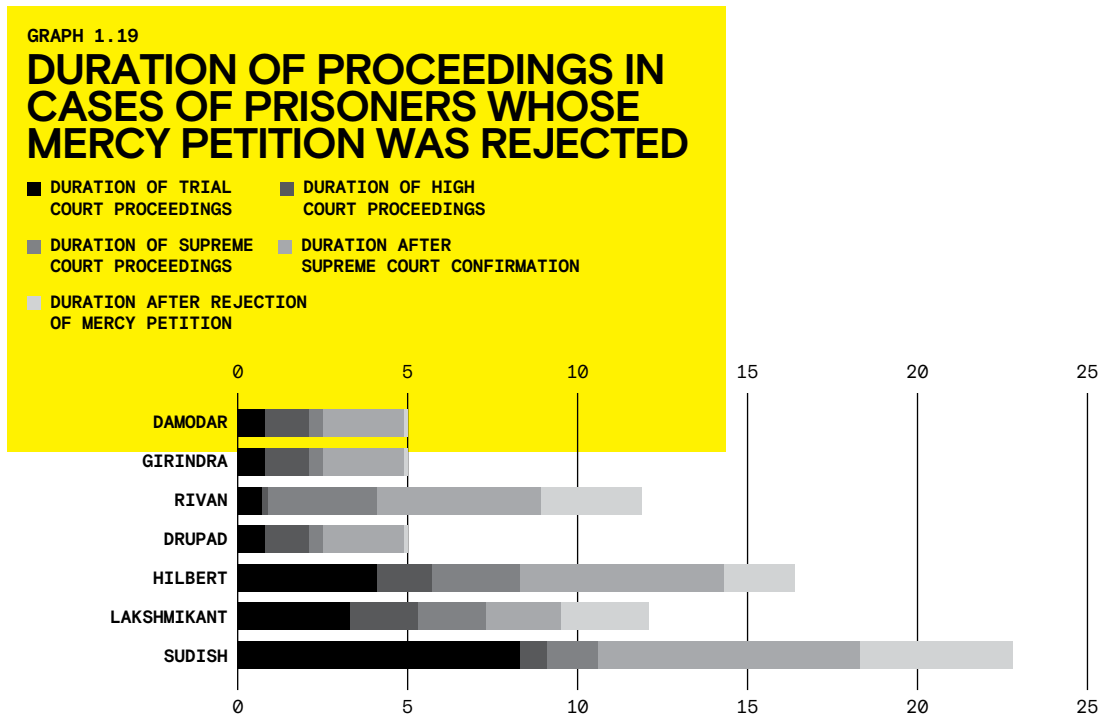
GRAPH 1.18

STATE-WISE DISTRIBUTION OF PRISONERS WHOSE MERCY PETITIONS WERE REJECTED



GRAPH 1.19

DURATION OF PROCEEDINGS IN CASES OF PRISONERS WHOSE MERCY PETITION WAS REJECTED



ule of the CrPC provides the format in which the death warrant has to be filled. Six of the 88 prisoners who we interviewed had a death warrant issued against them, all of which were subsequently quashed. The death sentence of four of the prisoners was eventually commuted.

In 2015 the Supreme Court ruled that death warrants cannot be issued until all remedies available to a death row prisoner under the law have been exhausted by them[13]. This would include confirmation of the sentence by the Supreme Court in appeal and other judicial mechanisms such as review petition, curative petition, and executive mechanisms such as mercy petitions to the Governor and to the President.

Death warrants of four prisoners were issued before they had exhausted all remedies available to them. Three of these warrants were issued in contravention of the Supreme Court's ruling in 2015. (Table 1.4)

■ DURATION ON DEATH ROW

"... if a standard period [regarding time spent on death row] was to be adopted, perhaps each and every person on death row might have to be given the benefit of commutation of death sentence to one of life imprisonment. The long delays in courts must, of course, be taken into account, but what is needed is a systemic and systematic reform in criminal justice delivery rather than ad hoc or judge-centric decision."

J Lokur, MA Antony v State of Kerala, (2018) SCC OnLine SC 2800 [33]

This section provides details of the total time spent in prison by the death row prisoners including time spent as undertrials. It looks at the time spent by them while awaiting decision between each judicial stage and while awaiting a decision on their mercy petition, where applicable. This section presents the time spent in prison and on death row until the date of interview and does not look at further developments which may have taken place in the case post the interview. Further, it also represents the time spent by prisoners since the last judicial or executive development in their respective cases up until the date of interview. (Graph 1.20)

The median time spent in prison by the death row prisoners interviewed, 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.

Time spent in prison and on death row becomes important due to the adverse effects of long-term incarceration on the mental health of the prisoner. The restrictive rules of conduct and conditions of living that incarceration entails are known risk factors for poor mental health[14]. In fact, the Indian Supreme Court recently acknowledged this reality, when commuting the death sentence of a prisoner who had been living under the sentence of death for 17 years. His death sentence was commuted on account of his mental illness[15].

The Supreme Court has commuted death sentences because of "undue" delay by the Executive in deciding mercy petitions and the mental agony of being on death row[16]. However, the narratives reveal that the experience of this agony begins soon after the death sentence is imposed. Though there may be no recognition of distress due to living on death row while the judicial process is going on[17], to the prisoner the immense distress they experience is not so neatly divisible into stages. (*See Chapters V and VII for a more detailed discussion on the psychological responses to time spent in prison and on death row.*)

TABLE 1.3

Warrant for execution of the sentence of death passed by the trial court

Name of the prisoner	Age at the time of offence (years)	Stage at which the death warrant was issued	Year in which the death warrant was issued	Age at the time of issuance of death warrant (years)	Time spent on death row when death warrant was issued (years)
Lakshmikant	17	Mercy Petition rejected	2014	27	6.3
Hilbert	38	SC Confirmed	2012	49	7
Sushant	30	HC Confirmed	2016	32	1
Aditya Singh	41	HC Confirmed	2014	42	0.6
Jay Singh	18	HC Confirmed	2017	23	0.7
Laxman	35	HC Confirmed	2017	39	0.7

GRAPH 1.20

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

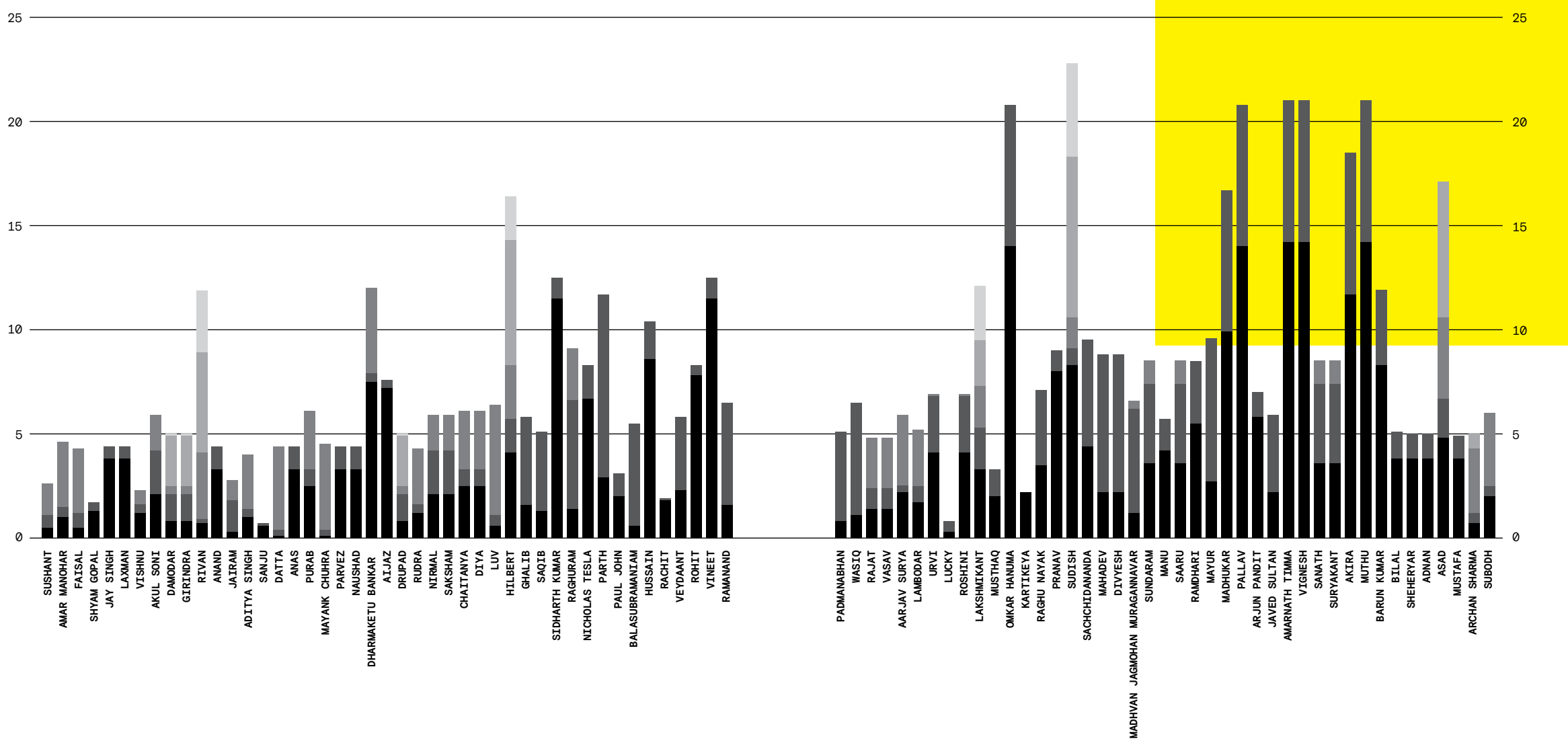


TABLE 1.4

List of all death row prisoners interviewed

S. No.	Name	Stage of case (at the time of interview)	Age at the time of sentencing (years)	Total time spent in prison (years)	Time spent on death row (years)	Age at the time of interview (years)
1	Sushant	HC Confirmed (Death Warrant issued)	31	2.50	2.00	33
2	Amar Manohar	HC Confirmed	21	6.00	3.58	25
3	Faisal	HC Confirmed	32	4.33	3.75	36
4	Shyam Gopal	Death sentence imposed by TC	37	2.00	0.33	37
5	Jay Singh	HC Confirmed (Death Warrant issued)	18	4.42	0.67	23
6	Laxman	HC Confirmed (Death Warrant issued)	35	4.42	0.67	39
7	Vishnu	HC Confirmed	49	2.08	1.08	50
8	Akul Soni	HC Confirmed	23	5.83	3.75	27
9	Damodar	SC Confirmed (Mercy Petition rejected)	19	5.00	4.17	23
10	Girindra	SC Confirmed (Mercy Petition rejected)	26	5.08	4.17	31
11	Rivan	SC Confirmed (Mercy Petition rejected)	50	12.08	11.17	61
12	Anand	Death sentence imposed by TC	27	1.50	1.08	28
13	Jairam	HC Confirmed	27	3.00	2.50	30
14	Aditya Singh	HC Confirmed (Death Warrant issued)	42	5.50	2.92	45
15	Sanju	Death sentence imposed by TC	22	0.58	0.08	22
16	Datta	HC Confirmed	18	4.75	4.25	23

TABLE 1.4 CONTD

List of all death row prisoners interviewed

S. No.	Name	Stage of case (at the time of interview)	Age at the time of sentencing (years)	Total time spent in prison (years)	Time spent on death row (years)	Age at the time of interview (years)
17	Anas	Death sentence imposed by TC	36	1.75	1.08	37
18	Purab	HC Confirmed	22	6.00	3.50	26
19	Mayank Chuhra	HC Confirmed	48	4.50	4.33	52
20	Parvez	Death sentence imposed by TC	37	1.75	1.08	38
21	Naushad	Death sentence imposed by TC	35	1.75	1.08	36
22	Dharmaketu Bankar	HC Confirmed	44	13.00	4.42	48
23	Aijaz	Death sentence imposed by TC	36	6.00	0.33	36
24	Drupad	SC Confirmed (Mercy Petition rejected)	30	5.00	4.17	34
25	Rudra	HC Confirmed	22	4.25	3.08	25
26	Nirmal	HC Confirmed	34	5.83	3.75	38
27	Saksham	HC Confirmed	22	5.83	3.75	25
28	Chaitanya	HC Confirmed	36	6.00	3.50	40
29	Diya	HC Confirmed	25	6.00	3.50	28
30	Luv	HC Confirmed	21	6.42	5.83	26
31	Hilbert	SC Confirmed (Mercy Petition rejected; Death Warrant issued)	42	16.58	12.25	54
32	Ghalib	Death sentence imposed by TC	34	5.50	4.17	38
33	Saqib	Death sentence imposed by TC	45	7.00	3.75	49
34	Siddharth Kumar	Death sentence imposed by TC	38	6.83	0.92	39
35	Raghuram	HC Confirmed	41	8.17	7.58	49

TABLE 1.4 CONTD

List of all death row prisoners interviewed

S. No.	Name	Stage of case (at the time of interview)	Age at the time of sentencing (years)	Total time spent in prison (years)	Time spent on death row (years)	Age at the time of interview (years)
36	Nichola Tesla	Death sentence imposed by TC	27	1.92	1.50	29
37	Parth	Death sentence imposed by TC	31	10.00	8.75	40
38	Paul John	Death sentence imposed by TC	42	3.42	1.00	43
39	Balasubramaniam	Death sentence imposed by TC	21	5.92	4.92	26
40	Hussain	Death sentence imposed by TC	50	3.25	1.75	51
41	Rachit	Death sentence imposed by TC	28	2.00	0.08	28
42	Vedyaant	Death sentence imposed by TC	39	7.25	3.50	42
43	Rohit	Death sentence imposed by TC	34	4.58	0.50	35
44	Vineet	Death sentence imposed by TC	44	12.00	0.92	45
45	Ramanand	Death sentence imposed by TC	56	9.42	4.83	50
46	Padmanabhan	Death sentence imposed by TC	30	5.17	4.33	35
47	Wasiq	Death sentence imposed by TC	37	6.42	5.33	43
48	Rajat	HC Confirmed	21	4.75	3.33	24
49	Vasav	HC Confirmed	28	5.00	3.33	32
50	Aarjav Surya	HC Confirmed	35	8.00	3.58	39
51	Lambodar	HC Confirmed	46	4.42	3.50	49
52	Urvi	HC Confirmed	39	6.08	2.67	41
53	Lucky	Death sentence imposed by TC	23	0.75	0.50	23
54	Roshni	HC Confirmed	34	7.67	2.67	37

TABLE 1.4 CONTD

List of all death row prisoners interviewed

S. No.	Name	Stage of case (at the time of interview)	Age at the time of sentencing (years)	Total time spent in prison (years)	Time spent on death row (years)	Age at the time of interview (years)
55	Lakshmikant	SC Confirmed (Mercy Petition rejected; Death Warrant Issued)	21	12.00	8.75	29
56	Musthaq	Death sentence imposed by TC	77	3.25	1.25	78
57	Omkar Hanuma	Death sentence imposed by TC	48	20.00	6.75	55
58	Kartikeya	Death sentence imposed by TC	51	2.17	0.02	51
59	Raghu Nayak	HC Confirmed	43	7.08	3.58	47
60	Pranav	Death sentence imposed by TC	27	3.92	0.92	28
61	Sudhish	SC Confirmed	48	23.50	14.50	62
62	Sachidanand	Death sentence imposed by TC	38	9.00	5.00	43
63	Mahadev	Death sentence imposed by TC	22	8.75	6.58	29
64	Divyesh	Death sentence imposed by TC	20	8.75	6.58	27
65	Madhvan Jagmohan Muragannavar	HC Confirmed	20	6.58	5.33	26
66	Sundaram	HC Confirmed	51	8.42	4.75	56
67	Manu	Death sentence imposed by TC	32	5.58	1.42	33
68	Saaru	HC Confirmed	22	8.42	4.75	27
69	Ramdhari	Death sentence imposed by TC	26	8.50	2.92	29
70	Mayur	Death sentence imposed by TC	32	9.58	6.83	39
71	Madhukar	Death sentence imposed by TC	28	14.17	6.75	35

TABLE 1.4 CONTD

List of all death row prisoners interviewed

S. No.	Name	Stage of case (at the time of interview)	Age at the time of sentencing (years)	Total time spent in prison (years)	Time spent on death row (years)	Age at the time of interview (years)
72	Pallav	Death sentence imposed by TC	41	20.00	6.75	48
73	Arjun Pandit	Death sentence imposed by TC	40	1.50	1.17	41
74	Javed Sultan	Death sentence imposed by TC	33	5.92	3.67	37
75	Amarnath Timma	Death sentence imposed by TC	40	17.58	6.75	47
76	Vignesh	Death sentence imposed by TC	41	15.67	6.75	48
77	Sanath	HC Confirmed	67	8.42	4.75	72
78	Suryakant	HC Confirmed	19	8.42	4.75	24
79	Akira	Death sentence imposed by TC	39	16.58	6.75	46
80	Muthu	Death sentence imposed by TC	36	17.58	6.75	43
81	Barun	Death sentence imposed by TC	50	7.00	3.58	54
82	Bilal	Death sentence imposed by TC	27	4.00	1.25	28
83	Sheheryar	Death sentence imposed by TC	33	5.17	1.17	35
84	Adnan	Death sentence imposed by TC	26	4.08	1.17	27
85	Asad	SC Confirmed	32	17.00	12.25	45
86	Mustafa	Death sentence imposed by TC	31	4.67	1.08	33
87	Archan Sharma	SC Confirmed	19	5.00	4.33	23
88	Subodh	HC Confirmed	23	7.50	3.00	27

CHAPTER II
LEGAL FRAMEWORK

The death penalty regime in India engages with the mental health of the accused from different perspectives and at multiple stages. Even before *Bachan Singh v State of Punjab*[1] set out the framework for a constitutionally compliant death penalty sentencing regime, the Supreme Court had begun to engage with the mental health of death row prisoners and its legal implications on their sentence[2]. *Bachan Singh* and its modern predecessors mainly engaged with the mental health of the accused to decide whether the accused is sufficiently "death worthy"[3], i.e., the accused deserves the death sentence. However, death penalty jurisprudence in India continued evolving beyond questions of death deservedness to those focused on dignity of prisoners while living under the sentence of death.

However limited, the death penalty is a small subset of criminal law jurisprudence that acknowledges the importance of a non-diagnostic model of mental health. As will be explained later in the chapter, in its emphasis on considering mitigating factors during the sentencing exercise or the impact of delay on the mental health of a death row prisoner, Indian death penalty jurisprudence has implicitly adopted a psychosocial lens[4], acknowledging the impact of the social environment of a person on their mental health, while also retaining the symptom-diagnosis approach[5].

Within the death penalty terrain, the legal lens through which courts have considered the implications and relevance of the mental health of the accused has varied at different judicial stag es. At the sentencing stage, the mental health of the accused is viewed from the perspective of penalisation and considered in assessing the degree of responsibility. In the later stages, the consideration of mental health turns largely on the dignity of an individual as a constitutionally protected fundamental right. The death penalty regime includes jurisprudence which is punitive at one stage and moves towards a more affirming approach, where the mental health consequences of the judicial and executive processes are taken into consideration to preserve the dignity of the prisoners and rights emanating from that.

Criminal law provides occasion to bring to judicial notice the mental health of the prisoner even before a prisoner enters the realm of the death penalty. While jurisprudence on the mental health of death row prisoners has developed through judicial intervention[6], statutorily there are two stages where the mental health of the accused comes into play – at the stage of assessing the competence of the accused to stand trial[7] and when the insanity defense is raised at the time of conviction[8]. However, the legal perspective at these two stages is narrower and limited to ideas of rationality and capacity.

This chapter is an attempt to provide an overview of the criminal justice system's response to the mental health of the accused, the varying perspectives which inform such consid erations and gaps that continue to exist. This overview will give an insight into the changing relationship between criminal law and mental health, particularly in the context of the death pen alty, and the contrast between, the by and large static law on mental health and criminal law at the pre-sentencing stages and the more nuanced interaction between death penalty and mental health. The section introduces a constitutional law anal ysis of the death penalty which neither *Shatrughan Chauhan* nor *Accused X*, both of which deal squarely with the question of mental illness and the death penalty, undertake—the right to health and the death penalty. *Shatrughan Chauhan* holds the execution of an 'insane' convict a violation of Article 21 but does not provide much insight into the reasoning. *Accused X* holds it impermissible to execute persons with mental illnesses who cannot understand the nature of punishment, which goes to the mental state of the accused. It does not comment on the state's responsibility in relation to violations of the fundamental right to health and its implications for the continued application of the death penalty—for instance, in cases of onset of mental illness in state custody or in relation to conditions of death row and mental ill-health of the accused.

Enquiry into Mental Health at Trial

In their treatment of mental health concerns of the accused, the pre-sentencing stages in India are a relic of the past and similar to the English common law conception of mental disorders, persons with mental illness and their interaction with criminal law. English common law, for instance, excluded the 'insane', 'mad', 'lunatic' or 'idiot'[9] from criminal justice processes[10]. In the mid-18th Century, the English jurist, Blackstone, wrote, "idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities". He further argued that mental incapacity would preclude a defendant from being tried, sentenced and executed[11].

Criminal law's understanding of mental health, was boxed in by ideas of what it considered rational behaviour, mistaken assumptions of capacity to know and understand the world around, and mental disorders of a certain kind- those which in current times would be referred to as illnesses with a psychotic feature. The idea was that persons with certain mental health conditions should be outside the realm of the law because of an inability to act with any real understanding of what they were doing and the law should therefore not be engaging with them.

Indian criminal law has not been eager to let go of the older, yes/no, approach to capacity and continues favouring notions which limit rather than protect the rights of persons with mental disability. For instance, it does not accommodate the concept of diminished responsibility, which does not acquit the person of all wrongdoing but allows for mental disorders to be taken into consideration to reduce the charge.

The starting point for both stages—capacity to stand trial and the insanity defense—is unsoundness of mind, which in law has been confined to mental illness. This then becomes applicable to only one kind of psychiatric concern and excludes the many other illnesses or concerns which may have repercussions for deciding the legal consequences vis-à-vis the responsibility of the person. Though at first blush, the capacity inquiry at both stages appears similar, the legal test and corresponding time frame differ. When assessing fitness to stand trial, the inquiry is focused on the current state of the mind of the accused, their capacity to mount a defense and exercise their right to a fair trial. During the insanity inquiry, on the other hand, 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 enquiry limited to the mental state of the accused at the time of offence.

■ COMPETENCE TO STAND TRIAL

That the accused understands the charge made against them and is able to defend their innocence is a procedural necessity for fairness in criminal law. While this could take various manifestations,

such as the requirement of conducting the trial in a language familiar to the accused[12], in the context of mental state, it refers to the capacity of an accused to understand the trial and evidence against them, in order to present their own defense. The aim of the provision is to ensure that the accused is able to effectively exercise their fair trial rights. The process must, consequently, accommodate persons who may not have such capacity during trial.

Accordingly, the Code of Criminal Procedure, 1973 empowers the court to suspend the inquiry or trial if they find the accused to be of unsound mind or with an intellectual disability (referred to as mental retardation in the Code) and incapable of constructing their defense[13]. For persons with intellectual disability, the law requires the proceedings to be terminated, and for the person to be discharged[14]. This was introduced after the recommendation by the Law Commission that where a condition such as intellectual disability is 'incurable', then the trial itself should not resume, and preserving the right to life of an undertrial prisoner with intellectual disability would necessitate discharge[15].

The process for determining fitness for trial is triggered where it appears to the authority that the accused is of unsound mind[16]. Where a *prima facie* case exists, the court has to mandatorily refer the case to government mental health professionals and, based on their report, make a judicial determination of whether the accused has the capacity to understand the charge and evidence against them, and is able to instruct their advocate[17]. If the court's finding is in the negative, the trial must be suspended until it is judicially determined with the help of psychiatric opinion that the accused is fit for trial[18]. Failure to observe this provision vitiates the trial and allows for the judgement to be set aside[19].

The binary approach of either suspending the trial (often for long periods) or continuing it conforms to the orthodox approach to capacity in criminal law and can lead to denial of liberty rights for long periods of time. In some cases, trials have been suspended and the accused remained incarcerated, deprived of their liberty rights for periods longer than the actual punishment[20]. In addition, such an approach does not account for the many mental health concerns/disorders/disability, such as mood disorders, which do not require suspension of trial, but nonetheless require support during the trial for effective participation of the accused. This understanding has, as a result, prevented criminal law from devising ways to facilitate the exercise of legal capacity of persons with mental disorders to access their rights.

A reformulation which takes into account vulnerabilities and support needs of the accused, rather than a lack of capacity approach, would be in line with the progress made with respect to rights of persons with mental disability. Such an approach ensures that the agency of a person and their right to participate in their trial is respected and reconciles these with the principles and aims of criminal law.

The next stage which invokes mental health consideration of the accused is when the accused raises the insanity defense. This defense can be raised regardless of whether claims of unsoundness of mind were raised or considered to assess the fitness of the accused to stand trial.

■ THE INSANITY DEFENSE

The insanity defense in India interrogates the ability of the accused to form intention or mens rea at the time of the incident. The defense requires the accused to prove that, due to unsoundness of mind, they did not know the nature of the act or that it was wrong or contrary to the law[21]. A successful insanity defense results in a complete acquittal and puts no responsibility on the accused. As the law presumes capacity to form intention, the burden lies on the accused to rebut this presumption through a preponderance of evidence[22], an evidentiary threshold which is lower than "beyond reasonable doubt" – the standard that the prosecution must satisfy. With slight variations, India's insanity defense remains loyal to its genesis, i.e., the English M'Naghten Rule, which first came into existence in 1843[23].

For a successful defense, the presence of mental illness is a necessary but not a sufficient criterion. Traditionally, courts considered only mental illnesses on the psychotic spectrum[24] and excluded "mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath"[25]. In the recent past, though, accused persons with epilepsy[26], partial seizure disorder[27] and premenstrual stress syndrome[28], have successfully pleaded the defense.

While 'insanity' or for that matter, 'unsoundness of mind' is not a concept in psychiatry or psychology, courts in India, when interpreting the defense, have divided 'insanity' into medical insanity and legal insanity, where mental illness has been understood as medical insanity. Legal insanity refers to the legal threshold and requirements that, once fulfilled, exempt the accused from all responsibility. Whether the link is one of causation, or there need only be a temporal connection between the act and the mental illness or whether only certain kinds of mental illnesses qualify or whether a combination of these need to be present are all questions which have not found any clear articulation in the Indian insanity jurisprudence.

The defense suffers from multiple problems that have led to a confusion in its application. It focuses solely on cognition, i.e., it requires that the accused be *incapable of knowing* the nature or consequence of their act. The defense requires complete lack of capacity to have knowledge. However, an episode of mental

illness does not only affect cognition but may also impair volition. In other words, many mental illnesses may affect a person's decision-making ability as well as pathways which affect full and conscious control of one's actions when they may be under an episode even while generally knowing the nature or consequence of their actions.

Additionally, linking the defense to only mental illness excludes many mental health concerns which may arise out of physiological illnesses or brain or neurological injuries which may impair, even if temporarily, the mental state required for intent and guilt. In any event, even if the defense were to be restricted to mental illness, taking a dimensional rather than a categorical approach to psychiatric disorders would align better with current advances in psychiatry as well. A categorical approach draws rigid boundaries between ideas of 'normalcy' and disorders. The more contemporary dimensional approach suspends this strict binary and looks at 'normalcy', disorders and illnesses on a spectrum. The defense would be better served if the first level inquiry were into the presence of any issue or concern which has an impact on an individual's mental, cognitive and volitional functioning, before examining whether the legal components of the defense are satisfied, which themselves need to be brought in line with a rights-based approach to mental disorders and disability.

Indian criminal law views a person as either wholly responsible for an offence or not responsible at all with respect to questions of guilt determination. In the context of punishment, particularly the death penalty, on the other hand, courts have commuted the death sentence to life imprisonment on the basis of mental illness, even where the insanity defense was unsuccessful[29]. However, the engagement of death penalty jurisprudence with mental health is not limited to the imposition of punishment. The perspective and the purpose of the inquiry into mental health of accused is much wider and changes with each successive phase of a death penalty case.

Death Penalty and Mental Health

Unlike when determining fitness to stand trial or the insanity defense, the approach to mental health within the death penalty regime is broader and not entirely constrained by symptoms and diagnostic categories. It also looks at the impact of the circumstances and social surroundings of the person on their mental state and psychological well-being. Not only does the approach to mental health differ but so does the legal inquiry between the pre-sentencing and post-sentencing stages as also between the sentencing, post-sentencing and post-conviction phases in a death penalty case. The following discussion on mental health and the death penalty is divided into three parts corresponding to the different phases of the judicial journey of a death penalty case, i.e., (i) death penalty sentencing at trial stage (ii) appellate or post-conviction stage and (iii) post-mercy litigation.

■ THE DEATH PENALTY SENTENCING FRAMEWORK

While upholding the constitutional validity of the death penalty, *Bachan Singh v State of Punjab*[30] lays down the sentencing framework to be followed by courts when 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 was "unquestionably foreclosed"[31]. The sentencing court must take an individualised sentencing approach and look into aggravating (usually pertaining to the crime) and mitigating factors (usually pertaining to the individual) in each case before making a determination regarding the death eligibility of an accused. The aim of the sentencing exercise is to impose the death penalty only in the rarest of rare cases, and on only those individuals who are extremely culpable. This individualised sentencing framework is (a) an implied acceptance that not all accused persons are equally blameworthy so as to deserve the death penalty and is consequently (b) a mechanism to determine the death-worthiness of an accused.

Bachan Singh provides an illustrative list of mitigating factors in favour of the accused, some of which pertain exclusively to mental health, such as emotional and mental disturbance at the time of the incident, 'mental defect' and duress[32]. Though not expressly articulated as such, the mitigation exercise envisaged by *Bachan Singh* acknowledges a psychosocial as well as a diagnostic approach to mental health.

A psychosocial approach views mental health as a subjective experience on a sliding scale. It emphasises the dynamic interaction between the social circumstances of an individual, their emotional and psychological state and the consequent responses to these moving parts of their lives. On the other extreme end of this scale

lies clinical and psychiatric illness, which enters into the realm of diagnosis and symptoms and is a distortion of an individual's thought, mood, perception, orientation or memory such that it impairs judgment, behaviour and the ability to meet the ordinary demands of life[33].

Currently, the scope of mitigating factors is limited in their application. Courts have typically looked at mitigating factors, such as poverty, age, mental and emotional disturbance, as items on a checklist, limiting them to the time of the offence. There has also been no consistent consideration and appreciation of mitigating factors across cases, largely owing to the lack of a principled approach to mitigation[34]. 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 variables, and their relationship with the internal workings of the individual. This approach will also allow courts to take into consideration crucial factors, currently missing from the vocabulary of Indian death penalty sentencing framework, such as trauma and abuse, which have a long-term impact on health and social outcomes of the individual and are therefore critical pieces of information which should be presented before courts. (*See Chapter III on Vulnerabilities and Life Experiences*) However, by condoning practices such as same-day sentencing[35], our current sentencing jurisprudence further reduces the system's ability to move away from an 'item on the list' approach towards one which allows for a more nuanced understanding of the life and context of the accused and a more principled appreciation of mitigating factors.

Another category in *Bachan Singh* is the mitigating factor of mental defect. Though now the term is defunct and considered pejorative, its parameters closely resemble those of intellectual disability. Intellectual Disability is different from mental illness in that it is neither episodic nor is it a distortion in thought, mood and behaviour. Limitations such as those in judgment-making, reasoning and impulse control which are characteristics of such a disability, would arguably preclude all persons with intellectual disability from qualifying the threshold of "extreme culpability", as required by the sentencing framework. (*See Chapter VI on Intellectual Disability and Death Penalty*). Mental defects could also include injuries to the brain or cognitive impairment which may result in impairment sufficient to reduce the "extreme culpability" of the accused to be sentenced to death.

One could argue that a lack of awareness has contributed to the absence of a robust jurisprudence on mental health and the death penalty in India. However, restrictions on access to mental health experts as part of the accused's defense team are also likely to have prevented development in this field. It was only recently, almost four decades after *Bachan Singh*, that the need for mental health professionals[36] and social workers[37] to be part of the defense team was recognised by the Supreme Court as part of the right to effective legal representation of prisoners sentenced to death and their right to access justice.

There is a crucial difference between considerations of mental health (diagnostic or psychosocial) at the sentencing stage and at the post-conviction as well as post-mercy stage. During sentencing, the mental health of the accused influences the sentence received, while in the later stages it is largely the impact of the death sentence on the mental health of the accused that is examined.

■ POST-CONVICTION ONSET OF MENTAL ILLNESS

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 (as discussed above) and the post-mercy stage, where considerations of mental health have been invoked by the Supreme Court in commuting the death sentence to life imprisonment post the President's rejection of the mercy petition of death row prisoners[38]. (*See section on post-mercy consideration of mental health*) There was no guidance on the question of mental illness the onset of which is during incarceration and at the appellate stage. 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[39]. This ruling, however, raises more questions than answers.

Though the Court refers to the onset of mental illness after the offence, it uses the framework of just deserts, even though that framework is limited to looking at factors and circumstances existing at the time of offence or pre-offence and for the purposes of sentencing. The onset of mental illness post offence, particularly if it is in the custody of the state, i.e., in prison, does not warrant an appraisal of extreme culpability[40]. The onset of mental illness during appellate stages requires its consideration in a manner which is compatible with the death penalty sentencing framework as also the Supreme Court's ruling in *Shatrughan Chauhan v Union of India* in the context of execution of death row prisoners post the rejection of their mercy petition[41]. However, in *Accused X*, the Court put in multiple qualifiers, which are at odds with *Shatrughan Chauhan.*

In holding mental illness as a post-conviction mitigating factor (already an oxymoron), the Court puts in place a 'test of severity'. The test requires the mental illness to be severe enough that it

renders the accused unable to “understand or comprehend the nature and purpose" behind the imposition of the death sentence[42]. The Court also favours schizophrenia to indicate ‘severe mental illness’, even while recognising that the severity of a mental illness is not simply dependent on the type of mental illness[43]. The Court’s test of severity is similar to India’s insanity defense which in itself has an outdated approach to mental states, cognition and mental disorders. It also runs contrary to *Shatrughan Chauhan*, which noticeably did not put any qualifiers on either the category of mental illness or its severity in the context of executions.

Accused X, therefore, creates a unique and problematic jurisprudence. It considers post-conviction mental illness as a mitigating factor, and then goes on to qualify such a mitigating factor (which themselves require no threshold qualifiers) and puts in place a test of severity—which, in essence, is a test of executability of the person—a test used largely in the US[44]; a test that *Shatrughan Chahuan* does not articulate. As a result, the consideration of mental illness pre-execution at the appellate stage requires satisfying a much more stringent test than the one required at the execution stage.

Though the onset of mental illness in incarceration, as an undertrial prisoner or in the course of being on death row, may not have a bearing on just deserts, it is important to look at it from the lens of fairness and dignity in punishment. While the idea of incarceration as punishment inherently accommodates loss of liberty and other attendant deprivations, the onset of mental illness while living in prison or while on death row is neither prescribed nor an intended consequence of punishment. This additional burden, while the prisoner is in state custody, violates the prisoner’s right to live a life with dignity, including while being on death row[45].

Consideration of mental illness at the sentencing stage is to consider whether the death sentence should be imposed at all, while at the execution stage it is to determine whether executing a prisoner who has a mental illness would be a violation of their right to life[46]. In *Accused X*, the Court conflates these issues. The introduction of a test which determines whether the prisoner understands the purpose of punishment contradicts the jurisprudence developed by the Supreme Court where the onset of mental illness during the course of life on death row has been determined as a violation of the right to dignity of the death row prisoner[47].

■ POST-MERCY CONSIDERATION OF MENTAL HEALTH

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 have arisen post the final verdict[48]. A commutation at the post-mercy stage does not alter the conviction and the death sentence imposed by the final court rather it is a consequence of imprisonment under certain conditions which go beyond the scope of the death sentence. Supervening factors are tested against violations of the right to life. Two of the factors which pertain to the mental health of the death row prisoner are delay and mental illness.

DELAY

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 the mercy petition. It is only the time lapsed during the pendency of the mercy petition that is considered for this purpose[49] because the delay is caused not by the prisoner but by the Executive in deciding the mercy petition[50]. It is for the state to prove that there were proper, plausible and acceptable reasons for the delay[51]. In brief, the delay not only has to be undue and inordinate, it also has to be unexplained. The Supreme Court had attempted fixing two years as the time period constituting undue and inordinate delay, but this was later struck down as an impingement on the President’s constitutional powers[52].

In delay claims, the court is charged with examining whether the undue and inordinate delay constitutes a violation of the dignity of the accused under Article 21 of the Constitution. In doing so, courts have focused on the adverse impact on the mental and psychological health of the prisoner as a result of living with the uncertainty of death[53]. Referring to it as dehumanising, the court has held "undue, inordinate and excessive" delay to be a violation of the triad of rights under Articles 14, 19, and 21 and falling foul of a just, fair and reasonable procedure[54]. Such delay is presumed to constitute torture[55], and the burden to prove so is not on the prisoner[56].

“[... The] brooding horror of ‘hanging’ which has been haunting the prisoner in her condemned cell [...] This prolonged agony has [an] ameliorative impact according to the rulings of this Court.”

J Krishna Iyer, Ediga Anamma v State of Andhra Pradesh, (1974) 4 SCC 443 [15]

The Right to Health and Death Penalty

However, as the narratives of death row prisoners show, the anxiety due to the 'uncertainty of death' that the law presumes sets in during the pendency of the mercy petition, is actually experienced by them from much earlier and the fear sets in soon after being sentenced to death by the trial court. However, courts have rejected the time taken during the judicial journey as part of delay relevant for commutation[57]. (*See Chapter VII on Living with the Sentence of Death*)

A development comparable to the delay jurisprudence in India has been the development of 'death row phenomenon' and 'death row syndrome' in international jurisprudence[58]. Developed much after the delay jurisprudence in India had set in, it is understood as comprising the time spent under the sentence of death, including during the judicial journey of the case, the consequent psychological trauma, the extreme conditions of detention on death row, including violence and the "constant spectre of execution"[59].

Though the death row phenomenon has not yet been considered a supervening factor in India, some of its elements have found stand-alone mentions in different pronouncements of the court. Solitary confinement before the exhaustion of judicial and executive remedies[60], delay, though qualified[61], and the adverse impact of prison conditions on the mental health of prisoners[62] have been considered factors for commutation of the death sentence.

MENTAL ILLNESS

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 has considered the question of mental illness as a supervening factor relevant for commutation[63].

Though mental illness had earlier been rejected as a ground for post-mercy relief by the Supreme Court[64], in *Shatrughan Chauhan v Union of India*[65], the Court took a diametrically opposite view. It considered mental illness as a supervening factor, and considered the onset of mental illness during the course of being on death row as a violation of the dignity of a death row prisoner.

In reaching its conclusion, the Court relied on provisions in various prison manuals, common law and international law prohibiting the imposition of the death sentence on persons with mental illness as well as the execution of those with mental illness[66]. It also relied on American jurisprudence which considers the execution of prisoners with mental illness as cruel and unusual if the prisoner is unable to understand the offence they have been charged with and the nature and purpose of the punishment[67]. Notably, *Shatrughan Chauhan*, while referring to American jurisprudence does not impose a threshold when holding "insanity as one of the supervening circumstances that warrants for commutation of death sentence to life imprisonment"[68].

In declaring that insanity is a supervening circumstance warranting commutation, the Supreme Court, in *Shatrughan Chauhan*, based its reasoning on the fundamental right to life and dignity, India's international obligations, the US Constitution's prohibition on cruel and inhuman punishment and various prison manuals in India. However, it does not provide a detailed analysis to answer 'why' or 'how' these violations would occur. The rationale adopted by *Accused X* in this regard is essentially that dignity in punishment must ensure that the person retains the "capacity for understanding, rational choice, and free will inherent in human nature"[69], and putting people with mental illness who do not have this capacity would be cruel and inhuman. In connecting dignity to the capacity of a person, *Accused X* makes a mental state argument.

Passingly, *Accused X* mentions the right of persons with mental illness to live with dignity as guaranteed under the Mental Healthcare Act, 2017. It also acknowledges the adverse effect of prisons on the mental health of prisoners. It goes on to mention, "Due to the prevailing lack of awareness about such issues, the prisoners have no recourse and their mental health keeps on degrading day by day."[70] It does not take forward the discourse by discussing the corresponding obligations on the state to address these concerns and the implications on the death sentence in cases of these health-related violations. It moves away from addressing these questions in the framework of dignity and mental health to dignity and mental state.

Approaching the question of dignity from a mental health (rather than a mental state) perspective allows for the inquiry to squarely incorporate issues related to the adverse impact of prison conditions on mental health, including various kinds of mental illness, and obligations on the state in terms of the right to life, but more specifically the right to health.

The right to health has been recognised as part of the fundamental right to life,[71] including of prisoners, and death row prisoners[72] are no exception. While the right to health is more obviously linked to the right to healthcare, the right to health framework[73] is broader than that, and includes addressing underlying determinants which contribute to poor health, including mental health.

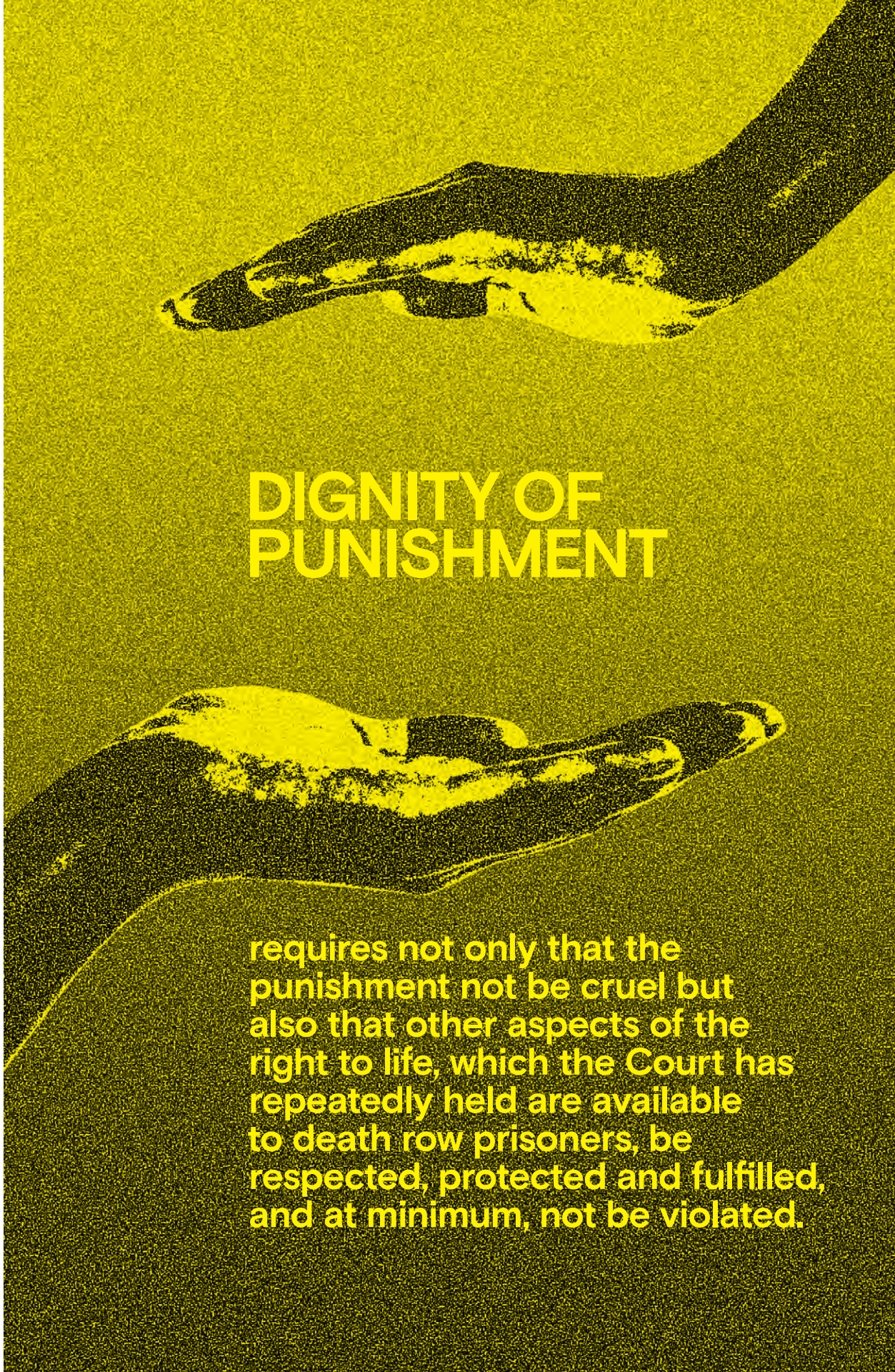
Seen in this context of underlying determinants, the right to health requires addressing these determinants of poor mental health on death row, such as violence, stigma, and discrimination that death row prisoners face, as well as undertaking curative measures and providing access to quality mental healthcare. Considering that death row prisoners are a particularly vulnerable group due to the additional restrictions and violence by virtue of the punishment itself, the state has a greater obligation to address factors and stressors that contribute to their deteriorating mental health, and ensure their mental well-being.

In fact, seen from the perspective of the right to health framework in delay claims when the Supreme Court emphasises on the mental and emotional agony of the death row prisoners, it is also looking at underlying determinants and state obligations. The underlying determinant being the executive delay in deciding mercy petitions. Though a violation in its own right, applying the right to health framework provides an insight into why it is a violation of the right to life (and health) and addresses the violation by commuting the sentence. Similarly, when *Shatrughan Chauhan* recognises the "prolonged anxiety and suffering experienced on death row"[74] and requires the state to conduct regular mental health evaluations of death row prisoners it establishes state obligations in the context of mental health. A proper application of the right to health framework, however, goes beyond questions of time spent on death row awaiting a decision on the mercy petition (as is the case with delay) or healthcare, but also examines state obligations from a preventative perspective. It urges a link between these obligation whenever a violation takes place in terms of deterioration of mental health, and exacerbation or onset of mental illness.

The right to health framework does not just focus on individual rights but also provides for state aims and interest to be taken into account when looking at incursions into the right to health. It harmonises these aims with individual rights by providing for the 'least restrictive alternative' to be adopted when incursions are necessary and alternatives are present[75]. In the context of the death penalty, the state interest involved is punishment (whether the penological justification is retribution, deterrence or incapacitation) and when incursions into the right to health take place, harmonisation is required so as to not defeat state aims while also upholding the rights (of health and life) of death row prisoners in individual cases of violations.

Dignity in punishment requires not only that the punishment not be cruel but also that other aspects of the right to life, which the Court has repeatedly held are available to death row prisoners, be respected, protected and fulfilled, and at minimum, not be violated.

Even if the severity of these mental illnesses does not lead to the inability of death row prisoners to understand the nature and purpose of punishment, deterioration of mental health and onset of mental illness regardless of its severity is a violation of the right of death row prisoners to live a life of dignity. These are incursions unauthorised by law and raise claims implicating the state's duty to ensure that the right to life of death row prisoners is not left at the prison gates.



CHAPTER III

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

This chapter provides a brief glimpse into the life of death row prisoners and offers a framework to understand the implication of life experiences on the social and health outcomes of their lives. It explains the relationship between life experiences and the psychological, emotional and behavioural development of an individual.

There is persistent and often intergenerational social and structural exclusion, deprivation, and violence that an over whelming majority of the prisoners interviewed found themselves in since childhood. Enough and more research has indicated that many of the experiences presented in this chapter—neglect and abuse during childhood, poverty, deprivation, disturbed family environment—are underlying determinants of violence later in life. These are not experiences actively sought but that the prisoners were surrounded with nonetheless, often with

out any support to minimise their harmful effects. 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. They impact the manner in which an individual makes sense of the world around them and responds to it. Compounding the vulner ability is the lack of any factors which may offset the negative effects of such violence.

To be sure, these factors are not exclusive to crimes punish able by death, they are common to crimes generally. However, what makes it important to look at them closely in the context of the death penalty is not only that the law requires it. It is also because when a person is condemned to death for causing harm to society, it becomes imperative to inquire into how they came to be at this juncture—how has society responded to and moulded them.

Mitigation offers an opportunity to understand the individual not in the context of a third person's (for instance, the judge) social and structural exposure but in the context of the social reality of the individual who is being judged. Grounded in a longitudinal view of an individual's life experiences, the chapter offers a framework to inquire into the purpose of mitigation and consequently develop a principled approach to the presentation and consideration of mitigating factors.

The chapter also discusses the stress-vulnerability model of mental illness which highlights the importance of an individual's experiences and circumstances in psychopathology and the onset of mental illness. The life experiences discussed in this chapter are also 'stress' factors which can trigger the onset of a mental illness, alter brain biology or lead to developmental disorders such as intellectual disability. This chapter focuses on the links between life experiences and mental illness. *(For a discussion on life experiences and intellectual disability, see Chapter VI)* 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 either at health facilities, community or family, though essential, remains a luxury.

The individual before the court carries the imprint of these multiplicity of harms, biologically, psychologically and emotionally.

The chapter first provides a brief overview of the relationship between life experiences, mitigation and mental illness. It then goes on to present certain kinds of harms, i.e., adverse childhood experiences, their relation with each other as well as traumatic events that prisoners have either experienced or witnessed.

Life Experiences and Mitigating Factors

Bachan Singh formalises the structure of the death penalty sentencing framework and explicitly mentions the critical role mitigating circumstances play towards determining whether the accused should be sentenced to death. It produces a non-exhaustive list of what may be considered as factors mitigating the death sentence, without articulating the underlying principle running through those factors. Some of those factors include age, mental and emotional disturbance at the time of offence, probability that the accused would not constitute a continuing threat to society, probability of reformation, and any 'mental defect' that the accused may have at the time of offence[1].

Though there have been some additions to this list of factors, their consideration has not been consistent and has lacked a cogent line of reasoning in their acceptance as well as rejection[2]. At odds with the idea that mitigating factors pertain to the accused[3], these factors seem to have been looked at in the context of the crime. However, the relevance of mitigating factors is not whether it can answer why the crime was committed, instead it is to answer who committed the crime.

An insight into the purpose of mitigating factors was provided by the Supreme Court in a case pre-dating *Bachan Singh*. The Court theorised that the need to look at the circumstances of the criminal is to understand the "subconscious reactions" of the accused[4]. 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 the social surroundings of an individual, their impact on the psychological make-up and well-being of the individual, the framework within which they view the world as well as their perception and responses to the circumstances in their life. In effect, mitigation requires us to adopt a psychosocial lens in examining and contextualising the life of the accused.

JAVED Sultan witnessed immense violence in his family when he was young. His father abandoned the family when he was around 12 years old and came back after 2-3 years. He shared an incident where his father once got meat and after it was cooked, he broke the pot in which it was cooked. He recalled that his father would come home drunk and fight with his mother, and would act like a "madman". This in turn caused his mother to take out her anger towards her husband on Javed and his siblings. She would beat them for the smallest mistakes. Javed's father was deep in debt even as they were already poor due to his drinking habits. "[My father] had a lot of debt. We had to lock up the house and sleep in the cow shed", Javed speaks of a childhood marred by emotional and physical violence.

The determination of blameworthiness for the purpose of calibrating punishment is undertaken post the finding of guilt, but that it takes account of the individual's life prior to the crime, indicates that the extent of blameworthiness, though in the context of the crime, is also independent of it. The mitigation exercise, then, has to keep the individual at the centre, and inquire into circumstances, positive or negative, in relation to that individual as well as in the context of each other, rather than in relation to the crime.

For instance, the socio-economic background of the accused has been affirmed by the Su-

preme Court as a mitigating factor often in cases where it has been able to link the offending act with the poor socio-economic background of the prisoner[5]. However, the manner in which socio-economic circumstances affect an individual are deep rooted and complex. Studies have repeatedly shown that children from socio-economically backward communities are at a higher risk of violent behaviour later in life[6]. However, this is not to say that poverty *causes* criminal activity. Instead, much like there are underlying determinants of poor health, these studies indicate that there are underlying determinants of poor social outcomes, including runins with the criminal justice system[7].

As to what factors can be considered mitigating, jurisprudence developed in the US can provide some guidance. The US death penalty sentencing framework also requires courts to look at aggravating and mitigating factors, where mitigating factors pertain to "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death"[8].

[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer.... not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.... A statute that prevents the sentencer in capital cases from giving independent mitigating weight to aspects of the defendant's character and record and to the circumstances of the offense proffered in mitigation creates the risk that the death penalty will be imposed in spite of factors that may call for a less severe penalty, and, when the choice is between life and death, such risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments.

Lockett v Ohio, 438 U.S. 586 (1978) 605-606

While the crime does form part of the analysis, the life experiences, events and circumstances, both negative and positive which mould an individual's character, their subconscious motivations, and their psychological and emotional state are the main areas to be considered. Under inquiry is an interplay of different factors that need to be considered when determining the blameworthiness of an individual. An individual's experiences and their circumstances might appear as distinct occurrences, but their implications are at a more subterranean level and weave into each other. Rather than existing as independent, distinct and singular events, these experiences interact with each other forming a network of experiences with the individual at the centre that impacts their emotional, psychological, cognitive, and social skills and which can have long lasting neurodevelopmental repercussions as well[9]. This is an important aspect of death penalty sentencing which requires people who are trained in fields which deal with these complexities, such as psychology, psychiatry and social work to be involved as part of the legal representation of the accused. Those trained in law are not equipped to inquire into or make these determinations.

VINEET grew up in a chaotic household and his family struggled to make ends meet throughout his childhood, especially since his father would spend his entire income on alcohol. Vineet's father was extremely hostile and aggressive and would often lash out physically. Once Vineet's elder brother and father got into a fight and when his uncle tried to break up the fight, he injured his head. If his mother so much as even uttered a word, Vineet's father would beat her.

Vineet grew up with violence in his community as well. Fatal accidents and suicide attempts were realities of life around him as he was growing up. He recalled an incident which made him particularly sad. During the celebration of Pongal, he saw a woman screaming with her saree on fire. He helped that woman reach the hospital in time and thankfully she escaped any serious injuries.

Vineet has diabetes. His mother has asthma, and his uncle suffers from TB and asthma. He believes in God and prays for the health and well-being of his family. He says he worked in a temple when he was young, hoping they would escape difficult times and adversities.

Vineet developed a hearing problem in prison. He believes this happened because his tooth ache wasn't properly addressed because he is a death row prisoner. He became habituated to beedis after he was sentenced to death.

Different experiences may elicit unique responses by individuals depending on the presence or absence of buffers such as a nurturing home environment, supportive relationships and other healthy experiences. These dynamic and interrelated circumstances and experiences, influence an individual's vulnerability to poor social outcomes. It is for this reason that life events need to be considered as mitigating factors individually as well as collectively.

Within death penalty jurisprudence, the life experiences of an individual are most relevant in providing support to reasons mitigating the death sentence. However, similar life experiences are also known to contribute to an onset of psychiatric illnesses. As with social outcomes, health outcomes too are dependent on an intricate interaction between the individual and their ever-changing environment.

Life Experiences and Mental Illness

The stress-vulnerability model of mental illness emphasises on social and environmental factors, in addition to the contribution of genetic and biological factors at play, which may lead to the onset of mental illness. Genetic and biological factors or inborn vulnerabilities combined with vulnerabilities acquired due to the environment are important when understanding the onset of mental illness[10].

Inborn vulnerabilities, such as a genetic predisposition or those that may be due to neurophysiological reasons, do affect the onset of mental illness—but the external environment of a person, particularly when adverse, also contributes to the onset of an episode of mental illness. This repeated exposure to adverse events acts as a stressor and influences the response of an individual to their circumstances, contributing to their psychopathology[11].

Within the parameters of this model, an individual is not seen as a static entity moving through time and experience unaffected and unchanged. An individual with exposure to experiences such as trauma, abuse, and negative family experiences, is more likely to have an onset of mental illness, than individuals who, though may have inborn vulnerabilities, but have been exposed to a healthy environment[12]. The deterioration of mental health is a response to repeated exposure to adversely affecting experiences and circumstances, which in turn further increases the vulnerability of an individual to mental illness. There exists a vicious relationship between the social surrounding of the individual and their mental health, with each feeding on the other.

Multiple and long-term exposure to stressful events can have serious health consequences, including bringing about a change in the brain itself[13]. Repeated exposure to negative events can particularly increase the risk of illnesses such as Major Depressive Disorder, anxiety or Post-Traumatic Stress disorder. Negative experiences also change the behavioural and cognitive responses to stressful events and increase an individual's reactivity to these events and experiences[14].

Additionally, it is not just the presence of vulnerabilities that contributes to the onset of mental illness, and not all individuals get equally affected by traumatic or stressful events. An individual's resilience to withstand stressful events plays an important role as well. The onset of mental illness is a combination of low resilience as well as increased vulnerabilities, inborn or acquired[15]. Resilience is the ability of an individual to adapt to adverse situations while managing their mental well-being in an effective manner[16]. Like vulnerabilities, resilience also depends on individual as well as social factors. For instance, individuals who have been exposed to a nurturing and supportive family have been found to be more resilient to stressful situations[17]. Buffered sufficiently by protective factors, such as education and good earning opportunities, during the life course of a person, the vulnerability to the onset of mental illness is likely to decrease[18].

While a large number of life experiences during childhood and adolescence which 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 experience before and during incarceration and under the sentence of death.

Negative Life Experiences among Prisoners Sentenced to Death

The negative life events and experiences discussed in this chapter have been collected through interviews with the prisoners as well as their families. Broadly, these life experiences have been considered under two categories: (a) adverse childhood experiences and (b) traumatic life events.

Though the common thread within these categories can broadly be referred to as traumatic experiences, the specifics of each category vary. For instance, experiences during childhood are linked to each other in both space and time. However, the category of traumatic life events is a miscellaneous category which excludes chronic trauma or adverse childhood experiences. These traumatic events could be repeated but are not necessarily interrelated in terms of continuity. They could have happened at any point in a person's life.

RAMANAND spent his entire childhood in extreme poverty. He discontinued his studies to earn money and started working from the age of around 10 in a paddy field where his earnings were not sufficient to cover basic necessities. The paucity of money also affected the availability of food in the family. The only option that they had was either rationed rice or kappa (tapioca). The rice would very frequently be infested with worms and would have to be put in water to separate the worms from the grains. He states that the cost of a kilo of rice was Rs. 7 at that time and a labourer would not even earn that much as their daily wage. The impact of living in poverty was not just limited to his family's hand to mouth existence but also extended to the treatment that was meted out to him by his school teachers. He faced hostility from his teachers because he couldn't afford to be well dressed. He stated that punishment was severe for students like him even if they'd make the same mistake as their better off classmates. This discrimination based on his social status affected him emotionally and mentally.

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[19].

■ ADVERSE CHILDHOOD EXPERIENCES

Adverse childhood experiences are interrelated negative experiences coupled with a lack of positive factors in a child's family, community and social environment[20]. Exposure to these experiences leads to disturbances in psychological, cognitive, emotional and behavioural development, including later in life[21]. Longitudinal studies have found a strong relation between adverse childhood experiences, such as poverty, deprivation, exposure to violence in the community, neglect and substance use by parents and negative health and social outcomes, including violence, later in life[22]. 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.

Persistent negative experiences during formative years and consequent disturbances, such as changes in brain development[23], unhelpful emotional responses, maladaptive coping, and aggressive behaviour[24], alter the perception and response to events whether stressful or threatening[25]. Left unattended and unaddressed, and in the absence of factors which can protect against these poor outcomes, adverse childhood experiences increase the risk of serious mental health concerns such as Major Depressive Disorder, anxiety disorders, substance use and other mental illnesses[26]. Direct links have also been found between childhood adverse experiences and suicide[27].

A positive significant association was found between childhood abuse (verbal and physical) and Major Depressive Disorder among the prisoners (p value = 0.061). The abuse comprised violence, including that for disciplinary reasons, inflicted by parents, family and teachers. 20 out of the 30 prisoners with Major Depressive Disorder, reported having been subjected to abuse in childhood.

Similarly, Substance Use Disorder among prisoners was found to have a significant positive association with low educational attainment (p value = 0.000). 16 out of the 18 prisoners with Substance Use Disorder had less than 10 years of formal education.

PADMANABHAN had a troubled childhood and lived in extreme poverty. He had an aggressive father who would beat him for the smallest of reasons. The abuse was not just directed towards him, it also meant witnessing his father beating his mother, without any regard to what he had in his hand, whether it was a scale or an iron rod. Padmanabhan recalled an incident where the violence and abuse had become so unbearable that his mother and his siblings decided to die by suicide. He said, "...once my father had beaten my mother and her hand broke. Because of these experiences, we decided to die. We bought some pills and consumed them."

He holds his family environment responsible for not being able to continue his education after the 10th standard, even though he wanted to study further. He narrated that whenever he would open his books, he'd be verbally abused, which eventually discouraged him from studying. Scared and tired of his father's behaviour, Padmanabhan convinced his mother to leave home. He goes on to say that he did not have anyone to guide him, and started smoking and drinking from a relatively young age and started associating with people who had a negative influence on him.

Exposure to stress and trauma during childhood has serious consequences such as hindering healthy brain development, resulting in conduct problems as adolescents and aggressive behaviour as adults, poor social attachment and increased emotional reactivity[28]. Linked with adverse childhood experiences are issues of early onset of substance abuse, lower educational attainment and poor engagement in employment, thus furthering the risk of violence[29].

Multiple studies have found links between adverse childhood experiences and violence later in life, including those resulting in convictions for violent as well as sexual offending[30]. For instance, research indicates that persons guilty of sexual abuse are likely to have been victims of sexual abuse as children[31]. However, even in the presence of adverse experiences during childhood, the presence of protective factors or some amount of adult support and social attachment, can reduce the likelihood of poor social outcomes and violent behaviour[32]. The presence of protective factors, such as education and employment opportunities, even later in life have also been found to be linked to a reduction in negative

social outcomes in people who have been exposed to adverse childhood experiences. A landmark longitudinal study done over a period of 32 years, showed that the presence of protective factors even in times of childhood adversity can lead to a healthy and well-adjusted life. The study attributed the ability of individuals to overcome adversity to individual protective factors within the family as well as those in the community[33]. However, most prisoners we interviewed, and as the stories illustrate, were bereft of exposure to positive experiences, having to cope with a life generously populated by adverse experiences.

Abuse during childhood was found to be significantly associated with initiation into substance use before the age of 18 (p value = 0.014). 20 out of the 28 prisoners who had started using substances early in their lives were also subjected to abuse during childhood. 35 out of the 46 prisoners who experienced violence and abuse in childhood, also took on adult responsibilities as children. A significant association was also found between childhood abuse and prisoners running away from home at a young age (p value = 0.000). 22 out of the 27 prisoners who left home in their childhood had also been subject to childhood abuse.

Childhood neglect had a positive significant association with prisoners interacting with and keeping the company of peers who might be referred to as deviant (p value = 0.001). 50 out of the 60 prisoners who reported associating with deviant peers before coming to prison, were also neglected as children. Further, childhood neglect was also significantly associated with low educational attainment (p value = 0.000). 41 out of the 46 prisoners who had less than 10 years of formal education were neglected as children.

55 out of the 61 prisoners who assumed adult roles in childhood grew up in family environments not conducive to healthy development. Disturbed family environment before the prisoner was incarcerated was also significantly associated with substance use by prisoners before the age of 18 (p value = 0.051). 25 out of the 28 prisoners who had started using substances early also grew up in a disturbed family environment, and 52 out of the 73 prisoners who had experienced a disturbed family environment also interacted with deviant peers.

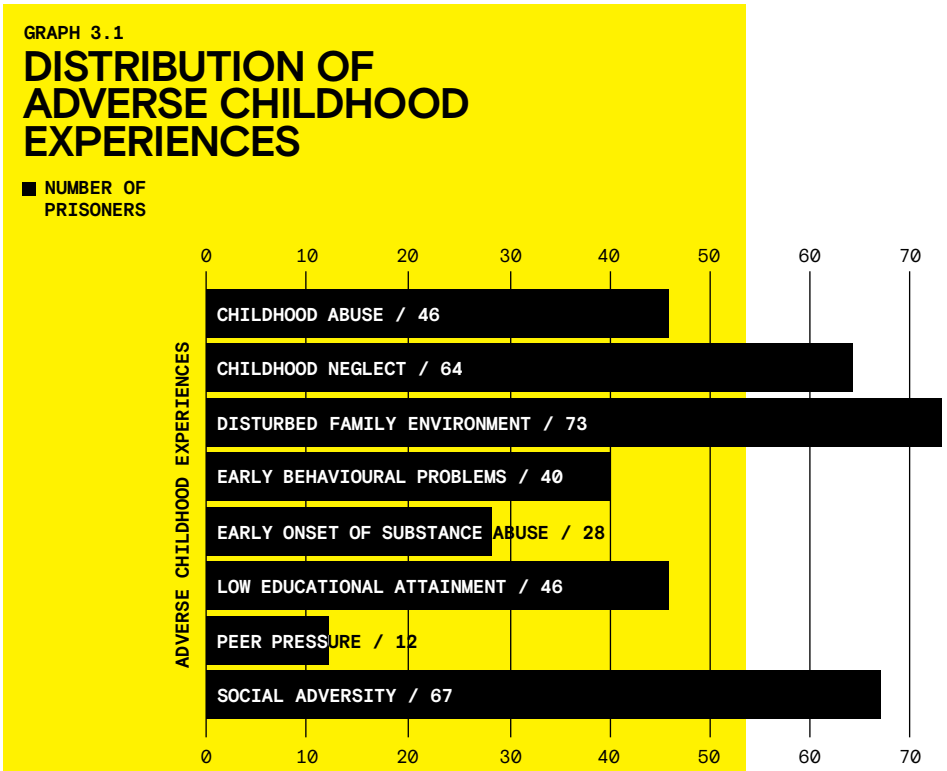
URVI lived with his parents until the 4th grade. Being the oldest, Urvi had to take care of his siblings from a very young age. His mother was ill for much of this time, and was unable to take care of them. Urvi's father would come home drunk, and would beat his wife and children. Urvi was physically and verbally abused by both his parents. He faced a similar environment of fear and punishment in school, leading him to lose interest in studies very early. He failed the third grade twice, and left for his grandparents' house who lived near a jungle and were traditional healers. He felt safe around his grandparents, but would face disapproval from his parents when he met them. His mother kept her distance from him and wouldn't allow anyone to eat from the utensils he'd touched. Being raised away from home, he also became estranged from his brothers. At his parent's house, Urvi faced the familiar abusive family environment and ran away multiple times, and was once caught by the police. When he was taken home, his father and uncle beat him and did not feed him for at least a day. He ran away again, but was unsuccessful living on his own.

In prison, Urvi fears for his life. He believes the co-accused in the case want to hurt him and only after he was kept separate from them did his worry subside a little. He also worries about his children and fervently looks forward to their visits. At the time of the interview, he mentioned that his eldest child had gotten engaged; a bittersweet event for him. He says he is only living for his children, and is waiting for them to get married, so that they have their own families and can move on and eventually forget him.

Urvi was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder.

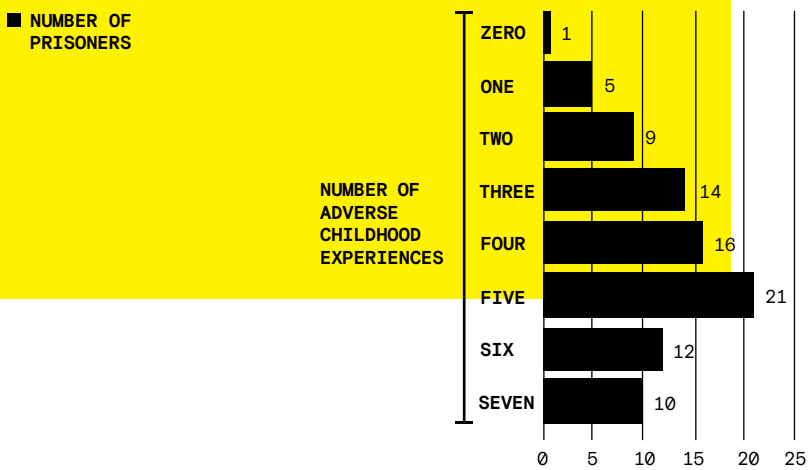
GRAPH 3.1

DISTRIBUTION OF ADVERSE CHILDHOOD EXPERIENCES



GRAPH 3.2

NUMBER OF ADVERSE CHILDHOOD EVENTS EXPERIENCED BY EACH PRISONER



Poor health and social outcomes have overlapping underlying social determinants that need to be addressed for an overall healthy population. It is important to acknowledge that these studies do not show causation, but a strong correlation between adult violence and experiences during childhood. This must alert us to the fact that the life history of a person substantially affects their life outcomes and must therefore be accounted for when a decision is being made about whether a person deserves to live or die. None of this is to suggest that an individual cannot be held responsible for their actions, but the extent to which we hold them responsible must reflect the social actualities that mould their subconscious reality and are likely to contribute to their emotional and mental state, including at the time of the offence.

MAHADEV grew up in a conflict-ridden household with an alcoholic father who would often abuse Mahadev and his mother, verbally and physically. The abuse was so bad at times that his mother had to be admitted to the hospital for treatment. When he was nine months old and wouldn't stop crying, his father, in a fit of anger, threw him in a water drum. His mother was the one who paid for Mahadev and his sister's education. He blames his father's drinking problem for the chaotic environment at his home throughout his childhood.

He felt cheated when his uncle, on the promise of admitting him into a school, took him away from his house and made him work at the shop the entire day. He abused him with a hot ladle, the marks of which are still present on Mahadev's body.

Whenever he watches family drama movies in prison, he cries bitterly as he misses his grandparents a lot. They are unable to travel the long distance due to old age. He is heartbroken as his family has burnt all of his photographs out of fear and humiliation after they saw how the media covered the crime.

Mahadev finds it difficult to build a rapport with most of the inmates. He thinks that they are not honest with him, that they say nice things in front of him but he doesn't trust them to say the same things about him in his absence.

Mahadev was diagnosed with Substance Use Disorder.

■ TRAUMATIC LIFE EVENTS

Information on traumatic events was collected through first-person narratives of prisoners, as part of the qualitative interview as well as through the Life Events Checklist, which lists potentially traumatic events and is a screener for Post-Traumatic Stress Disorder (PTSD)[34].

Experiencing or witnessing events such as natural disasters, accidents, exposure to toxins and violence has an important role to play vis-à-vis psychological, emotional and mental health, regardless of the age at which they occur, though their intensity might vary with age[35]. 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[36]. Further, traumatic events experienced or witnessed as an adult in addition to multiple past stressors also increases the susceptibility to mental illness[37].

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.

The importance of inquiring into trauma among prisoners is not merely an academic exercise. There is substantial research to suggest that there are higher rates of PTSD among prisoners than in the general population[38]. Given the number of prisoners who have had multiple exposure to adversity and trauma from childhood, including in prison, there is a need to understand the complicated nature of trauma for effective mental healthcare services in prison.

SURYAKANT and his brother were brought up by his paternal uncles because his parents had been murdered when he was around five years old. His elder brother and younger brother were also murdered along with his parents. He started working when he was all of nine years old and would take care of sheep, or work at a farm, or as a coolie. He has a very hazy memory of his childhood but whenever he does try to recollect anything related to his parents, he is saddened and frustrated by the fact that he is unable to recall even their faces.

Suryakant was diagnosed with Major Depressive Disorder and has attempted suicide multiple times.

TABLE 3.1

Positive correlations found between potentially traumatic events as listed by the Life Events Checklist, and MDD, GAD and SUD

Traumatic Event	Number of prisoners who experienced the event	Number of prisoners with Mental Illness *MDD – Major Depressive Disorder, GAD- Generalised Anxiety Disorder, SUD – Substance Use Disorder*	p value
Natural Disaster	20	10 (MDD) 9 (GAD)	0.073 0.006
Serious Accident	21	12 (MDD) 9 (GAD)	0.016 0.010
Exposure to toxic substances	7	5 (MDD) 5 (GAD)	0.091 0.006
Physical assault (including by police and in prison)	53	23 (MDD)	0.044
Life threatening illness or injury	22	11 (MDD)	0.035
Severe human suffering	25	12 (MDD)	0.075
Fire/Explosion	10	5 (SUD)	0.014

Prisoners who were diagnosed with a current episode of Major Depressive Disorder reported experiencing more traumatic life events than those who were not diagnosed (p value = 0.004).

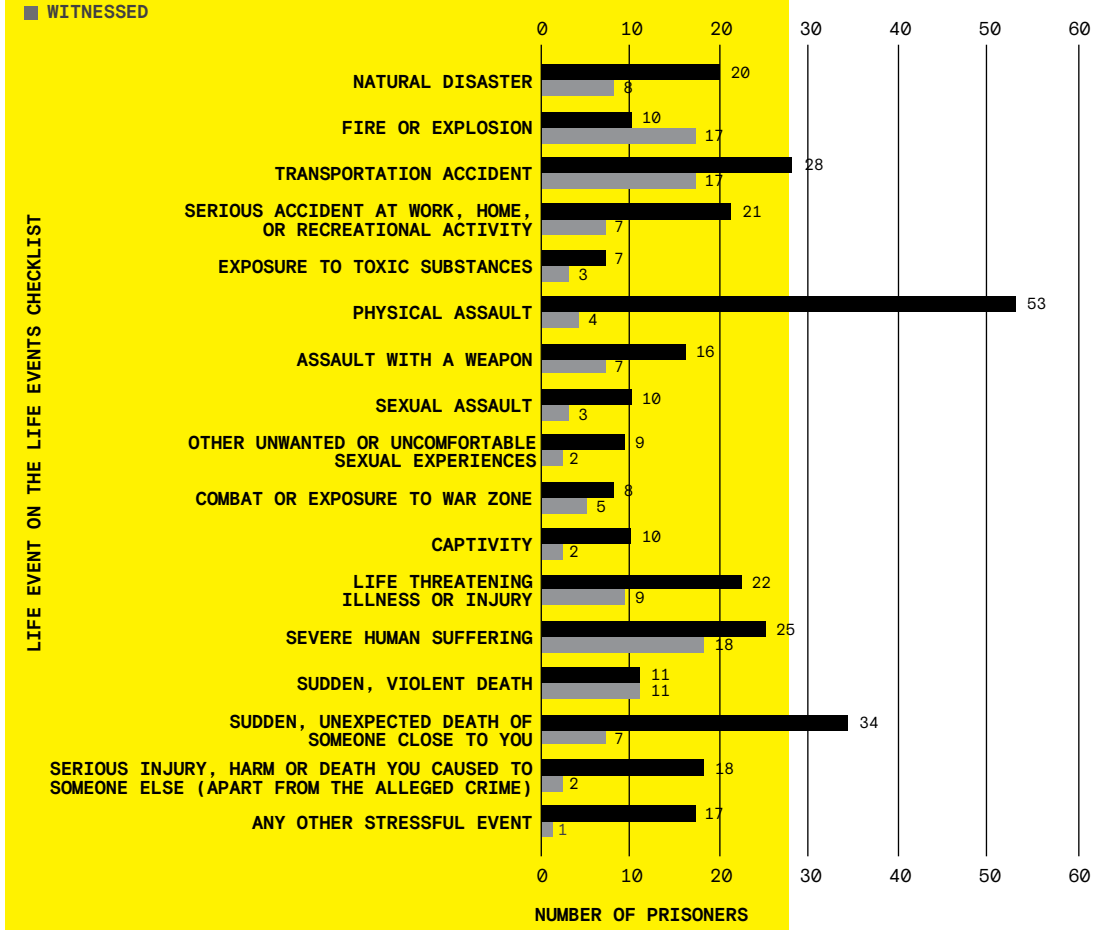
Inquiring into adversities provides an insight into the extent of vulnerability of the prisoner and the intensity of stress under which they have lived. Understanding social and structural vulnerabilities is important also because we know that these factors have an impact on not only our psychological and emotional processing, but also impacts us on a neurological level. 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 life in a society which notices them only after it's too late.

GHALIB witnessed quite a few accidents in his adulthood, one of them being a fire accident in a neighbouring house. His neighbour's son had set his own house on fire and three people lost their lives in that accident. He also witnessed a bus accident where the bus ran over a few school students. The rear wheel of the bus ran over a boy. Ghalib stated, "I rushed to my house with a shattered mind", after witnessing the accident.

Ghalib was diagnosed with Major Depressive Disorder and Substance Use Disorder.

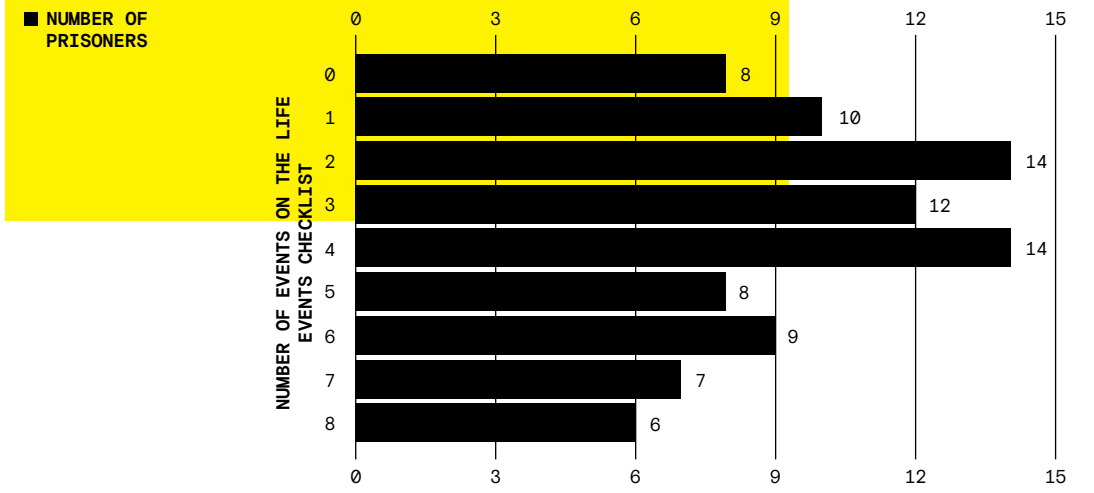
GRAPH 3.3

DISTRIBUTION OF TRAUMATIC LIFE EVENTS



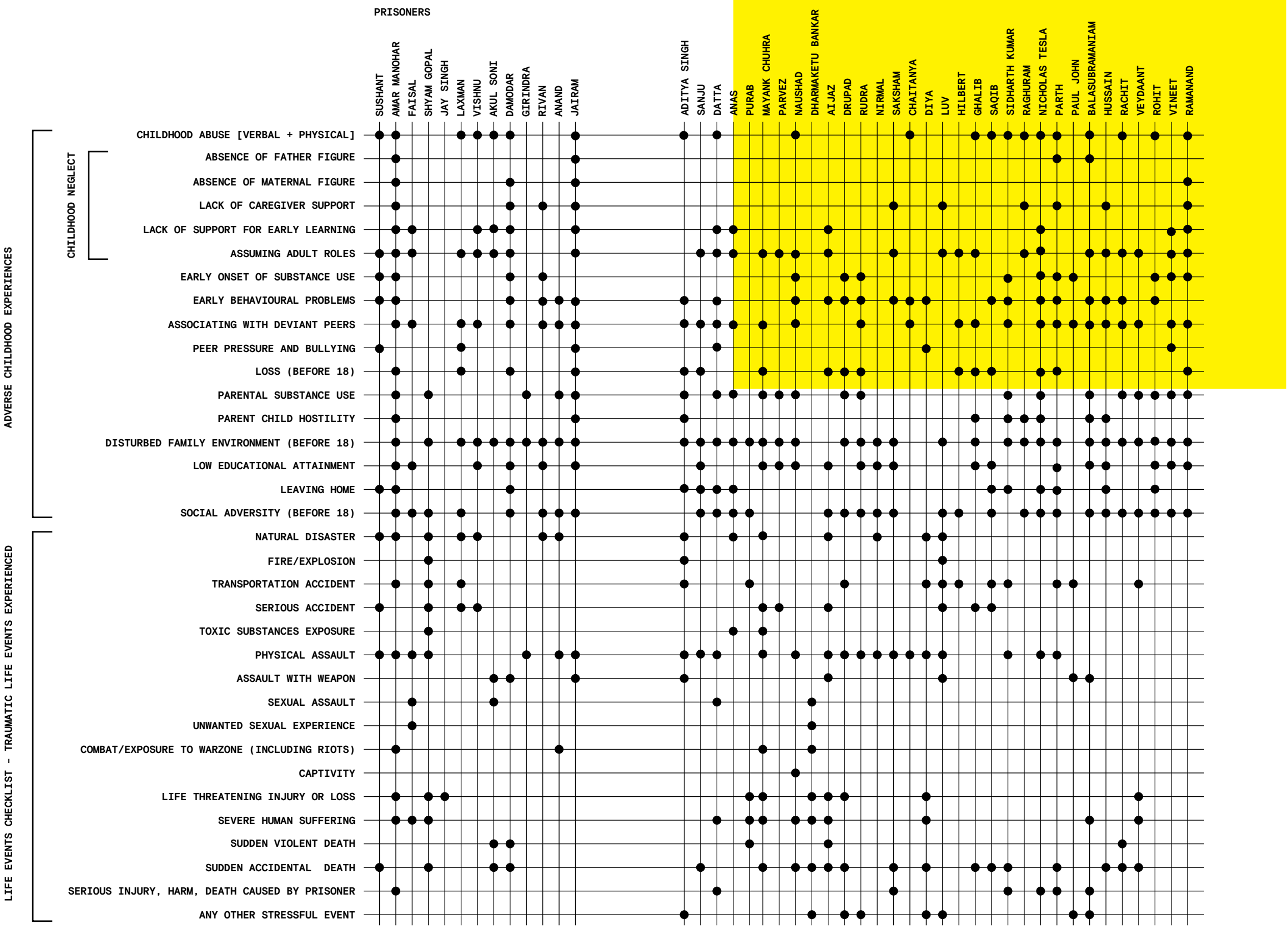
GRAPH 3.4

NUMBER OF TRAUMATIC LIFE EVENTS EXPERIENCED BY EACH PRISONER



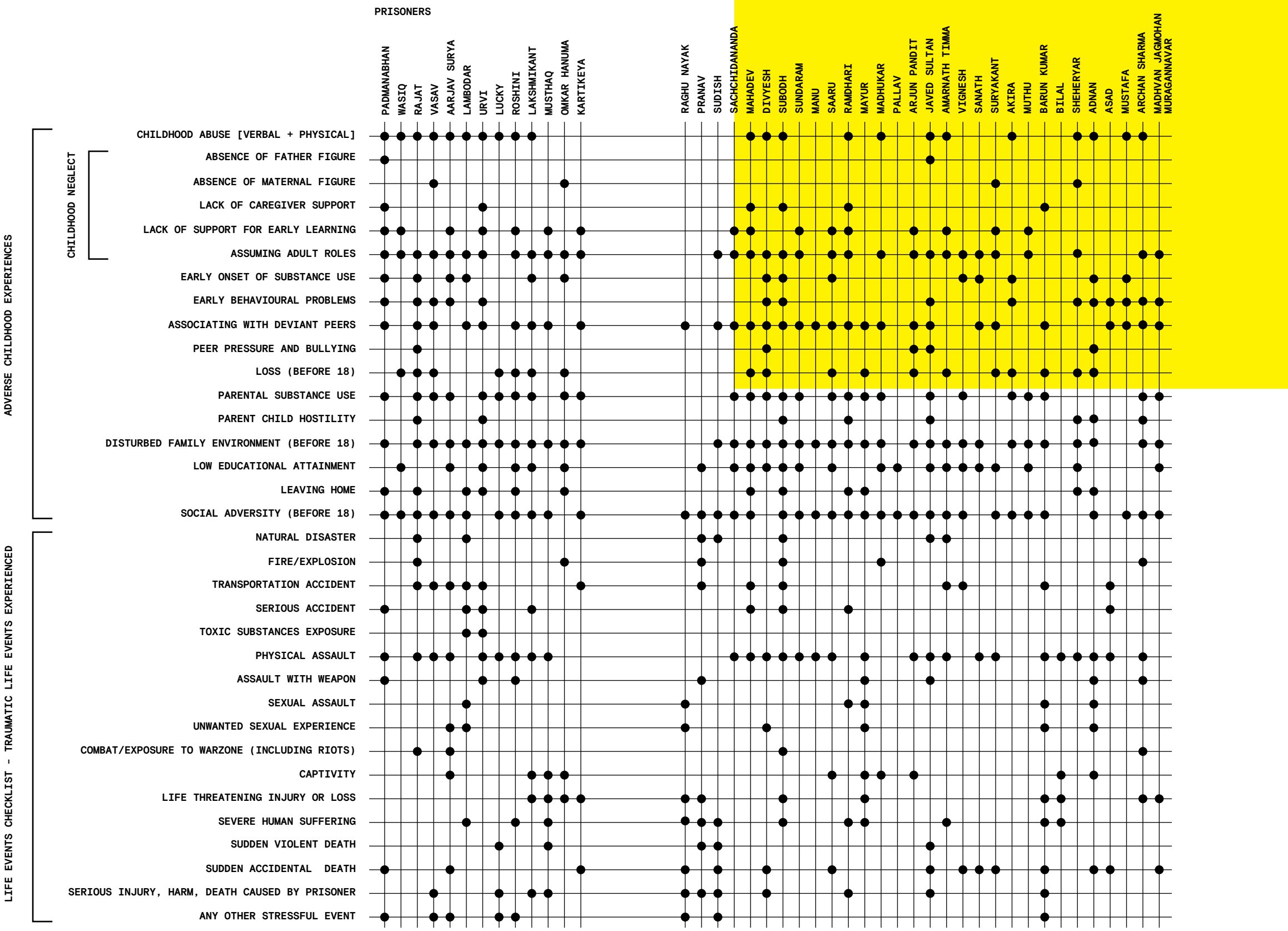
GRAPH 3.5

DISTRIBUTION OF NEGATIVE LIFE EXPERIENCES



GRAPH 3.5

DISTRIBUTION OF NEGATIVE LIFE EXPERIENCES



CHAPTER IV
PSYCHIATRIC CONCERNS ON DEATH ROW— A MENTAL HEALTH CRISIS

Empirical studies conducted in Indian prisons indicate the presence of high rates of mental illness among prisoners[1]. With respect to prisoners sentenced to death, studies in other juris dictions provide an insight into the state of poor mental health and the different mental health concerns[2]. However, there is

currently no study evidencing the presence of mental illness and other mental health concerns among prisoners sentenced to death in India—a population vulnerable to mental health concerns given their exposure to adverse experiences pre-in carceration, the nature of their punishment and the conditions of incarceration on death row.

This chapter presents data on cross-sectional mental health concerns of the 88 death row prisoners interviewed. While the data presented here is important in and of itself and for design ing effective preventive and curative care intervention strategies in prisons, it also raises important questions about the justice system and its response to, or rather its failure to respond to, the needs of an already vulnerable population, made even more so in prison. It warrants a deeper inquiry into ideas of punish ment, conditions of incarceration and life on death row in Indian prisons. Of greater urgency is the need to critically evaluate our procedural and substantive laws on the death penalty, and their interaction with mental health concerns.

Mental health concerns such as cognitive impairment have so far not been raised in courts, even though, depending on the time of onset, it becomes relevant to the death penalty sentenc ing framework. Impairment in cognition has implications on de cision-making processes, emotional and behavioural responses and day to day functioning of an individual—and therefore has implications vis-a-vis their deservedness for the death penalty. Yet, it has completely escaped any consideration in the Indian death penalty jurisprudence.

Even with respect to mental illness, which has a much larger presence in Indian death penalty jurisprudence, there is little certainty on which mental illnesses it would consider worthy of its mercy. It is unclear how or if our death penalty jurisprudence would accommodate a death row prisoner with depression and who has attempted suicide in prison.

Procedurally, it was only recently that death row prisoners were entitled to meet mental health professionals as an aspect of their right to legal representation and access to justice[3]. It is then not surprising that most mental health concerns have escaped the law's notice. The poor quality of legal representa tion afforded to and by an overwhelming majority of prisoners sentenced to death further reduces the possibility of mental health concerns being raised and considered by the court and ultimately entering the lexicon of our death penalty jurispru dence. The data presented here, then, is an attempt to alert the law to prisoners sentenced to death who have fallen through the cracks in the system.

Methodology

A two-step process was adopted in diagnosing mental illness[4]. However, in a few cases, the diagnosis was based on information gleaned from the qualitative interview with the prisoner.

Prisoners were first administered the DSM-5 Self-Rated Level 1 Cross-Cutting Symptom Measure—Adult, which is a tool to screen for a current episode of mental illness. The Screener, based on self-reporting, enquires into 13 psychiatric domains: depression, anger, mania, anxiety, somatic symptoms, suicidal ideation, psychosis, sleep problems, memory, repetitive thoughts and behaviours, dissociation, personality functioning and substance use. Each item, answered on a scale of 1-4, looks at the frequency with which the individual has been bothered by the specific symptom during the past two weeks. A rating of two or higher on any item within a domain, except for substance use, suicidal ideation and psychosis, is an indicator for further assessment. For the latter domains, a rating of 1 triggers further assessment. The final diagnosis was based on initial assessments and clinical interviews with a qualified mental health professional.

For corollary information on substance use, the WHO-ASSIST[5] tool was used. The tool is a screener for early identification of substance use and looks at the lifetime use of substances and in the three months prior to the interview. It is geared towards designing interventions and measures the risk level from low to high.

Hindi Mental State Examination (HMSE) or its translated version was employed as a tool to assess the presence and severity of cognitive impairment. It tests orientation, attention, memory, language and visual-spatial skills[6].

The anchor point for additional information regarding mental health concerns was the triaging of information from qualitative interviews with the prisoner, family and health records.

Findings

The findings evidence high rates of anxiety, distress, suicidal ideation, sleeplessness and somatic symptoms in addition to various psychiatric illnesses experienced by death row prisoners. It is a consistent finding that mental health concerns in prison are far more prevalent than in the community population, and there are two models which have been hypothesised to understand this. The deprivation model argues that prison conditions engender mental health concerns. The extremely restrictive conditions, the isolation from support systems, the completely different and strictly controlled environment are some features of prison systems that create conditions rife for a mental health crisis[7]. The other model—the importation model—argues that largely prisoners come from already vulnerable communities, have had multiple difficult and negative experiences and may already have mental health issues pre-incarceration, and they 'import' their psychopathology into prison[8]. Indeed, the previous chapter highlights many experiences such as adverse childhood experiences and exposure to traumatic events, that have been found to be correlated to onset of mental illnesses later in life. However, focusing only on the importation model negates the effect a person's current environment has on them. Research has also consistently shown links between the prison environment and mental ill health, including suicide[9]. Chapter VII also establishes correlations between various mental health concerns and experience of conditions of death row incarceration, such as violence and social isolation, and the prisoners' own narratives of the ill-effects of factors such as lack of work, discrimination, and exclusion.

Keeping in mind the importance of the stress-vulnerability model of mental illness and the psychosocial approach, a more suitable approach to understanding the issue would be a combination of both the models. The exposure to adverse experiences pre-incarceration make the prisoners vulnerable to an onset of mental illness and the chronic exposure to negative experiences in prison increases their vulnerability, ultimately acting as a tipping point. Further, research on trauma has for long argued that prolonged repeated trauma can occur "where the victim is in a state of captivity, unable to flee, and under the control of the perpetrator" and that consistent exposure to violence and coercive control can lead to trauma-related mental health concerns, such as Complex PTSD[10]. The contribution of the prison environment to the onset of mental illness, therefore, does need close examination.

The mental health concerns presented in this chapter can be broadly divided into internalising problems such as depression and anxiety and externalising problems such as substance use. As will be shown, the symptoms present in these two domains, even though broadly dichotomized, often co-occur in prisoners diagnosed with one of these mental health concerns.

■ COMPARING PSYCHIATRIC CONCERNS ACROSS POPULATIONS

To truly understand the crisis among prisoners sentenced to death, it would be instructive to consider evidence of mental health concerns among general prisoners in India as well as in the community population. The data presented below compares psychiatric morbidity among the death row prisoners interviewed with studies conducted with the general prison population and in the community population. As the data indicates, rates of psychiatric morbidity seem to run higher in populations living under extremely restrictive conditions. While the data presented may not be sufficient to conclusively comment on this trend, a comparison of the different categories reveals the intensity of mental health crisis among India's death row population, which has so far escaped policy considerations. (Table 4.1)

TABLE 4.1

Comparison of data on mental illness among death row prisoners, in prisons and in community population

Type of mental illness	Study data—current episode (N=No. of prisoners for whom the assessment was undertaken)	National Mental Health Survey of India figures for the community population[11]	The Global Burden of Disease Study[12]	Other Indian prison studies[13]
Major Depressive Disorder	35.3% (N=85)	2.7% (current)	3.3%	9.1%- 18%
Dysthymia/ Persistent Depressive Disorder	19.8% (N=86)	N/A	N/A	1.8%
Generalised Anxiety Disorder	22.6% (N=84)	8.6%	(Anxiety disorders) 2.7%	0.3%
Substance Use Disorders	20.5% (N=88)	22.4%	N/A	39.8%- 47.1%
Schizophrenia and other psychotic disorders	6.8% (N=88) (screened for psychosis on DSM-5 Screener)	0.5%	N/A	0.4%-28.2%
Suicidal Ideation	13.8% (N=87) (DSM-5 Screener)	6%	N/A	0.8%- 21.5%
Phobic Anxiety Disorder	1.2% (N=86)	1.9%	N/A	N/A
Comorbid mental disorders	31.7% (2) and 9.75% (3 or more) (N=82)	12.3% (2) and 4.3% (3 or more)	N/A	N/A
Cognitive impairment	19.3% (N=88)	N/A	N/A	N/A

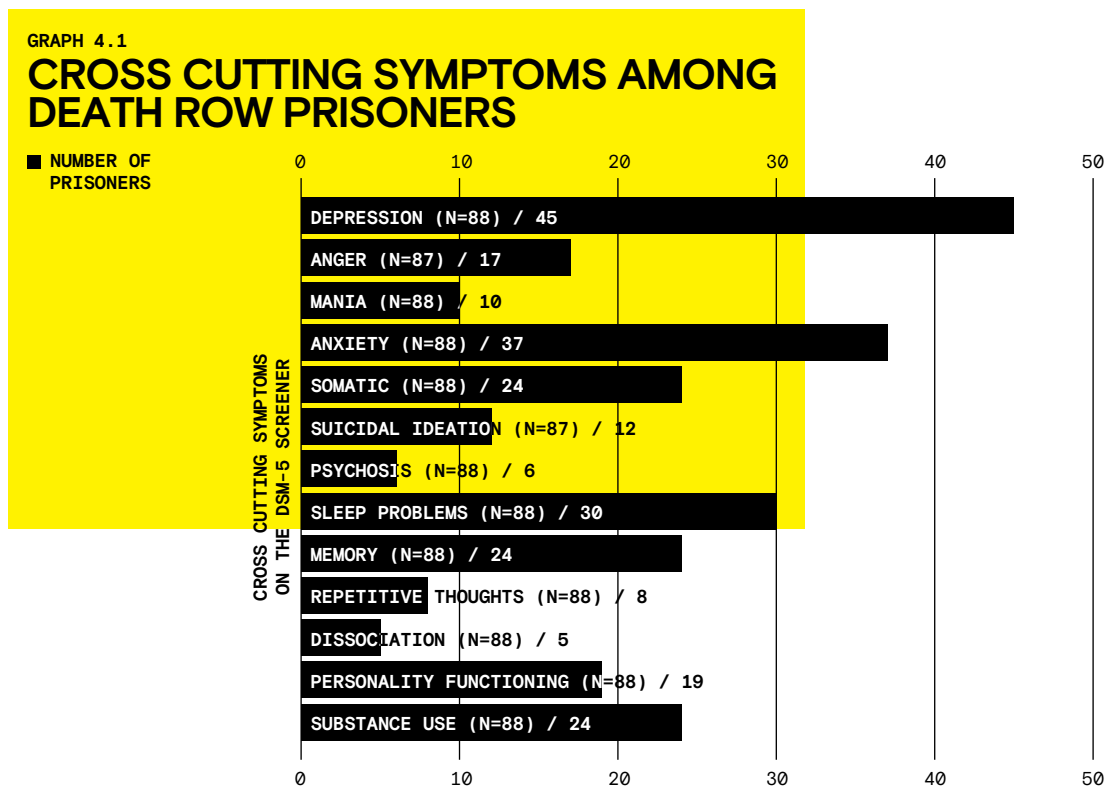
■ PRISONERS WITH MENTAL HEALTH CONCERNS OF CLINICAL AND SUBCLINICAL SIGNIFICANCE

Of the 88 death row prisoners we interviewed, 71 screened positive on at least 1 mental health domain on the DSM-5 Screener, i.e., approximately 81% of the prisoners interviewed were eligible for a clinical inquiry into a current episode of mental illness. (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 our of 82, i.e., 62.2%, were diagnosed with at least one mental illness. Current episodes of mental illnesses such as Major Depressive Disorder (MDD), Persistent Depressive Disorder (PDD), Generalised Anxiety Disorder (GAD) and Substance Use Disorder (SUD) were found to be the most prevalent among the prisoners at the time of the interview. (Graph 4.2)

GRAPH 4.1

CROSS CUTTING SYMPTOMS AMONG DEATH ROW PRISONERS



For a diagnosis of mental illness, certain distortions of thought, mood and behaviour that are symptomatic of the illness need to be clustered together. However, the presence of other symptoms of poor mental health compounds and further intensifies the effect of the mental illness. It is important to look at concerns that do not form part of the symptom cluster for a particular mental illness to understand the pervasive nature of the illness which engulfs multiple aspects of a person's daily life and existence.

DRUPAD'S interview reveals the behavioural, emotional and cognitive consequences of MDD.

Drupad shared a very close relationship with his grandfather because of their common interest in wrestling. During the interview, he spoke repeatedly of his grandfather, about how after the arrest he tried everything possible to provide Drupad with proper legal assistance. His grandfather was a well-known and respected man in town. After the case, Drupad indicated, his reputation had been lowered. When a rumour began to circulate that his grandfather had died, Drupad attempted to take his own life. Eventually, his grandfather died by suicide–something Drupad blames himself for.

Drupad was diagnosed with Major Depressive Disorder. He constantly worries about his family. He has stopped praying and drawing, two of his earlier interests and coping mechanisms. Multiple times during the interview, he mentioned that he felt he had lost control of his life, and did not want to live anymore. He sleeps only 2-3 hours a night due to this, and has recurrent nightmares. He is afraid of when he will be hanged.

Drupad is unable to see a future for himself. "Sometimes I think of going to the kitchen and pouring hot oil over me. I want to burn myself."

Drupad has spent five and a half years in prison, and has been on death row for almost all that time. His case is currently pending before the Supreme Court. He often wonders what he would do if he left prison.

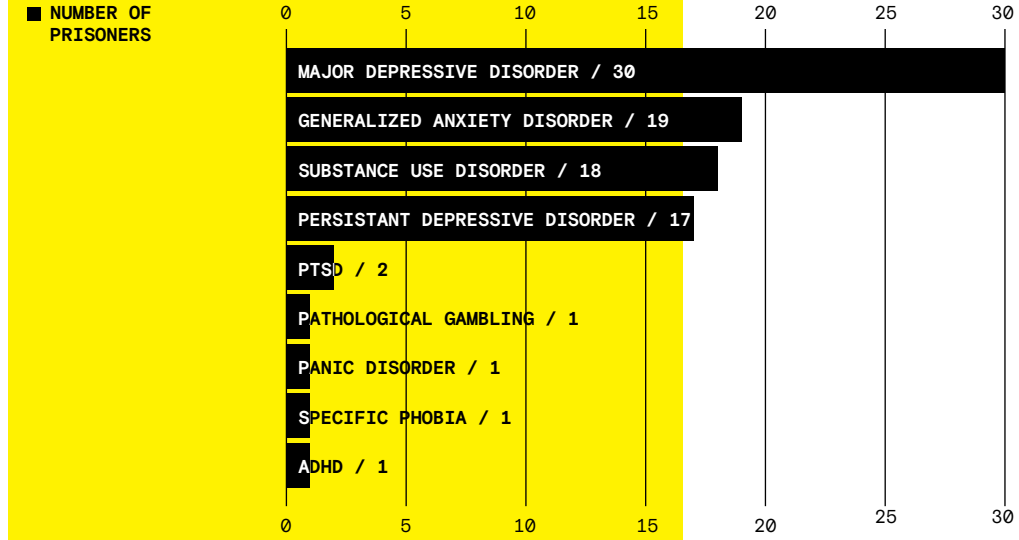
■ MAJOR DEPRESSIVE DISORDER

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 an intensity that it results in impairment in social and occupational functioning[15].

Out of the 41 prisoners who screened positive for depression and for whom further assessment was conducted, 30 prisoners (73.2%) were diagnosed with a current episode of MDD. This includes 29 prisoners diagnosed by us and one prisoner who informed us that he was on medication for depression at the time of the interview. 17 prisoners were diagnosed with Persistent Depressive Disorder (PDD) (Graph 4.3). The proportion of prisoners with MDD present among the 88 death row prisoners is approximately 11 times higher than that in the community population[16].

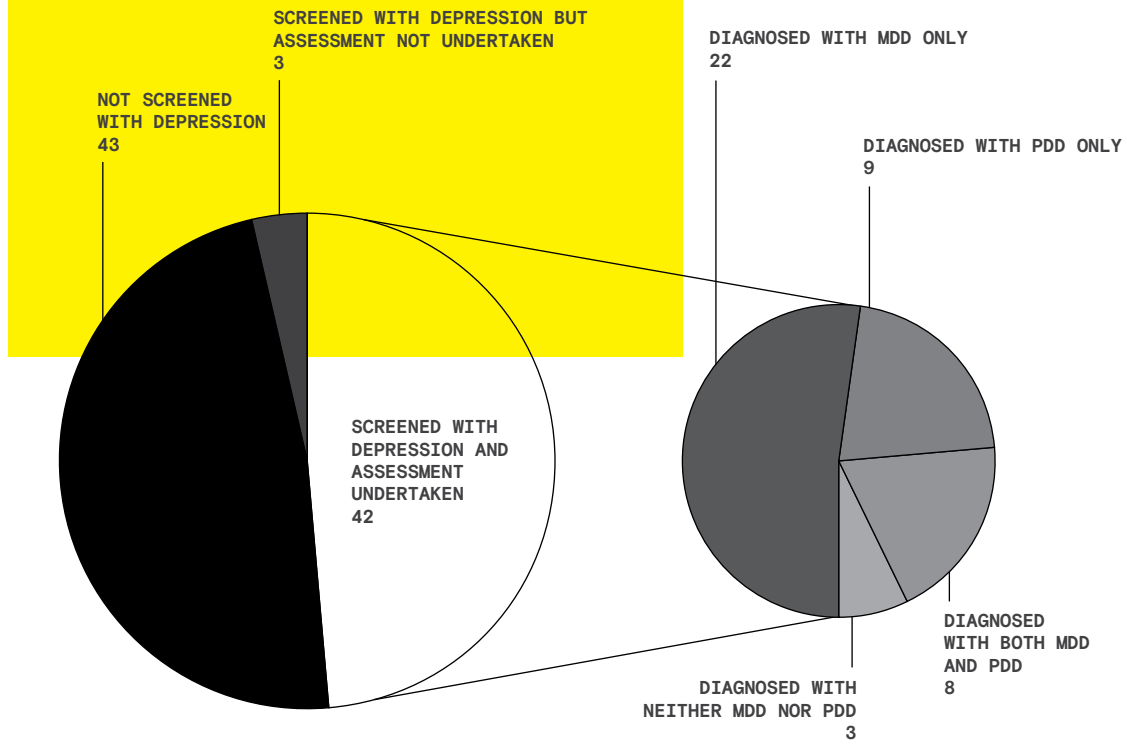
GRAPH 4.2

DISTRIBUTION OF CURRENT EPISODE OF MENTAL ILLNESS[14]



GRAPH 4.3

DEATH ROW PRISONERS DIAGNOSED WITH MDD (n=30)

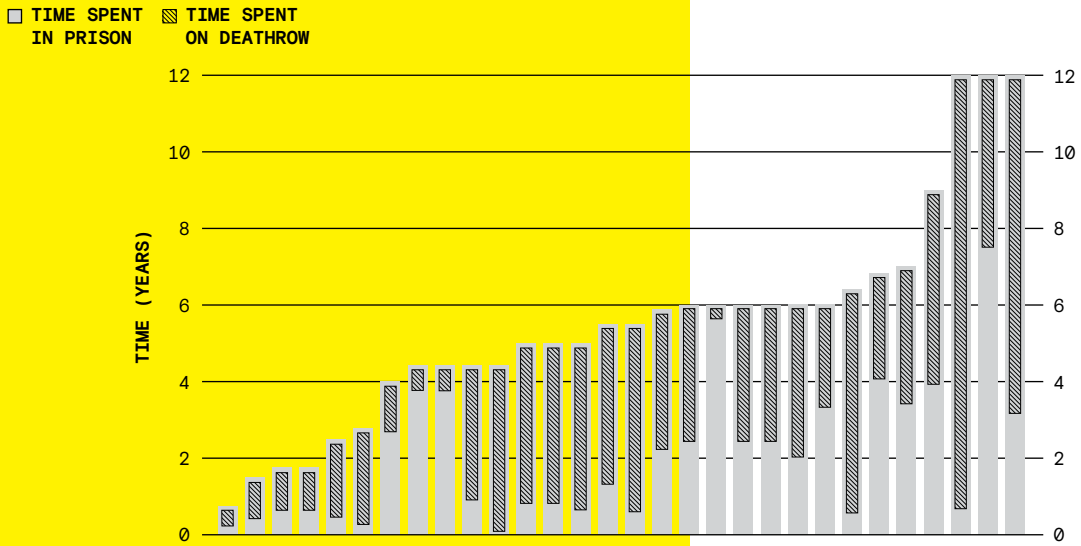


“SOMETIMES I THINK OF GOING TO THE KITCHEN AND POURING HOT OIL OVER ME. I WANT TO BURN MYSELF.”

Drupad has spent five and a half years in prison, and has been on death row for almost all that time. His case is currently pending before the Supreme Court.

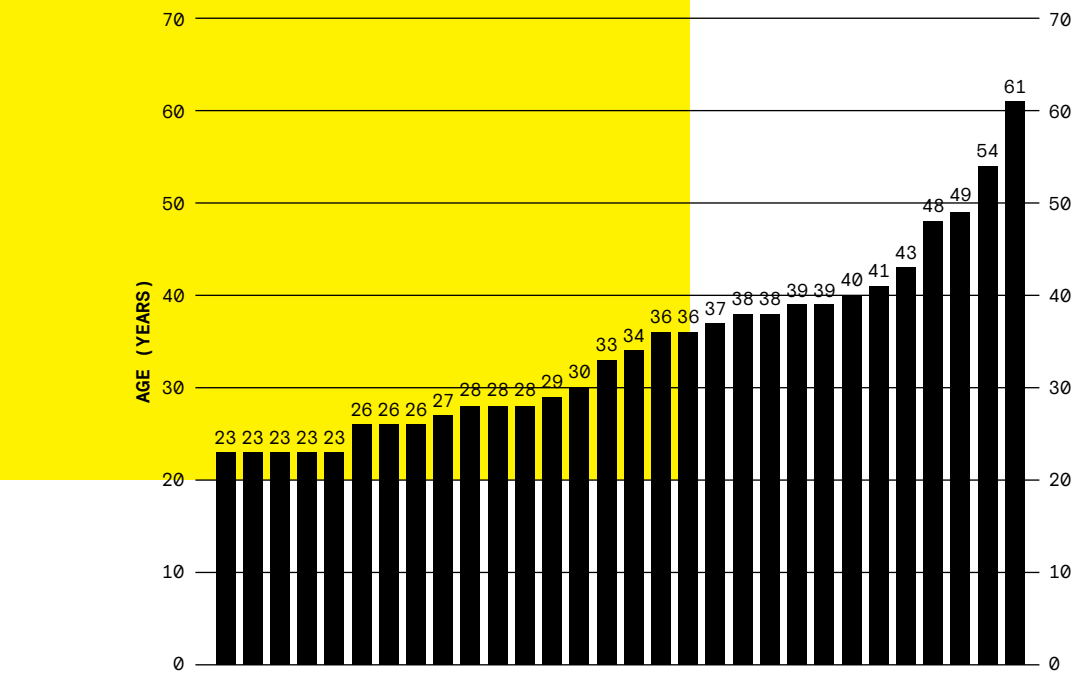
GRAPH 4.4

TIME SPENT IN PRISON AND ON DEATH ROW BY PRISONERS WITH MDD (n=30)



GRAPH 4.5

AGE AT THE TIME OF ASSESSMENT OF PRISONERS WITH MDD (n=30)



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. (Graph 4.4). The median age at the time of assessment and sentencing of prisoners with MDD was 33.5 (23-61) years and 30.5 (18-50) years, respectively. (Graph 4.5)

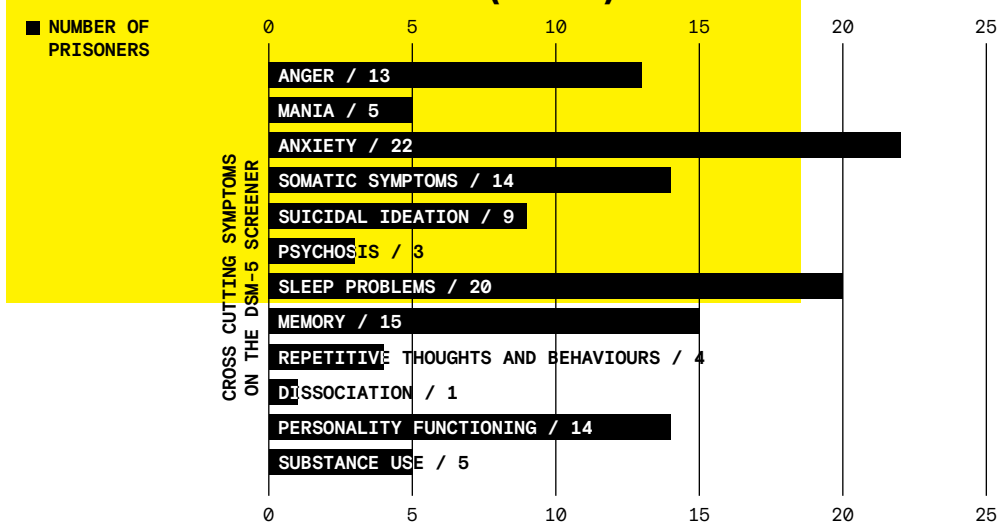
MDD had a negative significant association with age at the time of interview (p value = 0.047). The median age of prisoners with MDD was 33.5 (23-61) years, as compared to the median age of prisoners not diagnosed with MDD [38 (22-78) years].

SYMPTOMATOLOGY

While the triggering questions for depression on the DSM-5 Screener are based on the person's loss of pleasure in undertaking previously pleasurable activities and feelings of hopelessness and depressed mood, the Screener also reveals other important symptoms/factors which might be spread across different domains. These cross-cutting symptoms included anxiety (22), personality functioning (14), anger (13) and memory deficits (15). They are equally important to address for effective intervention. Suicidal ideation in prison was 1.72 times higher in prisoners diagnosed with MDD than those who were not diagnosed. Of the 30 prisoners with MDD, four prisoners had attempted suicide in prison. Nine

GRAPH 4.6

CROSS-CUTTING SYMPTOMS AMONG PRISONERS WITH MDD (n=30)



out of those 30 prisoners reported suicidal ideation two weeks prior to the day of the interview as found on the DSM-5 Screener. (Graph 4.6)

■ GENERALISED ANXIETY DISORDER

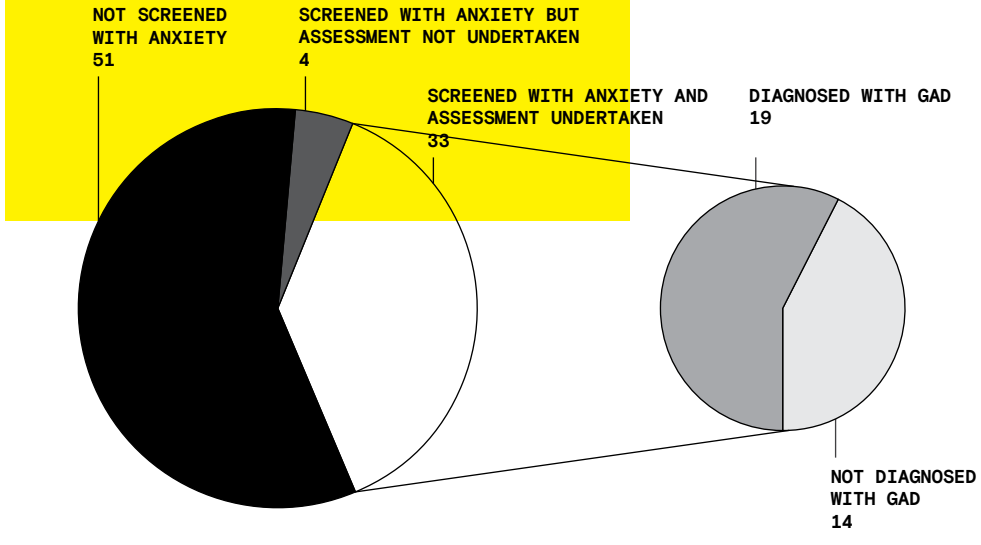
Marked by excessive concern and anxiety, Generalised Anxiety Disorder (GAD) envelops a person in an uncontrollable worry about their circumstances, and other events and activities, which are related or have an effect on their lives. Some of the main characteristics and diagnostic criteria, apart from excessive worry, include restlessness or feeling on edge, irritability, difficulty concentrating, muscle tension and sleep disturbances. In people diagnosed with GAD, the worry and other symptoms occur 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[17].

SYMPTOMATOLOGY

A further assessment for GAD was undertaken if the prisoner gave a rating of two on the DSM-5 Screener on any question regarding feeling nervous, frightened or on edge, panic, or avoiding a situation that makes the person anxious. Other symptoms of anxiety such as sleeplessness and somatic symptoms were also present

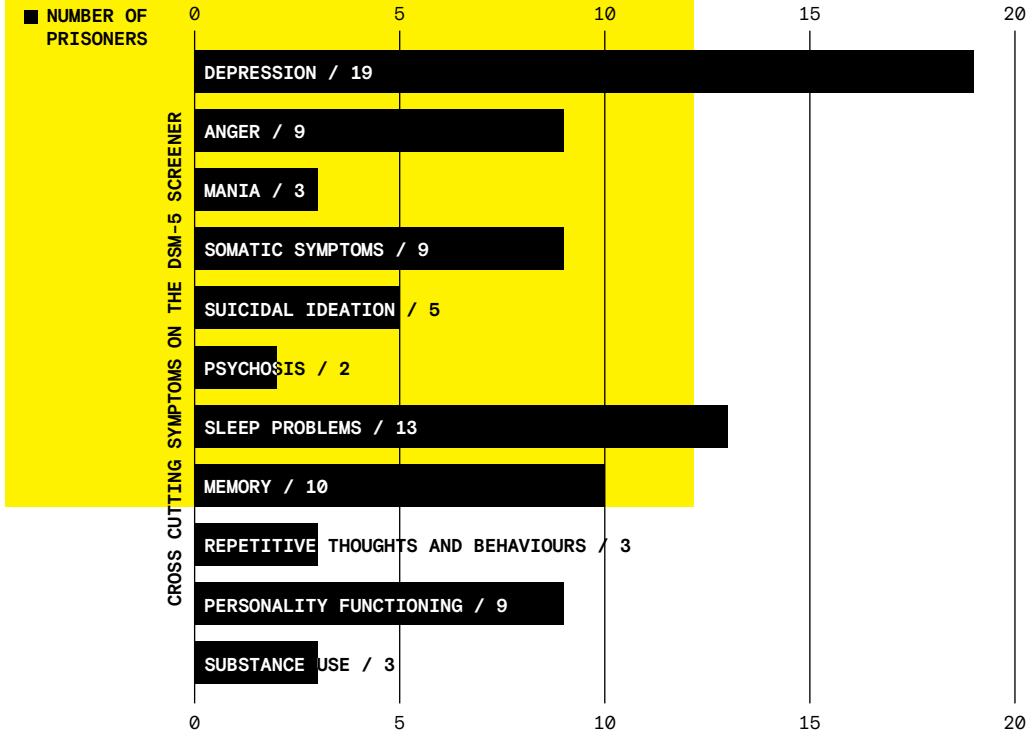
GRAPH 4.7

DEATH ROW PRISONERS DIAGNOSED WITH GAD (n=19)



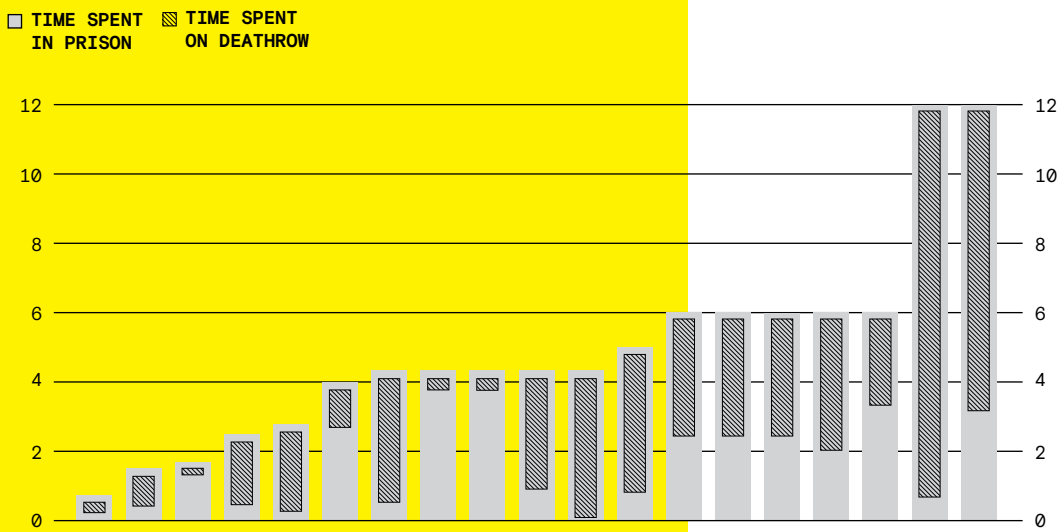
GRAPH 4.8

CROSS-CUTTING SYMPTOMS AMONG PRISONERS DIAGNOSED WITH GAD (n=19)



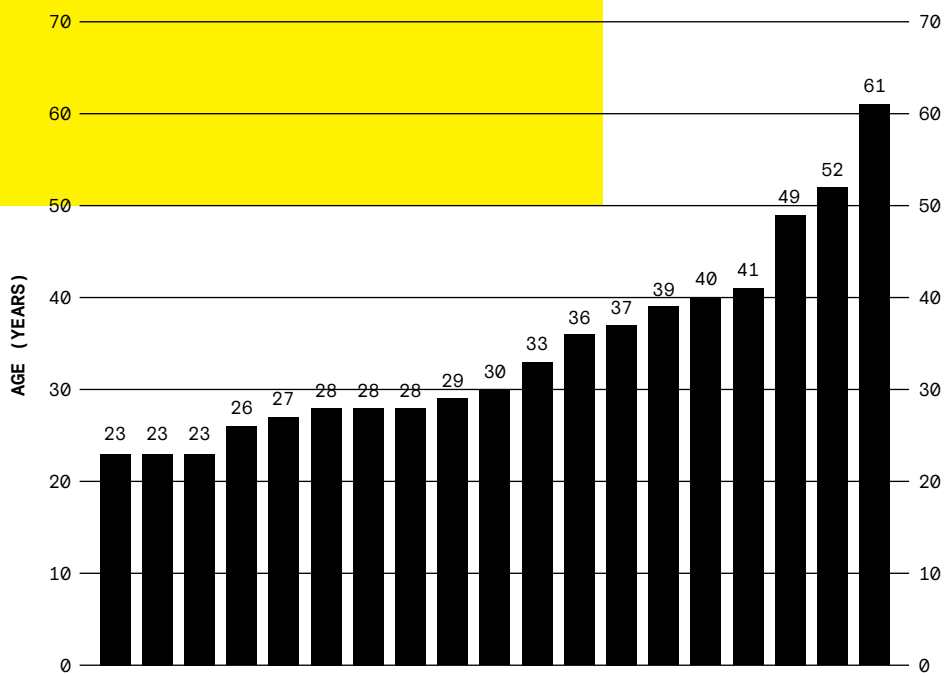
GRAPH 4.9

TIME SPENT IN PRISON AND ON DEATH ROW BY PRISONERS WITH GAD (n=19)



GRAPH 4.10

AGE AT THE TIME OF ASSESSMENT OF PRISONERS WITH GAD (n=19)



among these prisoners along with symptoms that are not clinically considered as part of the symptom cluster, such as memory deficits, anger and suicidal ideation. (Graph 4.8)

At the time of the interview, the median time spent in prison and on death row by prisoners with GAD were 4.42 (0.75-12.00) years and 3.50 (0.38-11.25) years, respectively. (Graph 4.9)

JAIRAM was extremely tense when he was interviewed and this vignette shows the behavioural and cognitive consequences of GAD.

With his hands between his legs, Jairam remained fidgety throughout the interview and constantly looked down at his hands. He did not make eye contact and looked scared. He was barely audible during the interview.

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 had, at the time of interview, spent three years in prison, out of which he had spent close to two and a half years on death row.

Significant negative associations were found between GAD and time spent in prison (p value = 0.018) and time spent on death row (p value = 0.078). The median time spent in prison by prisoners with GAD was 4.42 (0.75-12.00) years and was lesser, as compared to those not diagnosed with GAD [6.42 (0.58-23.5) years].

The median age at the time of assessment and sentencing of prisoners with GAD was 30 (23-61) years and 27 (18-50) years, respectively. (Graph 4.10)

■ 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 diagnosed with SUD have a preoccupation with procuring the substance and their whole day can revolve around acquiring the substance. 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[18].

PARTH'S life in prison is often dictated by cognitive distortions due to SUD, as this vignette illustrates.

At the time of the interview, Parth was 40 years old and had been in prison for over a decade and on death row for eight years. He started smoking ganja when he was 17 years old, and his use of beedis and ganja has continued during his time in prison. 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's death sentence was commuted by the High Court in 2018.

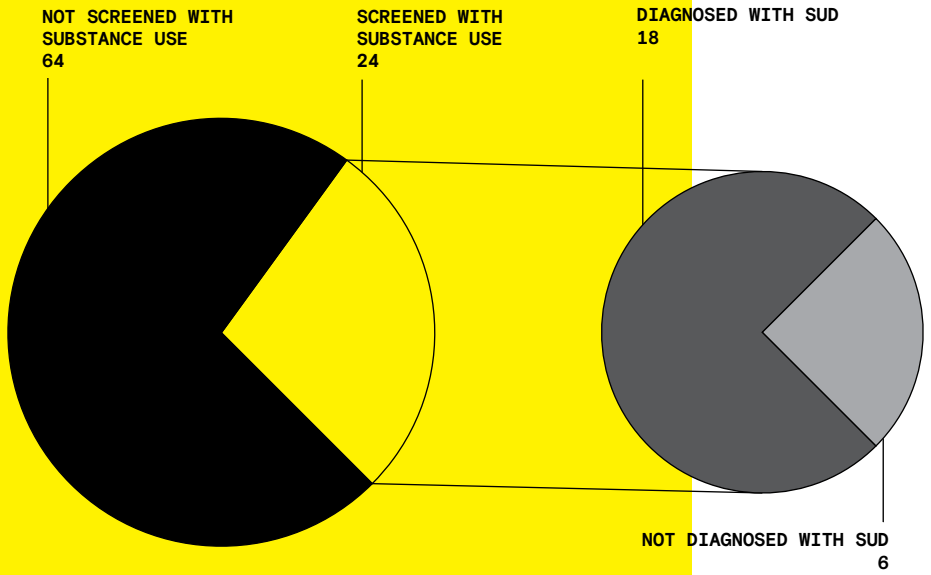
Despite the restriction on the availability of tobacco and other products, the proportion of prisoners with SUD (20.5%) among the 88 death row prisoners interviewed was found to be only slightly lower than the proportion of persons with SUD in the community (22.4%)[19]. Maladaptive coping mechanisms, such as substance use, are ways of dealing with stress that are detrimental to one's physical or mental health and likely explains the high percentage of prisoners using substances.

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. (Graph 4.12)

Positive significant associations were found between SUD and time spent in prison (p value = 0.002) and on death row (p value = 0.003). The median time spent by prisoners with SUD in prison was 7.75 (3.92-20.00) years, which was greater than the median time spent by those not diagnosed with SUD [5.33 (0.58-23.5) years]. Similarly, the median time spent on death row by prisoners with SUD was 4.87 (0.96-8.80) years, which was greater than the median time spent on death row by those not diagnosed with SUD [3.5 (0.02-14.5) years].

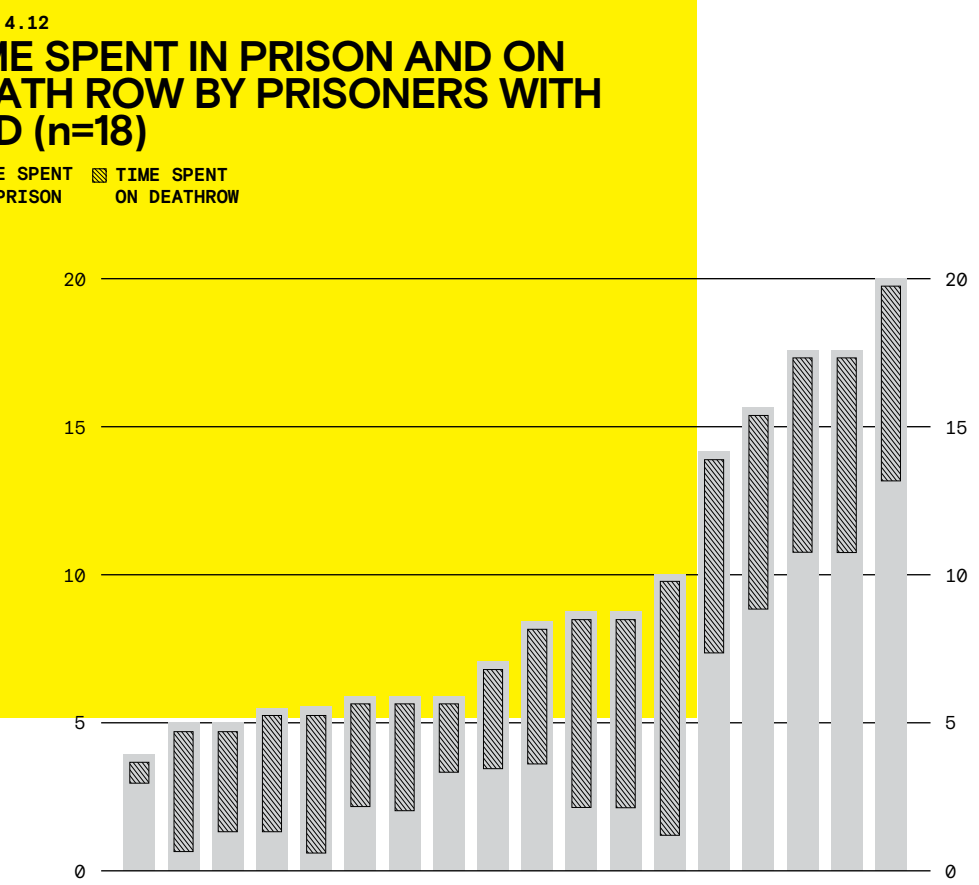
GRAPH 4.11

DEATH ROW PRISONERS DIAGNOSED WITH SUD (n=18)



GRAPH 4.12

TIME SPENT IN PRISON AND ON DEATH ROW BY PRISONERS WITH SUD (n=18)



The median age at the time of assessment and at the time of sentencing of the prisoners with SUD was 39 (23-72) years and 33.5 (19-67) years, respectively. (Graph 4.13)

SUBODH was 27 years old at the time of the interview. His hands were trembling while he read the consent form and he was visibly nervous. He became calmer as the interview progressed. Subodh said he is unable to sleep for more than 2-3 hours at night, particularly since he was transferred to the prison where the interview took place. He also said that since the transfer, he feels lethargic and has lost weight. He does not participate in any prison activity, and appeared uninterested in forming any relationship with the other inmates. He said, “no one will help you out in your bad times”. Subodh has no hopes from the future and prefers not to think about it. He frequently forgets to complete daily tasks, like picking up his laundry.

Subodh gets tense and nervous when his family doesn’t come for mulaqaats regularly. He used to bang his head against the wall whenever he felt low and once attempted to harm himself in prison with a blade. Subodh said he was very nervous when he was informed that the interviewers would be meeting him. He was unable to sleep and was preoccupied with thoughts of why people were coming to meet him. He said he started panicking, his heartbeat increased and he started trembling. His body goes numb because of stress.

Subodh has been using substances, including tobacco and charas from a very young age. He smokes tobacco and ganja and sometimes has unprescribed sleeping pills.

Subodh had, at the time of he interview, spent seven and a half years in prison, out of which three were on death row. He was diagnosed with Major Depressive Disorder, Generalised Anxiety Disorder and Substance Use Disorder.

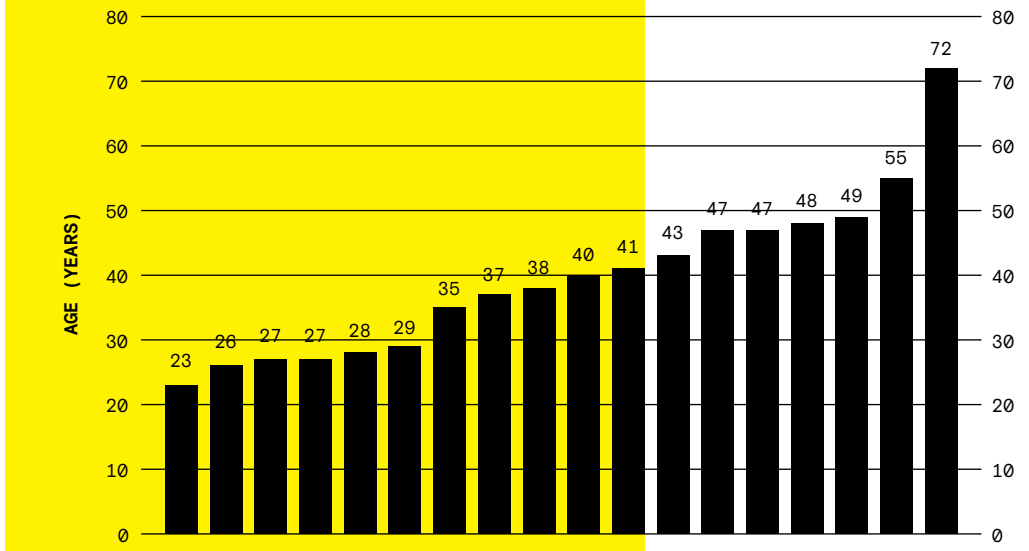
SYMPTOMATOLOGY

To assess a prisoner with SUD, they must have given a score of at least 1 on any one of the questions pertaining to the domain of substance use on the DSM-5 Screener.

While a minimum score of one on the substance use domain was required to move forward with a diagnosis, there were other symptoms on the Screener that the prisoners gave a score of two or more to, which also requires attention. (Graph 4.14)

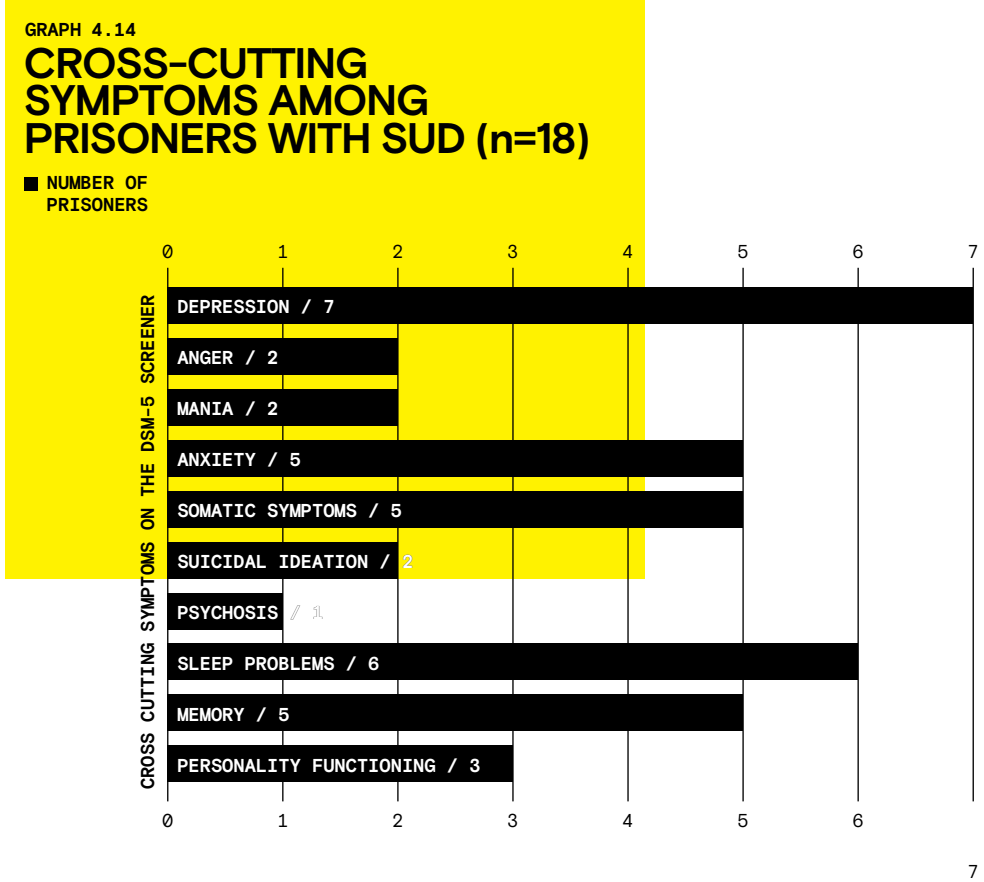
GRAPH 4.13

AGE AT THE TIME OF ASSESSMENT OF PRISONERS WITH SUD (n=18)



GRAPH 4.14

CROSS-CUTTING SYMPTOMS AMONG PRISONERS WITH SUD (n=18)



RIVAN'S life in prison is littered with cognitive distortions and behavioural manifestations of psychosis as shown by this vignette.

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 inserted in 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. Rivan's death sentence was commuted in 2019 by the Supreme Court.

TYPES OF SUBSTANCES USED

While tobacco was the most frequently used substance, when asked on the WHO – ASSIST, a few prisoners were found to be at medium risk with respect to other substances as well (Graph 4.15). Though 18 prisoners were diagnosed with Substance Use Disorder, 34 prisoners were found to be at medium-risk of tobacco use. The discrepancy in number could be because the purpose of ASSIST is to help in early identification and management of harm, which would include people who might not have yet formed habits and patterns of use.

■ PSYCHOSIS

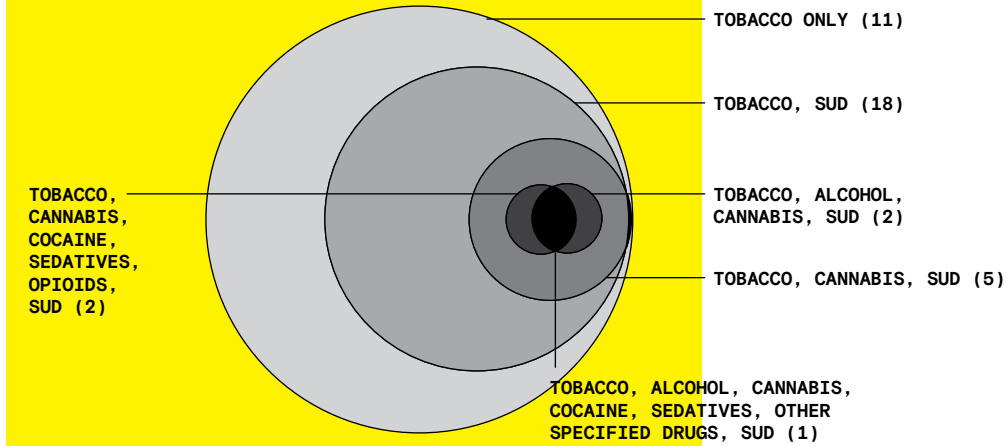
To be screened for psychosis, the DSM-5 Screener requires a score of at least 1 on any one of the following scenarios: hearing things other people couldn't hear, such as voices even when no one was around, and feeling that someone could hear their thoughts, or that they could hear what another person was thinking.

Six prisoners screened positive for psychosis. Out of them one was on medication for "depression with abnormal behaviour" and another had been on treatment for Psychosis NOS. He did not have prominent symptoms at the time of the interview.

Symptoms of psychosis include hallucinations, delusions, disorganized speech, abnormal psychomotor behaviour, and negative symptoms, as well as dimensional assessments of depression and mania[20].

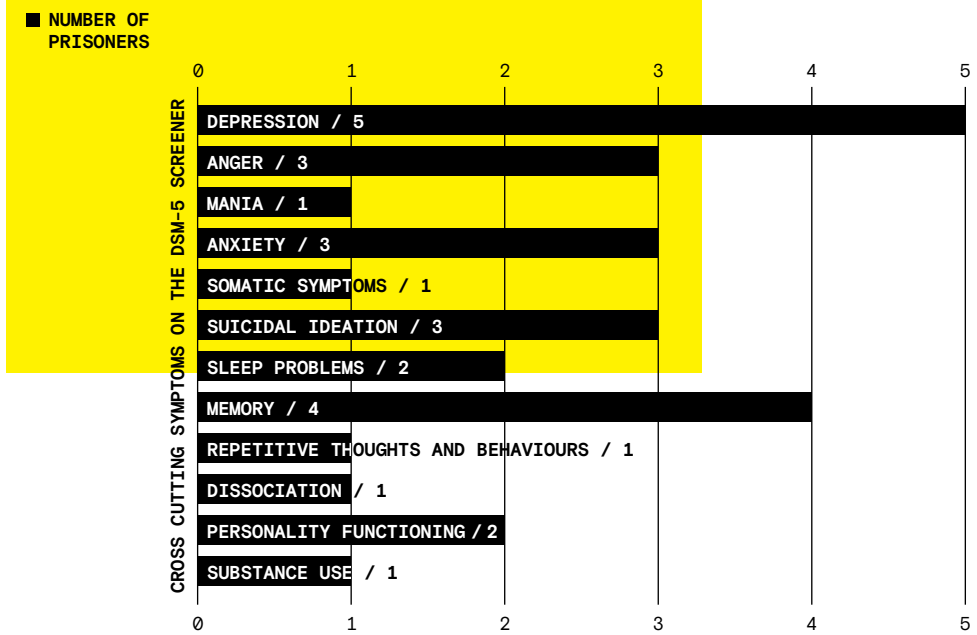
GRAPH 4.15

CONCURRENT USE OF MULTIPLE SUBSTANCES BY PRISONERS



GRAPH 4.16

CROSS-CUTTING SYMPTOMS AMONG PRISONERS SCREENED WITH PSYCHOSIS (n=6)



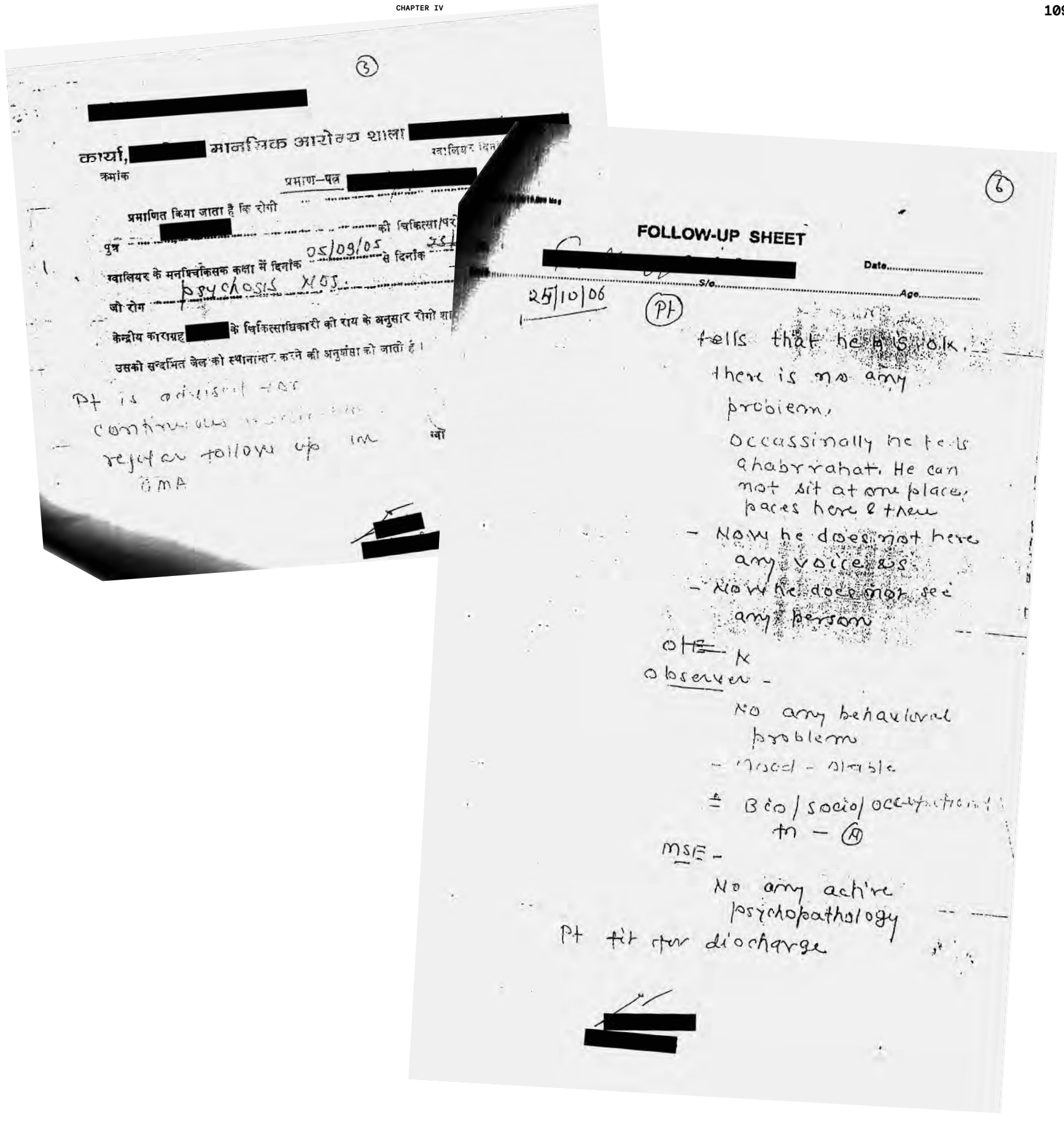
DHARMAKETU, a 48-year-old death row prisoner, had been diagnosed with 'Psychosis NOS' while his trial was going on. He was found unfit to stand trial and his trial was suspended for five years. He was sentenced to death in 2013. During the interview, Dharmaketu said he used to hear "bad" voices which forced him to "become an animal". In prison, he has to keep himself busy, otherwise he starts hearing those voices again. He dropped out of school because of these voices and since childhood he has been taken to various local faith healers. He did not receive formal treatment until he came to prison.

He said he is unable to sleep properly and has difficulty remembering things, including taking his meals. Dharmaketu has attempted suicide multiple times, including in prison.

Despite it being on record, his history of psychiatric illness was not considered either by the trial court or the High Court at the time of sentencing.

Dharmaketu was diagnosed with Psychosis NOS in prison but did not have active symptoms at the time of the interview. The vignette presents narratives of episodes he used to have prior to the interview and his coping mechanism to keep the symptoms at bay.

Dharmaketu had spent close to 15 years in prison, including over six years on death row, when his sentence was commuted by the Supreme Court in 2019.



■ COMORBIDITY

Studying comorbidity is important as it has implications on the severity of illness and its outcomes. 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 4.17)

■ PRISONERS WITH SUBCLINICAL MENTAL HEALTH CONCERNS

Of the 88 prisoners, 37 prisoners were not diagnosed with any mental illness. It would, however, be a fallacy to limit the understanding of poor mental health to mental illness. Such a limited understanding fails to account for the fact that when a continued stressful situation like prison and life on death row is combined with indicators of poor mental health, it could potentially result in disastrous consequences for the prisoners, including the onset of mental illness, or pushing people to contemplate and attempt suicide. Prisoners with subclinical mental health concerns are, therefore, most likely to fall through the cracks of treatment and care, further compounding and exacerbating their vulnerability.

As the following graph (Graph 4.18) illustrates, death row prisoners who were not diagnosed with a mental illness nevertheless had symptoms of poor mental health, which need to be addressed. Approximately 19% (7) of these prisoners had attempted suicide at least once in their life. Out of these, two had attempted suicide in prison.

While these prisoners have not been clinically diagnosed with any mental illness, it is clear that many of them have experienced severe emotional and psychological distress. This could perhaps be attributed to prolonged incarceration, the dehumanising experience of living on death row, its frustrations and the hope of being alive shrouded by the despair of death foretold.

RAJAT was not diagnosed with a mental illness, but presented subclinical mental health concerns and the following vignette illustrates the distortions in thought and feelings of a person with subclinical mental health concerns.

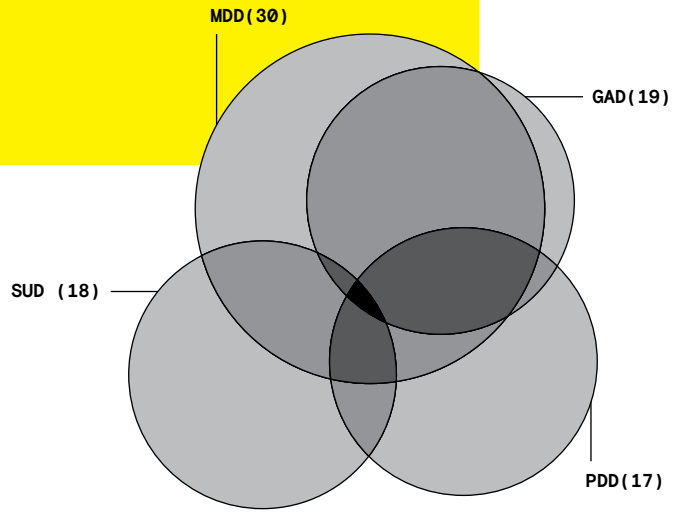
Rajat was arrested when he was 20 years old. He was tortured in police custody and sustained a serious head injury as a result. Soon after he was imprisoned, Rajat had thoughts of killing himself. He planned to hang himself with a towel near the central area inside the prison. He was nervous and scared of the pain it would cause and did not go ahead with his plan. He has never told anyone about this. He said he was in solitary confinement for a few months, and would talk to another death row inmate for around five minutes every day. Presuming that people wouldn't want to talk to him because of the crime, he didn't speak to anyone initially and kept to himself.

He was 24 years old when we interviewed him. He said he felt lethargic and his body didn't have the same vitality it used to have. He had also lost his appetite. He used to get irritable and angry in prison earlier but had become calmer. He complained of restlessness in his leg which grew worse as the day wore on. He is unable to concentrate and feels detached from everything, although he sometimes feels tense when he thinks about his family.

Rajat was acquitted by the Supreme Court after spending close to five years on death row.

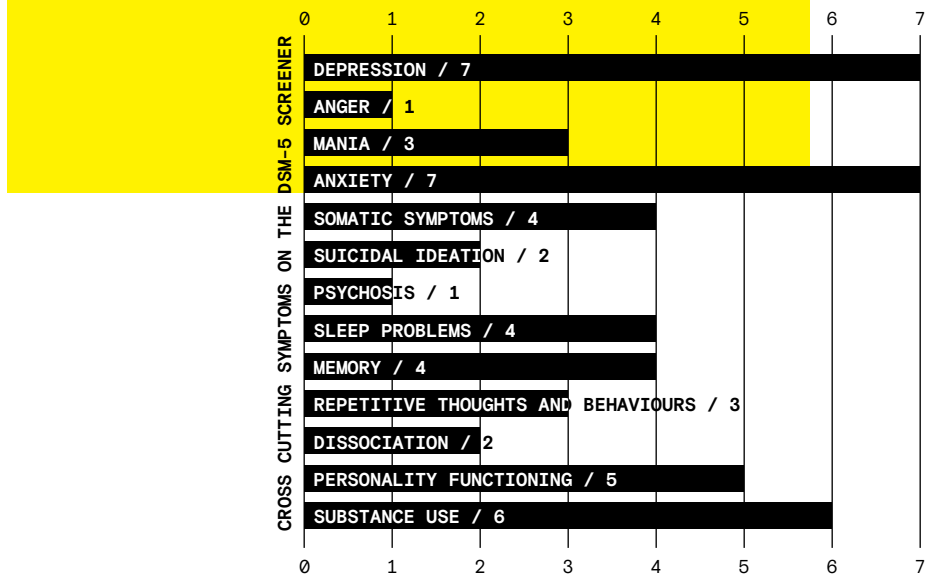
GRAPH 4.17

COMORBIDITY AMONG MDD, PDD, GAD, AND SUD



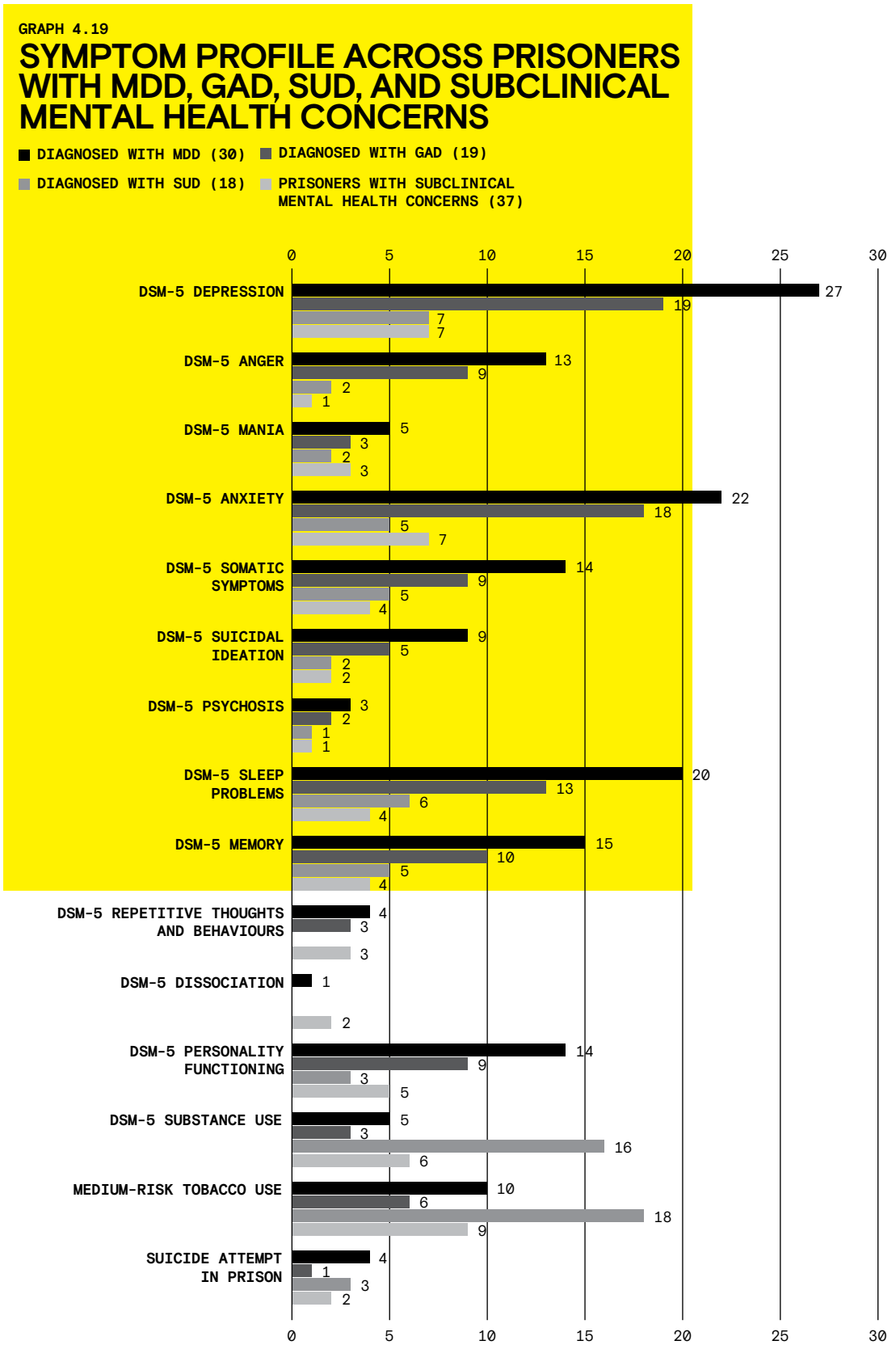
GRAPH 4.18

CROSS-CUTTING SYMPTOMS AMONG PRISONERS NOT DIAGNOSED WITH ANY MENTAL ILLNESS (n=37)



GRAPH 4.19

SYMPTOM PROFILE ACROSS PRISONERS WITH MDD, GAD, SUD, AND SUBCLINICAL MENTAL HEALTH CONCERNS



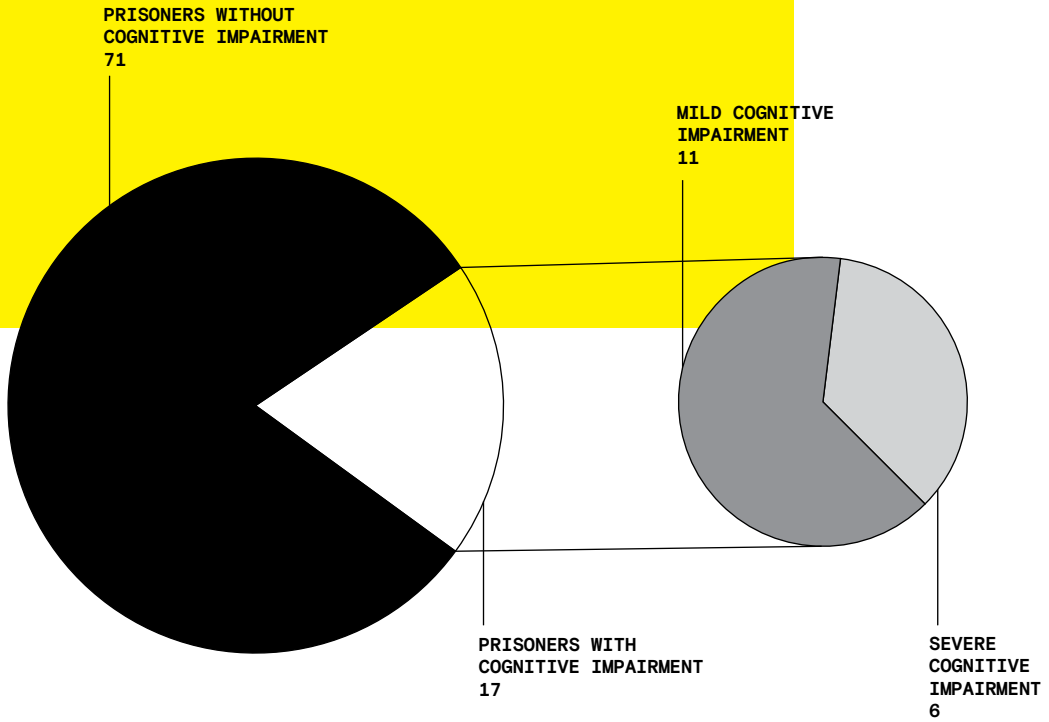
■ COGNITIVE IMPAIRMENT

Cognitive impairment is a condition where a person has difficulty remembering, concentrating or making decisions that affect everyday life[21]. Of the 88 prisoners we interviewed, six death row prisoners had severe cognitive impairment whereas 11 had mild cognitive impairment. (Graph 4.20)

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.

GRAPH 4.20

COGNITIVE IMPAIRMENT AMONG DEATH ROW PRISONERS (n=17)



Impairment in cognitive functioning is a common result of old age, and the approximate age of onset of cognitive impairment is 60-65 years[22]. However, a majority of death row prisoners with cognitive impairment were of ages much younger than the standard age of onset. (Graph 4.21)

At the same time, it is important to note that impaired cognition could also be a result of developmental and intellectual disabilities. Although the effect of incarceration on cognitive functioning of persons is understudied, there are studies to suggest that cognitive functioning is negatively affected by incarceration[23]. Deterioration in brain functioning, which affects day to day functioning, memory, behaviour and independent decision-making ability, in such a young population is a cause for concern and indicates that this deterioration is not an outcome of old age, when cognitive decline commonly occurs[24].

Some of the factors that are known to contribute to the onset of cognitive impairment include low socio-economic profile, previously present mental health issues[25], early childhood stressors such as abuse, neglect, social deprivation, household dysfunctions and substance abuse[26]. Early-life circumstances, particularly, educational attainment, can also influence cognitive impairment[27]. Low socio-economic status, childhood abuse, poverty, early onset of substance use and low educational attainment are factors overwhelmingly present in the death row prisoners who were found to have cognitive impairment. Further, in addition to environmental factors, head injury[28] can also contribute to early onset of cognitive impairment.

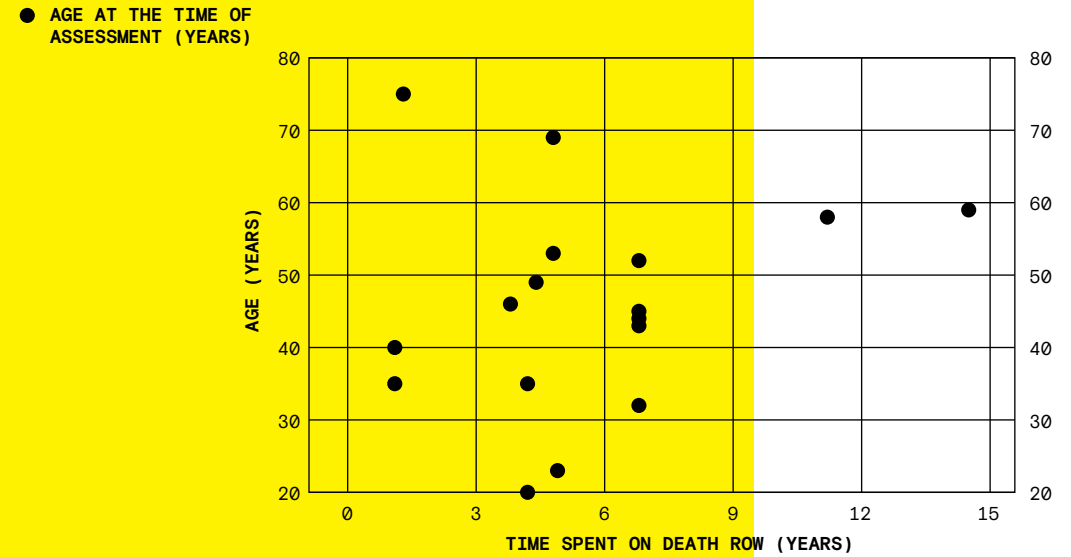
AKIRA was 46 years old at the time of the interview and had spent over 16 years in prison of which seven were spent on death row. She scored 16 out of 30 on the test for cognitive impairment and had severe impairment in cognitive functioning. Though Akira's parents tried to send her to school, she never 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 after 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's death sentence has been commuted by the High Court.

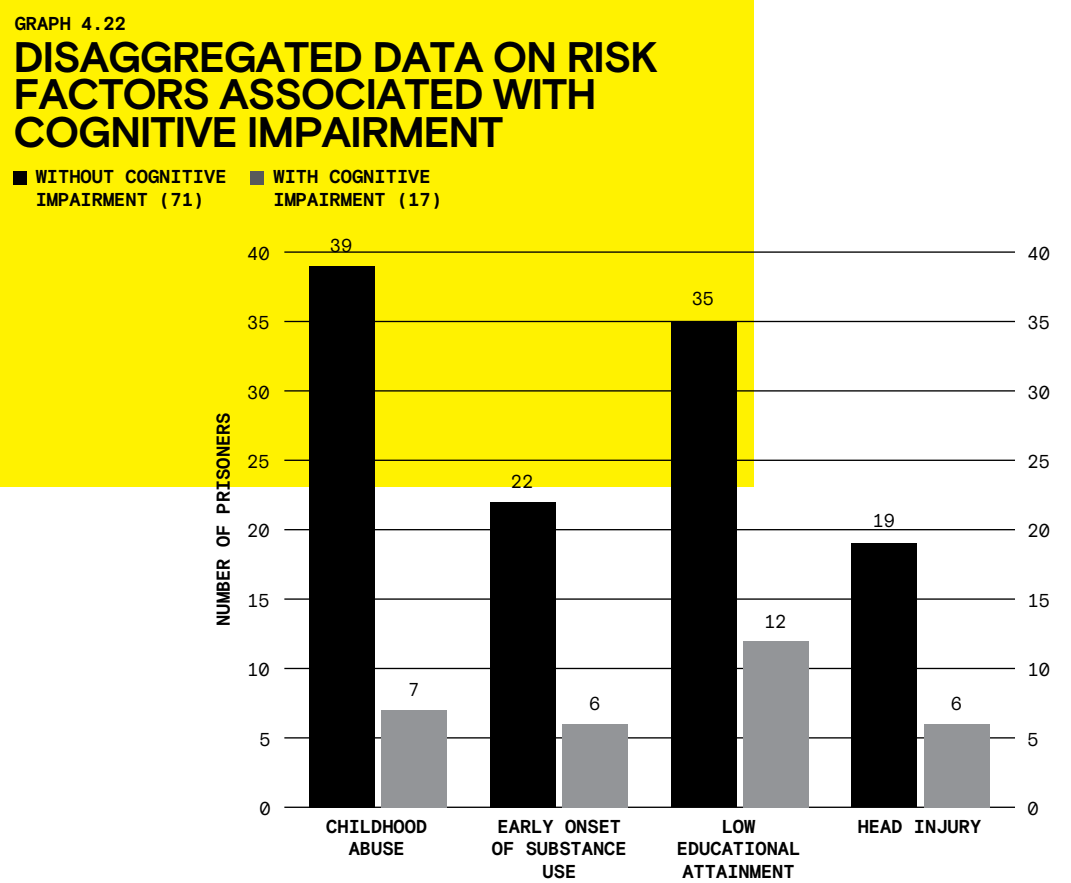
GRAPH 4.21

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



GRAPH 4.22

DISAGGREGATED DATA ON RISK FACTORS ASSOCIATED WITH COGNITIVE IMPAIRMENT



Cognitive impairment had positive significant associations with SUD (p value = 0.018), medium risk of tobacco use (p value = 0.014), and memory problems as screened on the DSM-5 Screener (p value = 0.041). (Graph 4.23)

■ HEAD INJURY

Head injury, defined as a physical injury, damage or trauma to the head, becomes important to study because, if serious enough, it can result in a Traumatic Brain Injury (TBI). TBI results in long-term changes in the behavioural and psychological patterns of a person and can have a negative impact on cognitive functioning[29].

LUCKY was 21 when he was attacked by a group of over 20 men. The men robbed him and beat him with rods. His father found him and took him to the hospital. He was bleeding from the nose and was unconscious. Lucky was released from the hospital after a week.

After this incident, Lucky reported falling unconscious frequently, up to 20 times a month. He went back to the hospital for further treatment, and was given injections. Following this, the episodes of unconsciousness stopped. He also received medication for his headaches, which he was required to take for a year. However, he still gets headaches in prison.

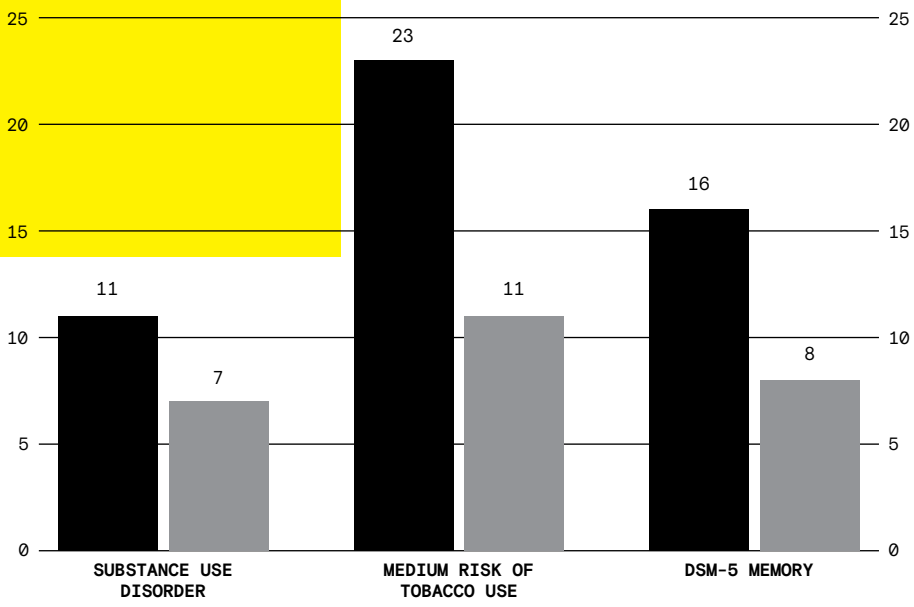
Lucky was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder.

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[30]. Similar to these studies, we found that 25 out of the 88 death row prisoners interviewed reported having suffered a head injury at least once, almost half (12) of whom reported having suffered the injury before or when they were 18 years old, which is likely to have affected their developmental process. However, we weren't able to conduct a comprehensive clinical examination to understand the severity of the head injury reported by prisoners and their families.

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. Six out of the 25 prisoners with head injury also had cognitive deficits as assessed on the HMSE. Research has shown an association between cognitive deficits and head injury[31]. 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).

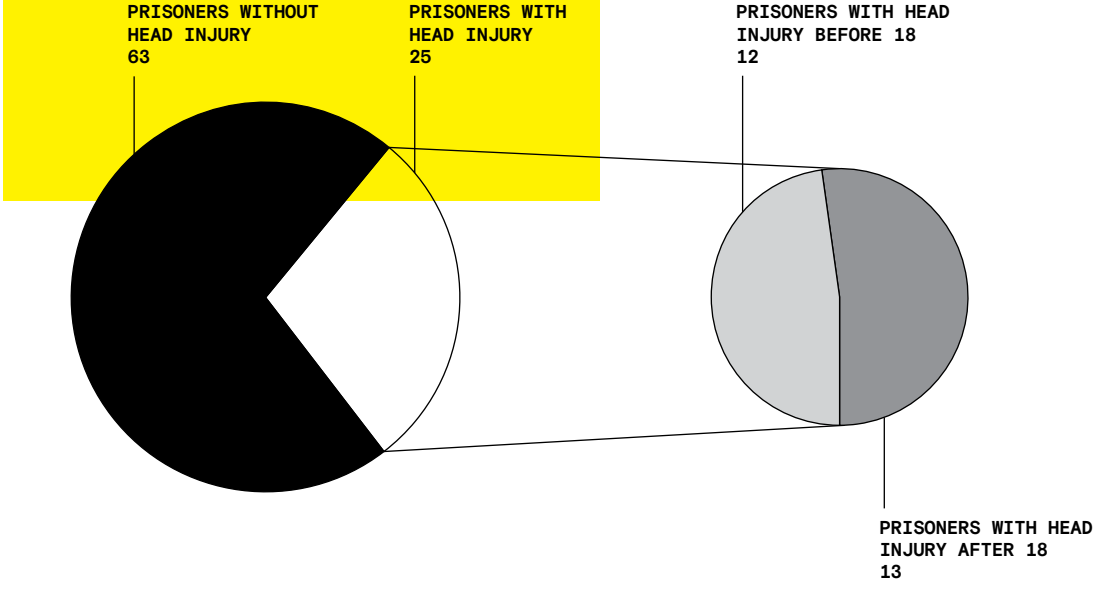
GRAPH 4.23

POSITIVE SIGNIFICANT ASSOCIATIONS WITH COGNITIVE IMPAIRMENT



GRAPH 4.24

DEATH ROW PRISONERS WITH HEAD INJURY (n=25)



■ SUICIDAL BEHAVIOUR AND IDEATION

Prisoners were asked about suicidal thoughts and behaviour in prison as well as any attempts or thoughts of suicide before they were incarcerated. In asking about suicidal thoughts and behaviour, we distinguished between self-harm and suicide attempts. Data on suicide includes only those self-inflicted injuries or thoughts that were centred around thoughts of death. Information on suicide was collected through qualitative interviews as well as the DSM-5 Screener, which inquires into suicidal ideation two weeks prior to the day of the interview. However, it is possible that since the interviews were largely conducted in the presence of either a prison official or a convict overseer, prisoners were not entirely forthcoming about suicide attempts. Prisoners who actively contemplated suicide in prison or attempted suicide in prison have been considered being at high risk of suicide.

DHARMAKETU sustained a head injury having hit his head on the bumper of a jeep when he jumped before it in an attempt to kill himself when he was approximately 17 years old. He was hospitalised after the injury and remained unconscious for a long period of time and reported his brain going "numb" subsequent to the injury.

Dharmaketu had been on treatment for Psychosis NOS in prison.

He was also diagnosed with Major Depressive Disorder and Intellectual Disability.

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. Of these 63, 34 prisoners, i.e., over 50% had thoughts of dying by suicide in prison and eight prisoners had also attempted suicide in prison. (Graph 4.26)

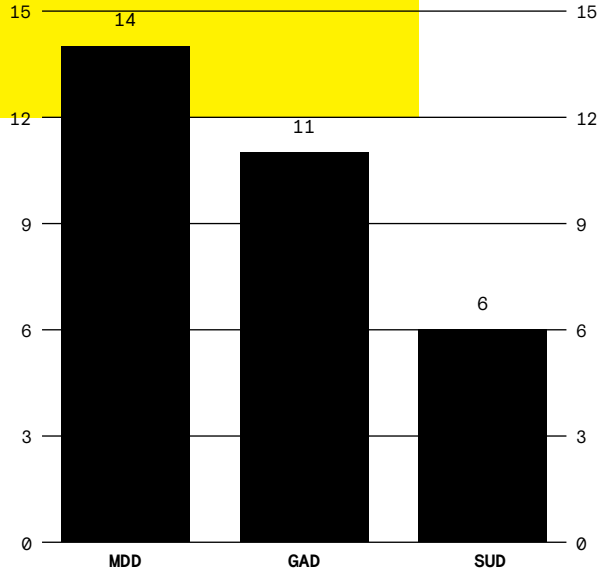
The family of one death row prisoner reported that the prisoner had attempted suicide in prison, but since it was not the prisoner who reported this fact, this incident has not been included for the purposes of analysis.

These numbers and proportion are alarmingly high when compared to the proportion of those at high risk of suicide among the general prison population and in the community. Though there is no official data on prisoners at risk of suicide, according to the National Crime Records Bureau, 116 inmates had died by suicide in 2019—the highest number among unnatural deaths[32]. Studies in Indian prisons have shown the proportion of prisoners at risk of suicide to be anywhere from 5.8%[33] to 4%.[34] Not surprisingly, the rate is also much higher than in the community population. According to the 2016 study conducted by NIMHANS in collaboration with the Government of India, in community population the prevalence of suicide risk, which includes ideation, preparing and making a plan, repeated thoughts of attempts and attempting it, in the past month was 6%.[35] 0.9% of the population was recognised as being at high risk of suicide[36].

The median time spent on death row by prisoners who had contemplated suicide as reported under the DSM-5 Screener

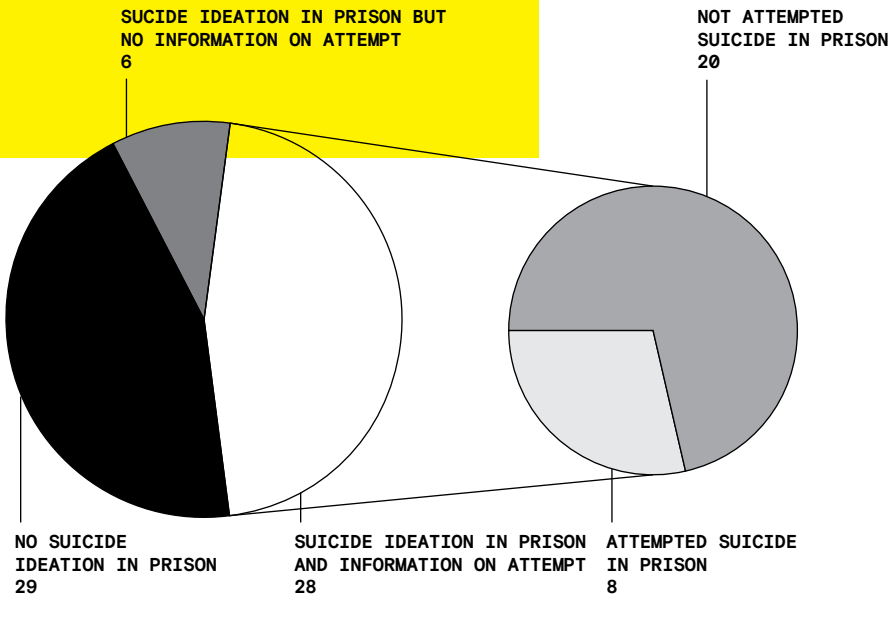
GRAPH 4.25

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



GRAPH 4.26

DEATH ROW PRISONERS AT RISK OF SUICIDE IN PRISON (n=34)



(12) was 4.18 (0.01–11.25) years. The median time spent in prison by them was 5.80 (2.17–11.98) years. (Graph 4.27)

An overwhelming number of prisoners who had ever contemplated or attempted to kill themselves had at least one mental health concern. As with other mental health concerns, these were not operating in isolation and multiple illnesses overlapped (Graph 4.28).

However, suicide is not only connected to mental illness, but is also connected to the chronic stress that death row prisoners face due to the complexity of life in prison and of living on death row. Poor social and family support, prior suicidal behaviour (especially within the last one or two years), and a history of psychiatric illness and emotional problems are common among inmate suicides. Moreover, suicidal inmates often experience negative experiences such as bullying, recent inmate-to-inmate conflicts and disciplinary infractions[37]. Many of these psychosocial factors are experiences that death row prisoners reported caused them distress.

RAGHU Nayak has been serving time for seven years, since he was 40 years old. Out of these, he has been on death row for a little over three years. On entering prison, Raghu would cry constantly, and did not eat or bathe. He frequently thought about killing himself, and on one occasion attempted to hang himself. He has repeatedly tried to hurt himself. After his arrest, Raghu was diagnosed with depression but stopped taking his medication on his own, as they made him feel "lifeless". This caused him to start crying excessively again, and he started having trouble sleeping. Soon after, he attempted to gouge his eyes out with a pen so he would not have to see the world. He was given another medicine by the prison psychiatrist, which he continues to take till today. Though he has been suffering from a severe psychiatric illness, he reported feeling better with medication at the time of the interview.

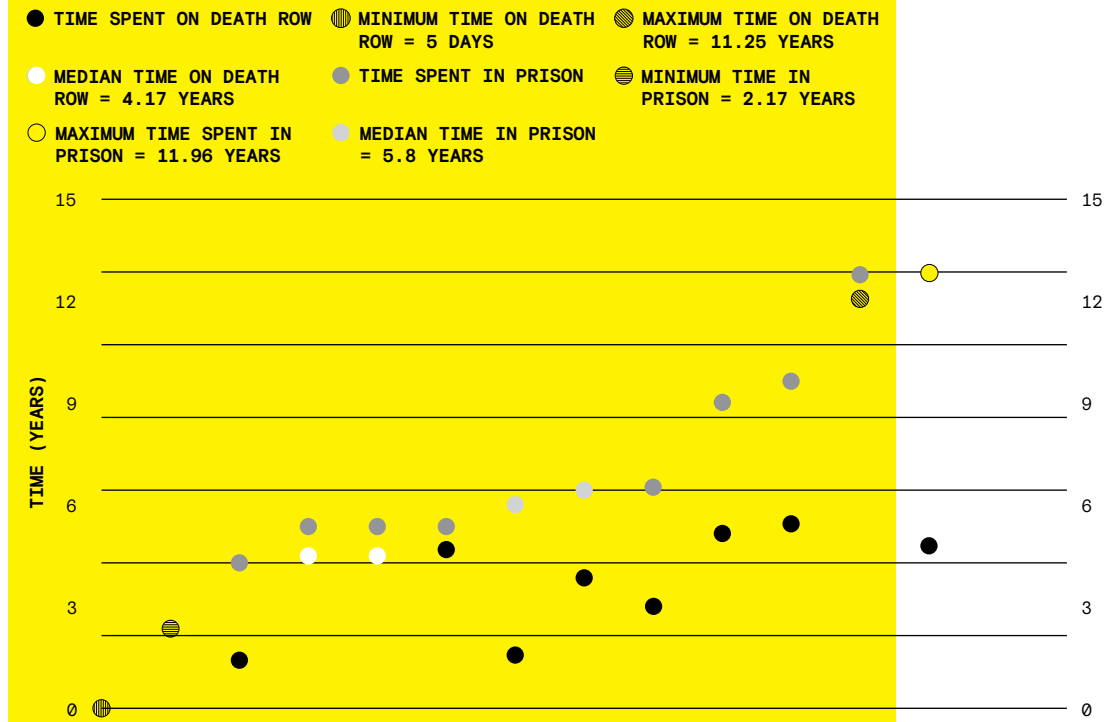
A positive association was found between prisoners contemplating suicide in prison and death row distress, defined as psychological distress and negative reactions experienced by the prisoner due to the death sentence and being on death row (p value = 0.129). Of the 34 prisoners who reported contemplating suicide in prison, 94.1% also reported death row distress.

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. Regardless of the presence of a psychiatric illness, suicide ideation and attempts among death row population have many complicated reasons and are often closely related to their distress of living on death row. (*See Chapters V and VII for an in-depth discussion of risk of suicide among death row prisoners.*)

The data we gathered on suicide is cause for alarm and requires urgent intervention. The large number of prisoners who are at risk of suicide is evidence that intervention aimed at addressing the underlying causes is an urgent need in prison. Prisoners reported current preventive measures employed in prison as non-existent. The problem was further compounded by the then operational

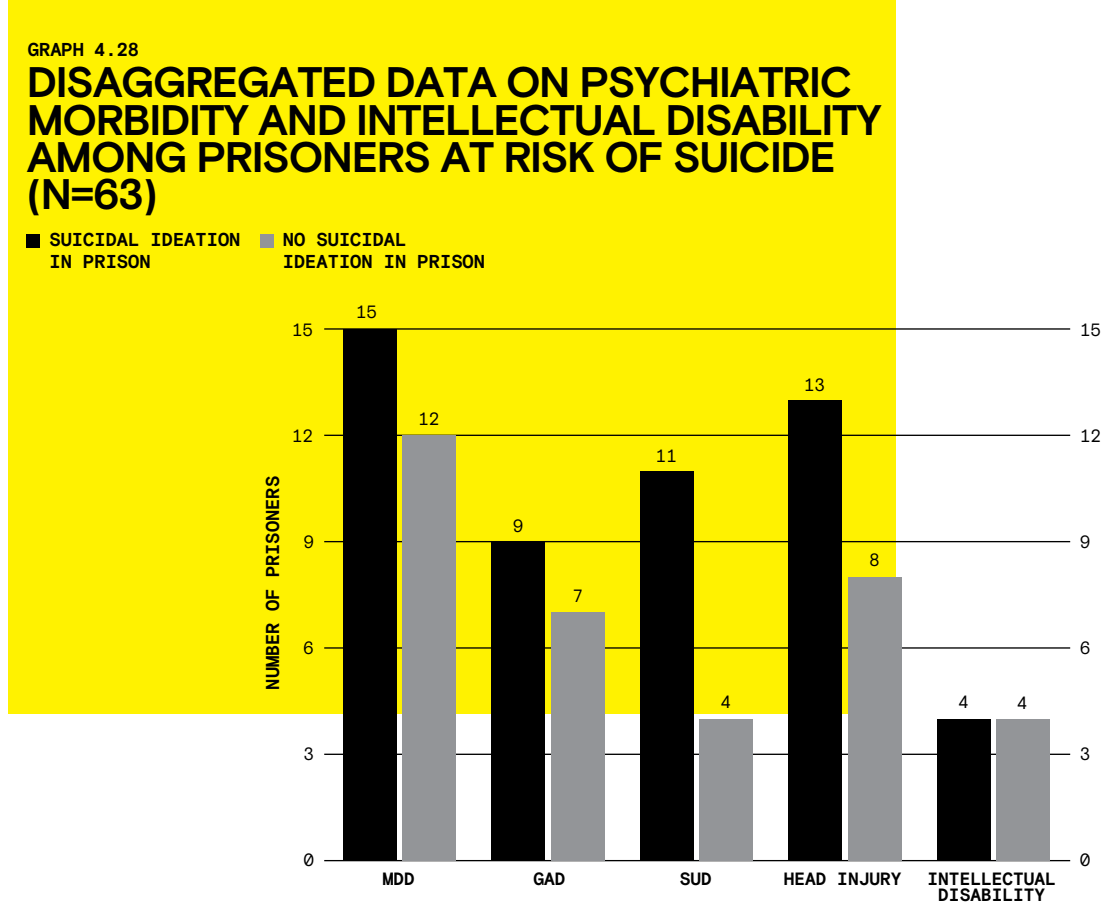
GRAPH 4.27

TIME SPENT IN PRISON ON DEATH ROW BY PRISONERS WHO SCREENED POSITIVE FOR SUICIDAL IDEATION ON DSM-5 (n=12)



GRAPH 4.28

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



s.309 of the IPC which criminalises attempts to suicide. One of the prisoners we interviewed was charged under this law when he attempted to die by suicide.

This Report has only scratched the surface of mental health concerns among death row prisoners. Not having access to prison health records in some cases also limited the possibility of undertaking a more comprehensive evaluation of mental health concerns that the prisoners might have been treated for in prison. Given these restrictions, it is very likely that the number of death row prisoners with mental illness is much higher and the kinds of mental illnesses cover a much broader spectrum. In showing the extent of the problem and providing an insight into the different kinds of mental health concerns among death row prisoners, the Report has highlighted the urgent need for understanding the different psychiatric concerns among a highly vulnerable population.

RAMDHARI grew up in extreme poverty. There were times when the family could not even afford one meal a day and on those days his mother would tie a cloth tightly around his stomach so that he would not feel hungry. Both his parents had health issues which may have contributed to there being fewer sources of income and he started working from a very young age to financially support the family.

Ramdhari was shocked when he got to know that he had been sentenced to death. He was so disturbed that within an hour of hearing the news, he attempted suicide by hanging himself in prison. He has not informed his parents about the case and the punishment as they have serious heart problems and he did not want to cause them pain. Ramdhari experiences throbbing headaches and the pain has been gradually increasing which affects his sleep as well.

At the time of the interview, Ramdhari had been in prison for around nine years, out of which three years were on death row. He was acquitted in October 2017 by the High Court.

SUDISH was 62 years old at the time of the interview. He has spent close to 23 years in prison out of which 14.5 have been on death row. His mercy petition to the President stands rejected. He has spent 14 years on death row in solitary confinement and reported having heard voices and seen a goddess once. In 2004, while attempting to kill himself in solitary confinement, he said, "[I] was saved by goddess Chamundi. She advised me not to take my life. She was physically present with 10 hands." He sees the goddess come to him as mothers and young girls, especially on auspicious religious occasions.

Sudish did not report any symptoms in the past two weeks as required by the DSM-5 Screener, and therefore an inquiry into a current episode of mental illness was not undertaken. His old age and time spent in prison are also likely to have masked symptoms. We also did not have access to his prison health records.

CHAPTER V

AN INSIGHT INTO A MIND ON DEATH ROW— EXPERIENCES OF PRISONERS WITH MENTAL ILLNESS

If they give a sentence so grim, they should carry out the execution right away. It's better than slowly dying like this.—Laxman

With an overwhelming majority of death row prisoners either at risk of, or living with, a mental illness, the previous chapter illustrated the mental health crisis among prisoners sentenced

to death. This chapter presents, at a more granular level, conditions of death row incarceration which contribute to the onset or exacerbation of the illness and the experience of living with it while under the sentence of death. It also discusses the correlations which were found between certain prison conditions and the three mental illnesses which were most common – Major Depressive Disorder, Generalised Anxiety Disorder and Substance Use Disorder.

While prisons and prison conditions are widely recognised as contributors to mental ill-health, there is little discussion in India on conditions of death row incarceration—which are subject to even more stringent restrictions—and their mental health consequences. Applying a psychosocial lens, the chapter discusses the presence of negative conditions and the absence of a positive environment and how death row prisoners with mental illness experience such conditions.

Negative physical and mental health outcomes are neither an aim of punishment, nor its purpose and intention. Conditions of incarceration nonetheless often lead to these outcomes. At most, the discourse seems to end at negative health outcomes as a foregone conclusion of incarceration. Little discussion seems to exist in India on measures that can be taken to reduce, if not prevent, this foregone aspect of punishment and the consequences for the state, in whose custody the prisoners live.

To understand the experience of prisoners with mental illnesses in the context of the death penalty, the chapter primarily takes a phenomenological approach. Life on death row comprises experiences that few can begin to understand and any serious exercise must include voices of people who live death row daily. Narratives of prisoners are also interpreted to gain an insight into the conditions of death row that contribute to the three mental illnesses discussed. Doing so provides an opportunity to identify and address the underlying determinants of poor mental health, i.e., conditions in which death row prisoners are incarcerated, thereby reducing the mental health crisis among death row prisoners and its potentially fatal consequences.

The themes discussed in this chapter, on conditions of death row and its psychological consequences, were chosen after a systematic process of coding and analysing themes and sub-themes. The analysis process had to be acutely attuned to the reality that the conversations with death row prisoners were not necessarily linear and the crux of any one theme was unlikely to be captured in neat boxes. A collapsing of themes, re-clustering of codes and sub-themes were processes necessary to ensure fidelity to the experience of death row prisoners, with minimum interference from us as observers and, to an extent, interpreters of their experiences.

Conditions of Incarceration and Underlying Determinants of Mental Health

A prisoner knows his difficulties. Jail life will shatter one. People think that we are getting good food and enough freedom. Many prisoners sentenced to life term kill themselves because of the unbearable situation in jail.—Hussain

Life in prison is in stark contrast to the freedoms enjoyed by individuals in the free community. Some conditions of incarceration such as the loss of liberty and the sudden loss of control over daily living are inherent in, and are intended consequences, of imprisonment. However, there exist aspects, such as violence, which while not inherent to punishment are nonetheless so deeply entrenched that they are now considered regular and expected features.

An anachronistic schedule—waking up at 4 am, lunch at 11 am, dinner at 4 pm and back in single cells or barracks at lockup at 6.30 pm—strictly regimented movements and the threat of sanction, the lack of privacy even in the most private moments; bathing together and using a door-less toilet, which serves 70 other barrack-mates; and the forcible restriction of freedom and liberties are psychologically and physically alienating experiences. A prisoner graphically put his understanding of prison: “If there is a hell in this world, that is jail. We cannot do anything here.... Nothing can be done. We get water full of dirt and waste for drinking. Sometimes they may mix chlorine in it.” Interestingly, even something as mundane as the act of reading newspapers, which are a connection to the outside world, can be alienating. Sheheryar, a death row prisoner housed in a high security ward, narrated, “They remove the news pertaining to my case and other jail related headlines. We only get to see the classified advertisements.”

Death Row and Mental Illness

It is better to die than live as a death row prisoner. The punishment is not only given to the person but also the family. After getting the punishment, the person will either die by suicide or the death sentence would be done away with. But they will not hang the prisoner. And even if the person goes home after being acquitted, their life would already have been spoilt by then. Then the person would resort to more crime.—Anand

For death row prisoners, the shock of incarceration is not just of having their liberties taken away, it is also of the way they are treated, interacted with and viewed not only by the community they leave but also the community they enter. Life as they know it ceases to exist. There is a drastic change, unfathomable to those in the free community. Death row prisoners are treated as a separate class of prisoners and, more often than not, the violence and alienation are directly linked to their belonging to this separate class.

Stripped of community and important support systems and coping structures, death row prisoners are now to live a life of universal condemnation. The prison environment, physical and mental, based on formal and informal rules, has psychological consequences for prisoners who are often either driven to think about suicide, both, active and passive, or to live their life as "the living dead".

I am like a cemetery now; like a walking dead body. —Purab

Death row conditions, by which is meant the structural and human environment, is a cesspit of othering and discrimination which unsurprisingly leads to an onset of depression, anxiety and substance use – disorders which are highly correlated with marginalisation and are present in overwhelming proportions among vulnerable communities[5]. Living in an environment of shared psychological trauma is a gruelling experience bearing no similarity to life outside the prison walls.

To ensure that death row conditions do not have debilitating consequences including suicide, preventative measures need to be put in place and practiced. The environment in which death row prisoners live needs to be addressed given that their experience of prison life is in the context of the knowledge that they have been chosen as persons who must die to achieve state aims, making them particularly vulnerable to poor mental health and mental illness.

Mental health research in prisons has consistently shown both a higher prevalence of mental illnesses among the incarcerated population[1] and conditions of incarceration as a contributor to poor mental health. India's National Mental Health Policy specifically recognises prisoners as a population vulnerable to mental illnesses[2] and the Mental Healthcare Act, 2017 ensures that prisoners have a right to mental health treatment and care[3]. However, the latter provides for a curative measure and the former fails to highlight preventative measures that can be taken to reduce prisoners' vulnerability to mental ill-health.

Some aspects of incarceration that the World Health Organisation 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[4]. 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.

JAVED Sultan clasped his fingers together when asked about his living conditions for the Death Penalty India Report and said, "We sleep like this (fits fingers of his hands) 70 persons a barrack. Two toilets, fans here and there. They keep the TV on." He continued, "Solitary was better, now there is no space to sleep".

With time, he had come to reconsider his answer. While being interviewed for this Project, he said, "वहाँ घुटन होती थी।(I felt suffocated there.) It was a small cell with four walls and it was packed. It feels nicer here...it is open. We can talk with everyone here. It feels nice."

He also mentioned that his health had deteriorated while he was kept in solitary confinement. "There I used to get headaches and I had BP issues. I didn't know what BP was before this. In andheri I used to take a tablet, then we were shifted here. I didn't take the tablets for 22 days and then I got paralyzed." He felt dizzy while in andheri, and was prescribed glasses when he was moved out. Javed was in solitary confinement for three months.

Javed Sultan was diagnosed with Substance Use Disorder.

I was kept alone. I used to get restless and I started talking to myself. I used to think about ending my life, because this day will come anyhow.... It was one of the forms of torture because they wanted me to look at the walls the entire day; that is the reason they used to keep me alone. I could tell day from night but there was no sunlight over there. I have spent one and a half years alone during which I couldn't hear a voice. There was only one person who would come to give food. It felt like a cage.

BILAL

■ DEATH ROW CONDITIONS

There is nothing we do out of our own wish. You have called me, your wish will prevail, we have to come here.—Saksham

Life on death row is a lonely experience, not necessarily cut off by walls but because of the qualitatively different life that being on death row means; one marred by resignation and despair. Unfortunately, none of these barriers are such that their effect vanishes as soon as the barriers disappear. The emotional, psychological and physical alienation and violence that death row prisoners face have multiple pathways, many of which are a matter of daily occurrence and which continuously compound the adverse effects of such an existence. Mental illnesses in such situations are but a given, and very few escape its clutches.

Mental illnesses are inherently subjective experiences and the experiences themselves are context-specific. To understand the illness and make interventions, it is, therefore, important to understand the context—the social environment and circumstances the person finds themself in. In other words, the external and internal environment are cyclical and in constant interaction.

MADHVAN Jagmohan Muragannavar no longer stays in a cell. He recalls, “I had trouble when I was in a separate cell. There was one person in each cell. It was not good. I was there for three years. I do not know how I survived here. I was not supposed to talk to others or go out. Someone would come to take me even when I had to go to the hospital. The only thing that they gave me was food. I felt like I was in the dark.”

He compares his experiences in the single cell to that of his current incarceration in the barracks. “I used to get tense [in the cell]. I came to the general prison two years ago. I feel relaxed here. In the single cell, they locked it at 1 p.m. and opened it at 4 p.m.. Later, they started locking at 5 p.m.. They allowed us to come out only for an hour. I could not see the outside world from there. Now, for the past two years, I have been good with people. I go out with the people in my barrack and play kabaddi, volleyball and cricket. I go to the library and read books. I go to the temple and pray for 30 minutes. Then, I sit there for some time and pray to God to release me.”

“I feel hopeless. I have left everything including my case to God. One can do anything if one has the money in the hand. One can get any lawyer. Otherwise, there is little hope. I think too much. I spend sleepless nights thinking about home.”

Madhvan Jagmohan Muragannavar was diagnosed with Substance Use Disorder.

SOLITARY CONFINEMENT

The cell opens from 6:00 a.m. to 7:30 a.m., 11:30 a.m. to 12:30 p.m. and 3:30 p.m. to 4:30 p.m. I remain in solitary confinement for more than 21 hours. This is not a jail; it’s a zoo.—Balasubramaniam

Almost all death row prisoners we spoke with were either living in or had lived in solitary confinement after being sentenced to death. The severe and long-term adverse effects of solitary confinement on prisoners have been well documented across jurisdictions[6]. Some of these include hallucinations, self-harm, decreased ability to remember things, anxiety and recurrent headaches[7]. Research on social exclusion has shown that deprivation of human contact has an effect on brain biology and brings about neurological changes[8].

Being in solitary (aptly knows as ‘andheri’ in some prisons) means that the prisoners are locked up inside a small single cell, most often, 8*8 or 8*12, for most of the day, except for a few hours spent on lunch, dinner and short

No sunlight enters my cell, there is just one small bulb. Therefore, when I was brought before you, my eyes couldn’t suddenly adapt to such a well-lit surrounding. After a long time, when I was taken out in sunlight, I felt as if I would melt.

Solitary confinement had an effect on my soul. My bones have become brittle; they feel spongy. I felt that the bones of my right hand and ankles had become softer. They seemed to be reducing. There was nothing to energize and recreate. I felt that my body was wasting away.

When I go for court visits, sometimes when I speak, I get confused about the source of the sound; is it me or someone else speaking? Sometimes when I would speak, I would feel as if it’s not sound generated from my body but from some external source. There was sensory deprivation in my case. I didn’t have exposure to sunlight, I couldn’t smell flowers. Once I held a rose in my hand. After seeing that, the jail officials uprooted all the rose bushes in the jail since they had become suspicious. Post that incident, I never went close to any plant because of the fear that it might get chopped the next day.

SHEHERYAR

walks. When living in solitary, death row prisoners are not allowed to partake in any aspect of prison life. There's an ever-present guard to make sure the prisoner stays alive – it is perhaps an implicit acknowledgment of the effects of solitary confinement. Narratives of ideations and acts of self-harm, episodes of auditory and visual hallucinations, and the feeling of losing one's mind, are shockingly common. Saqib, diagnosed with Substance Use Disorder, described his cell as a room where one can barely turn. He goes on to add, "I suffer a lot of tension and if things go like this, I will become mental and will be admitted to a psychiatric hospital. Evening to next morning at 6 o'clock I have to be in this tiny cell where one cannot even turn around. It will be no surprise if I go mad."

In [the previous] prison, they didn't give us TV or newspapers. I was there for six months. Here, I lived alone for 19 days in a similar cell. In [the previous prison], there would be five guards outside my cell to make sure that I don't kill myself.—Faisal

Perceptions of living in the barrack as opposed to staying in a cell are not always easy to understand. Many prisoners who were interviewed for the Death Penalty India Report and also for the current study, narrate their changed perceptions of being confined in cell and living in barracks. Some preferred the cell when they were living in it only to realise later how being in solitary confinement broke them.

LAMBODAR was living in a cell when he was interviewed for the Death Penalty India Report. When staying in the cell, he preferred it over the barracks. "The barracks in [the previous prison] were quite bad so I stayed away from everyone there. It's fine here, there is a lot of peace in the cell. We are two people in the cell. I believe in God and pray to him. I had difficulties in the barrack because of lack of space. I could not sleep properly because the barrack had many people. It was bigger than the current room but not that big. I wake up, do yoga and then come back to the cell at 9. At 10:30, we eat our food and then we come back into the cell. I like speaking to others but I prefer staying outside."

At the time of the interview for this Project, Lambodar had been moved to a barrack with other prisoners. He now thinks that staying in a barrack is better than a cell. "I was in the cell for one and a half years. I had to stay alone all day. I felt lonely. It used to open in the morning, you would be inside by 8 o' clock, then it opened again at 10 o' clock for food and closed again at 2 o' clock. I used to sleep a lot inside as there was a lot of time. Sometimes, I used to read the Ramayana. We were 5-6 prisoners [on death row] then and three of us used to stay in one cell. At first, we used to stay separately, but then we started staying alone. Outside the cell, one gets to interact more and we all live like a family. I had no support in the cell. I get some support here."

Lambodar was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder.

SUDISH has spent around 23 years in prison. He says, "I stay alone in my cell. I only talk to the staff if they call or talk to me. I like praying the most here. I go to the gallows which is near the Hanuman temple. I am very afraid. Who wants life here? Living here means death. I would not mind staying here as it has been so long. I will die in the environment outside prison. I want to serve God if I go outside. All of this is a play orchestrated by God."

At the time of interview, Sudish had spent over 14 years on death row in solitary confinement. While describing his experience, he says, "I do not fear death. When I was alone, I used to hear others murmuring about me. It does not happen anymore. I enjoy the company of others.

I can talk to God. They say in my ear that everything will happen for good. I try to sleep, but I am not able to. I have memory problems. I forget where I am going, whom I talked to, where I have been."

A GUARD AND AN EYE

Many prisoners, especially those who were in solitary or solitary-like confinement, spoke about the presence of a guard around them round the clock. The guard is meant to keep an eye on them. Vasav, a now acquitted death row prisoner, reported that when he was in death row segregation there were two guards per death row prisoner and that, "[the guard] accompanies me to the washroom also". Guards, for many, were a (unwanted) portal to the rest of the prison. Whether it was to give them food in solitary, to get them books from the library, to buy food from the canteen or even to provide contraband substances like cigarettes and chewing tobacco; for death row prisoners, the guards facilitate their lives. On the relationship with his guard, the same prisoner said, "Guards are given to each and every death row prisoner. As the time passes, we become familiar with them so they don't discriminate."

Death row inmates are kept in a separate ward. We can't roam around, we have to live with a guard, even when we go to the hospital, the guard has to accompany us.—Amar Manohar

Whether friendly or not, the guards do act as a barrier to regular interaction with other prisoners. A prisoner told us how other prisoners would not talk to him initially because he was always surrounded by guards. While the panopticon structure of the prisons helps authorities keep an eye on the prisoners, for death row prisoners, guards are their personal panopticons. The interviews too were conducted in the presence of prison staff.

MAYANK Chuhra began his interview by telling the researchers that he was innocent and his incarceration was the result of an unfair trial. The interaction revealed his almost constant preoccupation with injustice–something Mayank believed he had been subjected to throughout his trial. He wondered aloud about the effect this had had on his family, and traced many of the family's troubles as going back to his initial incarceration. He was diagnosed with Generalised Anxiety Disorder.

Believing his character to have been stained, he limits his socialising within prison grounds–even backing out of events he had chosen to participate in earlier. He spoke about feeling more tired, his appetite shrinking, and about putting aside essential daily activities (like bathing) for later. Mayank had always been a religious man, but now he finds it increasingly difficult to concentrate while praying. Images of a noose swaying come to his mind instead.

"अब भगवान् के आगे हाथ जोड़ रखे है तो फांसी-फांसी दिख रही है। कुछ चीज़े बताने लायक नहीं है।"

[I try praying but all I keep seeing is the noose. There are things I can't even talk about.]

At night, Mayank often found himself unable to sleep. He worried about his children and their future, and felt he could not trust anyone. He also had frequent nightmares about this. He got interrupted sleep for around 3-4 hours a night.

Mayank Chuhra's sentence was commuted by the Supreme Court in early 2019 to life imprisonment for 25 years without remission. By this time, he had spent over five years in prison, almost all of them on death row.

DIFFERENTIAL TREATMENT

One of the markings of a death row prisoner is the denial of opportunities that other prisoners have access to. Those living in solitary confinement have access to only the bare minimum needs for living. However, even death row prisoners living in barracks are denied certain opportunities. For instance, many death row prisoners reported not being allowed to undertake any educational activities in prison. When asked whether he can study, a 20-year-old death row prisoner, Sanju, said, "I am the only one who is not allowed to go to the library. I am not allowed because of my punishment. I am not allowed to play either, but that's because the other prisoners don't let me." There are other ways which indirectly lead to poorer conditions for death row prisoners because of factors related to their punishment. Many prisoners spoke of the need to make their food edible or the need to have more food because of the insufficiency of the prison food. However, at the time of interviews, some prisons had put an embargo on any kind of outside food. Though the embargo was applicable across the prison with no exceptions, but because death row prisoners are not allowed to earn money in prison, they are hit the hardest. As a result of such a rule, death row prisoners were not able to get their food and neither were many able to buy any from the prison canteen because of the lack of money. For death row prisoners, thus, it meant no access to additional food. With respect to violence by prison officials, while almost all prisoners spoke about the unflinching violence inflicted on them because they were death row prisoners, in one prison, all death row prisoners spoke about not being misbehaved with, because being death row prisoners, prison officials would be hauled up if something were to happen to them.

Officers (in prison) know that if something happens to me, it is a risk for them, so, they take care of me very well. I heard that there is a Supreme Court order to provide basic needs to the death penalty prisoners. Here they do not even give us work.—Sanath

In our sample, differential treatment due to the status of a death row prisoner was positively correlated with the risk of substance use (p value = 0.089).

SOCIAL ISOLATION

I don't like social gatherings because the talk revolves around the case. In order to avoid these comments, I avoid such types of situations as I don't find myself ready to face them. I do not like a situation where four people standing in a group pass comments and say that I would be hanged to death. —Archan Sharma

DATTA has found a mentor in another death row prisoner. He recalls how his mentor once said that his punishment would pass, but, "I should not forget one rule, that one does not get to live again. This line had a huge impact on me. I wish I had met him earlier in my life."

An important theme that emerged was the alienation that death row prisoners faced from other prisoners and barriers to communication with their families. Feelings of isolation are both a contributor and a consequence of depression[9]. It should be noted that in addition to isolation from other prisoners and inability to communicate with their families, the inability to have prison officials take their concerns seriously or protect them from violence adds to this isolation. While there were a few prisoners who reported having found support and solace in the company of other prisoners, these instances were extremely rare.

Prisoners also reported a disinterest in seeking company seeing either its futility, or because of a general distrust of the other prisoners and, at times, out of a sense of shame. They were viewed as either more dangerous due to the punishment or were harassed because of the punishment itself, leading to alienation and isolation. Alienation of death row prisoners from peers in prison was positively correlated with negative interaction with other prisoners (p value = 0.026).

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. I thought it was better to die.—Sushant

The benefits of not being isolated and having relatively positive, if not close, relationships with other prisoners was starkest among those who had lived in solitary confinement. Vignesh, diagnosed with Substance Use Disorder, and who was previously in solitary confinement, explained this phenomenon, "[A prisoner in the general prison population] can talk and share things with people; happiness and sadness."

GHALIB keeps his worries to himself and bottles up his feelings in prison. He actively avoids any discussion on the case. Mulaqaat is a sensitive topic for him and while he thinks a lot about his family, he has shut them off. Neither Ghalib not his family can see the other worried. They meet rarely and when they do meet, they hold back their problems from each other with no outlet for their mutual suffering. Even the few mulaqaats that Ghalib has are emotionally exhausting. Unable to share his worries, he controls his tears until after his mulaqaat is over. It is in the loneliness of his cell when he breaks down. Unable to eat, Ghalib stares blankly at the T.V. He keeps thinking about how he cannot be with his family and protect them. Alone in the lockup, he becomes gloomy. He cries and has no peace of mind. Hopelessness and sadness take over. Nothing makes him happy now. Full of life earlier, Ghalib is unrecognisable even to himself. Years in prison have taken away his interest in self-care. He used to be careful about how he presented himself to the world, but now he has lost all interest. Life was a joy for him, but even food holds no pleasure for him. Being in prison for this long, Ghalib's memory has worsened and he finds it difficult to track things. Ghalib wanders aimlessly in prison. Lack of sleep and a heart attack in prison contribute towards his tiredness. Once he wakes up, sometimes of shock, he is unable to sleep further. His body aches always. His death sentence was commuted to life imprisonment without a possibility of release for 25 years in 2018. By then, he had already spent around six and a half years in prison out of which around five years were on death row. Ghalib was diagnosed with Major Depressive Disorder and Substance Use Disorder.

I felt very sad in andheri as there was no one to talk to. Here, in general prison, we can walk freely and talk to others.—Mahadev

Compounding this isolating experience is the fact that death row prisoners face institutional and structural barriers in communicating with their families; a unit of support that they now have little or no access to. For instance, in some prisons, death row prisoners were not allowed to use the prison phone facility to contact their families because of the penal provision they were charged with, such as murder. Sometimes, even where these facilities were available, they proved to be too expensive for death row prisoners, particularly because they were denied paid work in prisons. When families called the prison, many reported facing multiple difficulties in getting through.

For death row prisoners, the experience of meeting their families, sometimes their only support, bore out a complicated picture. While most prisoners spoke about the want and need to meet their families, the no-touch policy, the multiple barriers during the meeting and the 15-minute time limit for each meeting, left them distraught—making it nearly impossible for them to access the emotional support they need to protect themselves. Though they looked forward to the meetings, prisoners were often left worse off. The poor financial condition of the families was an additional barrier and not wanting to be a burden, prisoners often ask their families to not meet them.

Two months have passed since my mother last called me. She can call me but I can't. They don't charge us any amount because we aren't allowed to call in the first place. When a family member calls, we are called from our cells. We just get about 5-7 minutes to converse with them.—Datta

Barriers to communication with families and alienation from other prisoners was found to be

positively correlated with the risk of depression (p value = 0.074) and anxiety (p value = 0.058) and Major Depressive Disorder (p value = 0.075). Isolation from social networks was also found to be positively correlated with Substance Use Disorder (p value = 0.034).

LUCKY was 22 years old when he came to prison. In five months, he was transferred between three prisons, finally ending up in a Central Jail. The first prison, he told the interviewers, was the worst. He was frequently beaten up, verbally abused, and not allowed to sleep. Sometimes, food was denied to him as well. He found no one to reach out to, no source of support in the prison. Both the prison administration and inmate population were antagonistic towards him, and he could not complain about his treatment to anyone. The prison guard told him that he had no right to live. Lucky attempted to hang himself while in that prison. He explains that he did this as the prison authorities had taken away his will to live.

The prison the interview was held in was much better in comparison, Lucky mentioned. He still does not have friends, since most inmates were much older than him, but the prison authorities do not hit him here. He misses his family, but is reluctant to ask them to visit since they live far away from the prison.

Lucky was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder. At the time of writing this Report, Lucky had been in prison for over a year, and on death row for most of that time. His appeal is currently pending before the Supreme Court.

VIOLENCE (BY AUTHORITIES), AND HARASSMENT (BY PRISONERS)

They attack our honour, they touch your private parts. They beat and humiliate you. The searching of the ward is physical and psychological torture. They throw away ironed clothes, they throw away the bed and step on it. They tore my mosquito net which was in the cell where I was staying. They beat me too.—Adnan

Violence in its many forms is entrenched in the prison system, whether as a means of discipline, to establish hierarchies between the prisoner and prison administration or even between classes of prisoners, or as a means of subjugation. Many prisoners reported violence at the time of entry into prison as if like an initiation ritual – that every prisoner gets beaten up in prison upon their entry. For death row prisoners, however, the punishment provides targeted avenues for the prison authorities as well as prisoners to inflict violence, both psychological and physical. Additionally, the violent atmosphere in prison, regardless of whether it is inflicted on the death row prisoner leads the prisoner to remain ever vigilant about potential violence, and the resultant mistrust leads to even more restrictions on death row prisoners to seek help and care. On being asked about suicidal ideation, Urvi, diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder, said about harassment by other prisoners, “I do not need to think about suicide, they will put me in the tank and kill me.”

One of the most important and invisible modes of violence was psychological and directly related to the prisoner being on death row. Diya, who was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder reported, “When I asked them about how my family was doing, the officials said, ‘Your family already considers you dead. They have performed your antim sanskar (last rites), they are not even interested in seeing you”. They were condemned to death by prisoners as well. Another prisoner with Major Depressive Disorder and Generalised Anxiety Disorder, narrated an incident where an inmate offered him water, but when he was going to drink it, he realised that the other inmate had spat into it. Another reported being repeatedly told that he deserved to die. The violence is not necessarily random, but is intended to taunt death row prisoners. Constant reminders of being condemned to death included being shifted to the phansi yard or being shown photographs of the gallows. This kind of continuous violence has near fatal consequences. Speaking of the time when he tried dying by suicide, Lucky says, “I was new then, didn’t try talking to anyone. Baba [a prison guard] himself would beat me up, who would I talk to?”

I didn’t know about the death penalty. One officer asked me if I knew anything about it, I replied ‘no’ and he told me, “Didn’t you watch in movies how they hang people by covering their face with a black cloth and hang them?" It was then that it hit me and I fell unconscious out of shock. —Sachchidananda

Violence by authorities in prison and harassment by prisoners were found to be positively correlated with Major Depressive Disorder (p value = 0.026 and p value = 0.039, respectively) and Generalised Anxiety Disorder (p value = 0.073 and p value = 0.092, respectively).

LACK OF WORK

A constant reminder of being on death row for the prisoners was the lack of working opportunities; a lack of engagement with things external to them. Almost all prisons had an official embargo on paid work for death row prisoners, which has disastrous consequences for them. In addition to the financial incentive, however minimal, work is an opportunity for prisoners to mingle with others and build the much-needed support systems to help them cope with the reality of their life under the sentence of death. That death row prisoners fared better once they were allowed to mingle with other prisoners, is a testament to the importance of reducing barriers between the general prisoner population and death row prisoners. Crucially, it helps the prisoners disengage themselves from the constant and intrusive thoughts revolving around their own fate and the fate of their parents, spouses and children.

I read [books] unwillingly. Time passes. I don't feel any happiness while reading books. We don't have any work to do.—Lucky

The forced inability to work is a continuous and daily reinforcement of their identity as a prisoner on death row. Not being allowed to work as a matter of policy also takes away an avenue for death row prisoners to keep themselves engaged. Apart from being institutionally discriminatory, such policies act as unnecessary barriers for death row prisoners to undertake goal-oriented activities which provide a purpose and structure to each day.

I have sleep problems. Earlier, there was work which we could do and that kept us busy but there is no work here. Sometimes, I wash clothes that have been washed before again, so that I get tired and fall asleep.—Subodh

The inability to earn money in prison is an institutional barrier which has ripple effects on the prisoners' sense of self and results in long-term psychological damage. In such circumstances, meeting and communicating with families is an important coping mechanism providing them with some respite. That, however, comes at a cost. Families spend money they do not have to meet the prisoners who are far removed from them geographically. While the prisoners need this support, they are also burdened with an internal tension owing to the finances of the family, which they grapple with on a daily basis.

Many death row prisoners were either the sole or the primary earners in the family. Their absence then means increased economic hardship for the families, many of whom have also been socially ostracised. Without work, prisoners have little respite from these constant thoughts about the social and economic survival and future of their families, and the knowledge that they can do little about it. In this context, paid work is not only a means for prisoners to continue providing for their families as much as they can, but it also protects death row prisoners from the psychological consequences of a regular barrage of negative thoughts.

All death row prisoners wanted 'something to do', something to take their mind off their reality, to pass the time productively, and to earn so they could continue to support their family or, at least, not be a burden on them. Spending large swathes of the day with nothing to do further fuels the sense of futility that prisoners reported. A common descriptor that prisoners used for themselves—that of the living dead—perfectly echoes this sense of futility, of being in suspended animation and the resultant chipping away of the self.

Among the prisoners interviewed, work sanctioned in prison, both paid and unpaid, had a negative significant association with the risk of depression (p value = 0.054) and Generalised Anxiety Disorder (p value = 0.060).

To some extent my interest in doing things has reduced. As time elapses, a person loses interest and gets detached from everything.... There isn't much work here that I can do.—Aijaz

DISCRIMINATION AND STIGMA

When a prisoner is sentenced to death, the shift in status from an undertrial prisoner to a death row prisoner is stark. They are shifted to new prisons (almost all death row prisoners are housed in Central Prisons), and are subject to institutional discrimination entrenched in our prison policy and psyche. Death row prisoners are easy targets of prejudice due to their punishment coupled with their socio-economic status and the imbalance in the power structures. They become easy subjects of bullying precisely because there is more to be taken away from them. While, as mentioned, there are formal rules which clearly discriminate against them, for no good reason, there are also other insidious ways in which they start being treated differently. There is now an opportunity to subject them to targeted violence, to dismiss their concerns, and continuously taunt them about the punishment. The felt experience of that stigma was captured well by Hilbert, who had come close to his execution, but is no more on death row. He said, "Whoever comes, any new superintendent may come, and we will be referred to as death penalty detainees. They make us stand in a row. 'Oh... this is him... that is him' they would say. I didn't like that." The institutional discrimination easily seeps into interpersonal social discrimination and stigma. The stigma of being on death row itself is powerful enough for other prisoners to avoid them as dangerous, or to inflict additional violence on them.

RAMDHARI, who is now acquitted, was sentenced to death for murder. He recounted his experience when he was sentenced to death, "...after the judgement came, things have changed. People now look at me as a culprit and in a bad way, because I have been given the death penalty. There are people who have raped women and children, they look at me the same way they look at them because I'm on death row. This affects me a lot."

It becomes much easier to humiliate them and exclude them, because from being any other prisoner their status has radically changed to a class that other prisoners now assume they belong to and deserve. The punishment changes how people view them, negating them as a person. After adjusting to prison as an undertrial prisoner, they have to go through another period of shock and adjustment to begin their lives as a death row prisoner.

The geographical alienation from their families, going from a regular undertrial to being the condemned, dealing with despair that very few share results in a state of mind which wants to reside in the past but also cuts it away; a state of mind where despair, hope, frustration and helplessness flow into each other.

■ PSYCHOLOGICAL CONSEQUENCES OF LIVING ON DEATH ROW

I have seen this... there are people who have gone mad because of thinking too much.—Vineet

PURAB has barely been able to get by in prison for the past three and a half years. He goes about a daily routine that involves bathing, shaving and other mundane activities, listlessly.

Being around people he cannot relate to results in Purab getting irritated with people and yelling at them, which he regrets. Purab reports that his anger and irritation started only after coming to prison; markers of a change in his personality. He barely sleeps at night and cannot get himself to get out of bed. When he does manage to, he is awash with lethargy and unable to work. Commenting on the poor state of skills training in prison, Purab says, "Matchsticks came first then came the lighter but here they are teaching us to light a fire with stones. If a person is spending six years of his life here then at least one must learn something so that one would be able to stand in today's world."

Every day Purab wakes up looking forward to death. He reports preferring death over such a life.

Purab was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder. He complains of nervousness and thinks of dying by suicide quite often. He considers himself to be a walking dead body. His mental and physical health issues are not taken seriously by prison officials. He has unexplained headaches which, owing to the poor quality of medical care, continue to be so. Purab used to be a motivated person, wanting to make something of his life. He has stopped trying to think of a life beyond prison and death row.

This section unpacks the experience of Major Depressive Disorder, Generalised Anxiety Disorder and Substance Use Disorder in the context of death row. The extremely restrictive conditions of death row incarceration in addition to the knowledge of the deliberate imposition of death and reminders of the punishment make death row prisoners particularly vulnerable to the risk of mental illness. Though universal in nature, symptoms of mental illness in the context of the death penalty take on a unique colour in as much as the thoughts, feelings, mood and behaviour are underscored by the knowledge and fear of the fatal consequence of the punishment. The reason for hopelessness, a 'symptom' of depression, or for suicidality is an exercise in meaning-making for people living with mental illnesses with respect to their situation and circumstances. For death row prisoners, the very unique context of the punishment, the accompanying external and social conditions of death row and the internal workings of the prisoner create an ecosystem which are interlaced with the constant reminders of an impending and uncertain death.

Nobody understands me, nobody is there to care for me. I don't even know what the authorities are going to do with my body after execution. I'm scared that they will leave my body for it to be eaten by cats and dogs.—Damodar

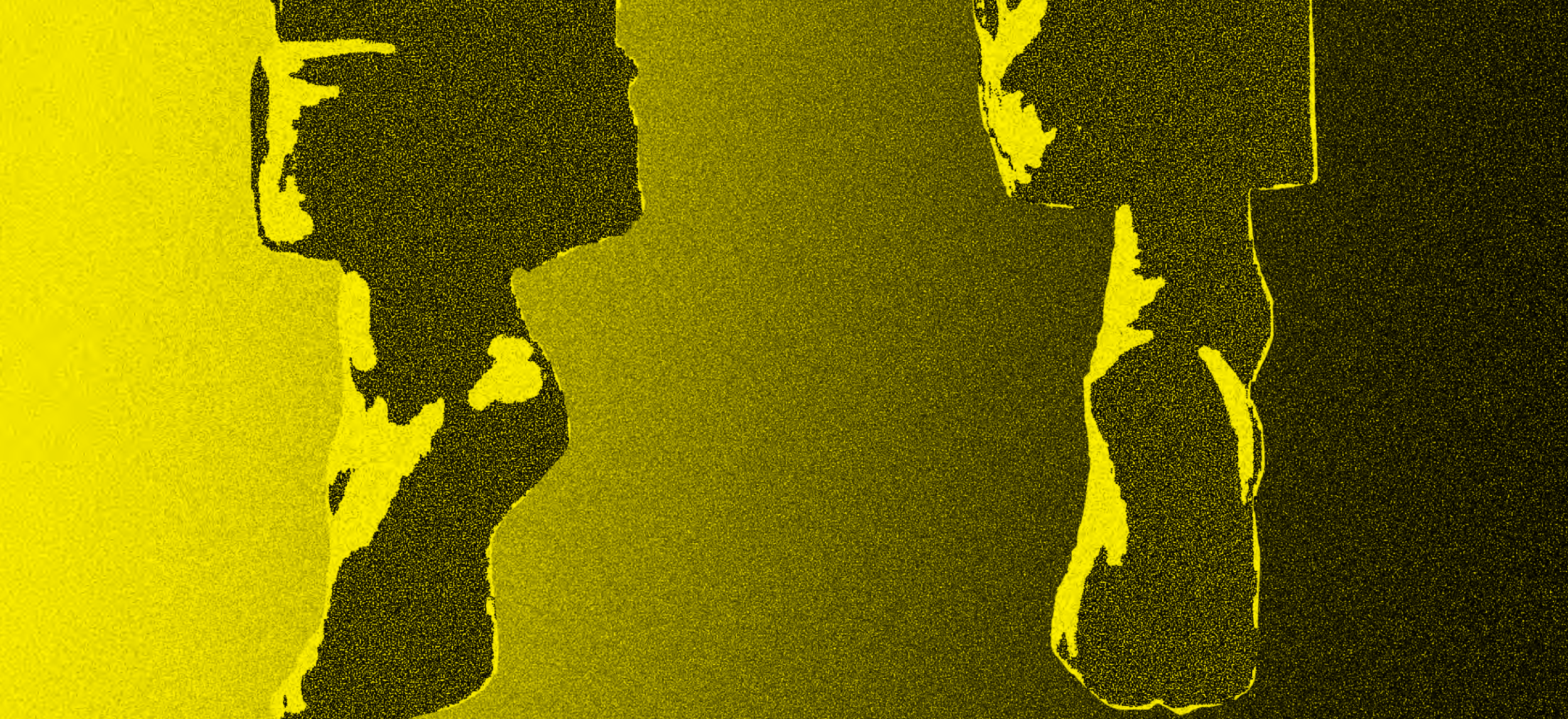
Before discussing the symptoms, it is important to note that time spent in prison had a negative correlation with the risk of depression (p value = 0.025) and anxiety (p value = 0.004) but a positive correlation with the risk of substance use (p value = 0.000). Generalised Anxiety Disorder was negatively associated (p value = 0.018), while Substance Use Disorder (p value = 0.002) was positively associated with time spent in prison. Similarly, Substance Use Disorder was found to be positively associated with time spent on death row (p value = 0.004) and Generalised Anxiety Disorder was found to be negatively associated with time spent on death row (p value = 0.078). One way to explain this phenomenon could be that the prisoners had adjusted to the prison conditions and to, therefore, look at the negatively correlated illnesses as an adjustment disorder. However, the adjustment to prison life and life on death row does not necessarily indicate the well-being of death row prisoners. Rather it is an indication that their experiences are no more 'newly' felt experiences—that the experience has been internalised to such an extent that the baseline for their psychological well-being has been compromised to a degree that for many others this baseline would qualify as a mental illness.

JAY Singh spoke in a very soft voice and appeared quiet. At the beginning of the interview, he was shivering, even though it was hot. Multiple times during the interview, he was on the verge of tears. Since coming to prison, Jay Singh 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, Jay Singh 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's appeal is pending in the Supreme Court. A few days before the interview his death warrant had been issued. The warrant has since been quashed.

Jay Singh was diagnosed with Major Depressive Disorder. 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.

Additionally, the starting point of our inquiry was the presence of cross-sectional symptoms over a period of two weeks prior to the interview, which may have further excluded some prisoners from our enquiry. The initial inquiry assessed recent symptoms of mental health concerns, and not a lifetime history of illness or its aggravation or alleviation in prison. For instance, Sudish who had been on death row and in solitary confinement for over 14 years was not diagnosed with any mental illness and he reported no problems with sleep or lack of interest in doing things. He only recognised memory deficits as a matter of concern to him. That he was in solitary for the past 14 years meant that he could not partake in any activity, thereby negating the relevance of some of the questions. He also did not report sleeping less than usual, because to him the 'usual' was 14 years of a solitary existence. It is also possible that prisoners using substances were self-medicating leading to the symptoms getting suppressed. That being at risk of Substance Use Disorder was negatively correlated with the risk of depression (p value = 0.041) as well as anxiety (p value = 0.014) indicates this possibility.



Nobody understands me, nobody is there to care for me. I don't even know what the authorities are going to do with my body after execution. I'm scared that they will leave my body for it to be eaten by cats and dogs.

Damodar

Whenever I am tense or worried about the case, I chew tobacco. After dinner, I take tobacco and sleep.—Sanath

LAMBODAR lives in a constant state of worry. His wife's deteriorating health often keeps him up at night. It is difficult for him to sleep and he usually wakes up in the middle of the night feeling anxious, sleeping only for 2-3 hours during the entire night. He wakes up whenever the prison authorities come near his cell. Lambodar has trouble concentrating even while engaging in any activity. He finds his mind wandering, often thinking about the well-being of his family.

Even though he looks forward to seeing them, he finds it difficult to share his struggles with his family when they meet him. Of his mulaqaats he says, "I do not understand what to say. I plan a lot to say but I am unable to speak." His brothers stopped visiting him, leaving him bereft of a key emotional support system. He used to have faith in God, but has little interest in praying, even as he has resigned his fate to God.

He remains extremely preoccupied about his health and is fearful that he might have cancer. He said, "When I breathe in, it feels like it can be cancer". He hasn't been diagnosed with cancer in prison.

Lambodar was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder. His death sentence was commuted to life imprisonment simpliciter, in November 2018. By then, he had spent six years in prison out of which five were on death row.

Though they remain unarticulated in response to specific questions, conversations with death row prisoners, their behaviour and feelings were very much in the context of their lives underlined by the death sentence. It would be folly to understand their symptoms and mental illness as stand-alone experiences, as if frozen without reference to context or time.

LOSS OF SELF

Incarceration is a debilitating experience not only because it is a sudden break from support structures and freedoms but also because the intensely rigid routine, being under constant watch and the restricted movement, affects the prisoner's psyche and their sense of self[10]. Death row prisoners retain lesser and lesser control over their autonomy and existence. The constant reinforcement of their identity as death row prisoners has serious consequences for their psychological well-being as it further 'others' them while also being a barrier for the expression of their own self. As a result, there is a constant chipping away of the prisoners' identity as individuals who are more than the category which now defines them.

I don't feel like focusing on anything. If someone is talking to me then it's fine, otherwise my mind is like a blank paper.—Bilal

For death row prisoners with Major Depressive Disorder and Generalised Anxiety Disorder, the consequences are far more magnified, because these illnesses themselves affect an individual's sense of self. This slow deterioration is further compounded by the prohibition on work and the consequent taking away of an opportunity for the prisoners to disengage themselves from ruminative and unhelpful thoughts. The lack of any meaningful activity creates a vicious cycle where it intensifies the depression and the depression in turn feeds into the inability of the prisoners to have any motivation to actively engage with their lives in prison, not just in work but in multiple other aspects of their lives. This bore out through multiple narratives by the prisoners as well as the positive significant association between lack of motivation in prison and Major Depressive Disorder (p value = 0.000).

The loss of self includes a deterioration of internal resources of the prisoners but also small yet significant changes in temperament that are not unnoticed by the prisoner themself. This depletion manifests in different forms, from not wanting to engage, to listlessness, indecisiveness, loss of memory, and shutting down to external stimuli. For instance, though keeping in contact with the family is a crucial coping mechanism, many prisoners with depression pushed their family away, trying to persuade them to not come all the way to the prison citing financial and emotional reasons. By doing so, the prisoners force this isolation upon themselves under the guise of protecting their families.

What is the use of my family coming to meet me in prison? What will they do when they come? Just meet me and leave.—Jairam

This deterioration is further worsened by the prisoners' inability to employ methods to cope with their circumstances as effectively. For instance, though religion was one of the main coping mechanisms, those at risk of depression as well as those with Persistent Depressive Disorder reported the relative ineffectiveness of praying and engaging in spiritual activities.

Many prisoners were also unable to think of a life beyond their current situation. When asked about what they want out of life, many expressed their inability to derive any meaning from it and seemed unable to conceive of any foreseeable future.

Our account of how we perceive ourselves, relate to and respond to the world and people around us is a fundamental characteristic of our nature. Our attitude towards everyday events contributes to the certainty and predictability of our lives. However, depressive disorders make incursions into this understanding of ourselves, disbalancing how one relates to oneself and interfering with daily functioning. Close to 50% of prisoners with Major Depressive Disorder and Generalised Anxiety Disorder indicated, in some form or the other, that the person that they knew themselves as, had slowly disappeared only to be replaced with unrecognisable traits. It may be possible that these are temporary shifts in moods and traits, but it is also likely that the everyday stress of living on death row slowly brings about a change in the person's personality, which undergoes a fundamental shift to cope with the trauma of the death awaiting them.

For instance, on being asked if they felt happy or sad, a prisoner responded, "Whatever it is, it is all the same." Another prisoner said, "I get irritable these days, I wasn't like this."

MEMORY DEFICITS

I have difficulty remembering things. I forget where I have kept things, I empty my whole bag to search for it. It is somewhere else and I search somewhere else. I forget old names. I forget the names of my children and family members, I have to think. I forget things from the past, I forget everyone who came to talk yesterday. I do not have anything now. I am unable to remember it. I forget everything.—Urvi

Most death row prisoners who were diagnosed with Major Depressive Disorder spoke of having trouble recalling any memories that they had of their past and an inability to remember simple details of their current lives as well.

Our memories play a crucial role in our lives in providing a sense of continuity and providing a hold on the lives we have led and who we currently are[11]. For instance, one prisoner reported feeling lost and not having any memories of his childhood or his life outside prison. To be clear, this kind of memory deficit is not necessarily memory loss but a clouding of memories. Of course, many prisoners also made active attempts to avoid recalling their past due to the inability to deal with the emotional upheaval caused by these memories. In terms of recent memories, prisoners reported grappling with remembering simple tasks that they were doing or were meant to do and having to write down information in order to not forget it.

I have forgotten about my case. I also don't recall anything from my childhood. My memory has reduced considerably. I feel like I am forgetting a lot. I am speaking to you now, but I'll forget who you are after you leave. It doesn't even take me five minutes to forget. It's out of my memory almost immediately. —Aarjav Surya

This was also not a result of old age, most prisoners who had deficits and gaps in memory were relatively young. The mean age of the 24 prisoners who screened positive for memory deficits on the DSM-5 Screener was 38.67 years. Research shows that lack of engagement through active work can lead to memory loss in addition to impacting cognitive abilities[12]. These connections hold true for death row prisoners as well.

In our sample, memory deficits were positively correlated with Major Depressive Disorder (p value = 0.000). 14 prisoners with memory deficits were housed in solitary or solitary-like confinement at some point during their life in prison. It should be noted that out of these 24 prisoners, eight prisoners had either mild or severe cognitive impairment.

ANXIETY

Generalised Anxiety Disorder and Major Depressive Disorder are often comorbid and it is no different for death row prisoners, where the illnesses were found to have a positive significant correlation (p value = 0.000). Marked by exaggerated worry, hypervigilance, fear and an inability to concentrate, Generalised Anxiety Disorder consumes the person with thoughts of the worst outcomes of any scenario, and, unmanaged, interferes with daily functioning and disallows the person from escaping the quagmire of negative thoughts. It reinforces the negative thought processes that accompany depression. For death row prisoners, this means an inability to break free from thinking about their own fate, which is inextricably linked with worries about their families. Fear is a constant companion; unexplained fears of being attacked in prison, nightmares, their own death or fear for their families' safety are common experiences for death row prisoners with depression and anxiety.

SUBODH relies heavily on the mulaqaats with his family for support; they are a crucial aspect of his life. When he was shifted to the high-risk ward, Subodh harmed himself and his life in prison has been lonely. His mother is his only source of emotional support and when she does not visit, he is awash with worry. However, mulaqaats often leave him worse off than before. The emotional drain takes a toll on him and he ends up contemplating suicide. Events like unexplained meetings or a court visit make Subodh nervous and, as a result, he has difficulties in sleeping. He sometimes loses consciousness because of his nervousness. His heart rate increases and his body starts shaking. To escape his worries, Subodh keeps a wet cloth on his eyes while sleeping and also uses substances. He takes sleeping pills and other drugs without prescription in order to sleep. When he wakes up, his muscles tense, his body goes numb and dizziness takes over. He feels lost and gets irritated easily. In prison, Subodh has a terrible backache, but the cause is unknown and the doctor prescribes medicine without inquiring much about his backache. The medicines are not of much help. The pain comes back once the effect of the medicines wear off. The poor quality of healthcare he receives in prison add to his distress. Subodh has spent seven and a half years in prison out of which three years have been on death row. As he awaits the decision of his Criminal Appeal pending in the Supreme Court, he feels helpless and has no expectations of life. He has no hope, so he does not think of the future anymore. Subodh was diagnosed with Major Depressive Disorder, Generalised Anxiety Disorder and Substance Use Disorder.

Sometimes, I feel suffocated. I fear someone is going to step on my neck and kill me.—Damodar

SOMATIC SYMPTOMS AND POOR PHYSICAL HEALTH

Somatic symptoms, i.e., unexplained aches, are a characteristic feature of Major Depressive Disorder and Generalised Anxiety Disorder and manifest as body aches including back pain, headaches, and joint pains that cannot be traced to a specific physical injury or cause. Being unidentifiable, they become another source of distress and further add to the sense of deterioration. While being a characteristic feature they also increase the risk of Major Depressive Disorder and Generalised Anxiety Disorder. Many death row prisoners spoke about having aches for which they could find neither explanation nor cure. Those who sought treatment for it in prison often reported not being taken seriously because the stigma of being on death row permeates through interactions with the prison healthcare providers. For death row prisoners, this is a difficult experience. Their worries are dismissed as

aches and pains without cause and because the complaints come from a stigmatised population they are taken even less seriously.

DAMODAR'S life in prison has been enveloped by the threat of the death penalty. He was diagnosed with Major Depressive Disorder, Generalised Anxiety Disorder and Intellectual Disability. He was also diagnosed with PTSD.

Damodar sleeps with the constant fear that someone will step on his neck and kill him, often leaving him gasping for air and with chest pains. Sleeping for only four hours, he stays up at night thinking of the noose around his neck. He dreams of his death by falling down the stairs and into the flowing water or the execution process itself.

There are several other manifestations of his poor mental health. His hands and limbs freeze and he gets dizzy, due to nervousness. Memory loss impacts his everyday life; forgetting the location of his barrack or his slippers are common occurrences. His pain-relieving techniques include banging his head against the wall and other forms of self-harm.

Damodar has often fallen sick in prison and has almost always experienced a worsening of his anxiety symptoms. Despite such incidents, the doctor often asks him to leave without a check-up. The absence of any support system within and outside prison contributes to his distress. He mentions that no one in prison understands him and no one outside visits him. During his four years as a death row prisoner, he was convinced his death by hanging is inevitable.

Damodar's sentence was commuted in 2018 to life sentence without possibility of release for a term of 18 years. He does not have the noose of death hanging over him anymore.

I have had a tongue problem for the past one and a half years, which hurts when I breathe. The doctor did not give me any details, just told me to apply an ointment but that doesn't give me any relief. Doctor said it will take time for it to go away. While the doctor does come twice a week, he does not check what is wrong with us, he just gives us medicine. They treat me differently from other prisoners, they do not even talk properly. When I showed him my parchi (prescription) and tried to tell him my problems, he threw it away. I fear this might be cancerous because of the burning sensation.—Lambodar

SLEEPLESSNESS AND SLEEP DISTURBANCE

Describing his sleeping habits, Vasav, who has now been acquitted and was diagnosed with Persistent Depressive Disorder said, "At night, there's always a light on in the barracks, and sometimes people scream out of stress. It becomes tough to sleep." Sleep disturbances and sleeplessness often accompany a person's experience of stress. Continuous exposure to stressful experiences has a cyclical interaction with sleep. The stress interferes with sleeping patterns while the disruption of sleeping patterns leads to further stress. It disallows a person from settling down, creating continuous psychological and emotional turbulence. As a result, most prisoners were prescribed sleeping pills to help them sleep. However, pills do little to address the underlying psychological and emotional reasons which contribute to their sleep disturbances. Many prisoners turned to substance use to help them sleep. Amarnath, a prisoner diagnosed with Substance Use Disorder said, "I have one beedi every night before sleeping. It helps me become calm and comfortable and helps me forget these problems [about the punishment]. I can also eat better with this."

When I was sleeping at night, I dreamt of a snake. It felt so real that I thought it would start crawling on me. I screamed after that. The snake was like the one that eats human beings [comparing the snake to an anaconda which he saw many times on the prison T.V.].—Datta

DIYA gets depressed every time she thinks about her life in prison and how or when she might get out. Her distress is severe and she has contemplated suicide. The continuous mental and physical torture she has endured as a death row prisoner for the past three and a half years has considerably impacted her mental health and personality. She was diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder.

Diya has also been experiencing some memory loss. She is unable to remember stories and news she read about an hour ago. She also believes that she has become slower in performing her daily chores and has lost her ability to focus on things. She is now easily irritated when someone tries to talk to her and does not feel like responding.

A girl wanting to live life to the fullest, on most days Diya now likes to keep to herself and be alone, with anxiety and fear as her constant companions. She becomes numb with fear upon receiving a call from home, afraid that some problem would have arisen. After laying down, she spends over an hour pondering over the hardships faced by her family due to this case. All this overthinking gives her severe headaches on a daily basis, so much so that she thinks a vein will burst.

Upon closing her eyes, she sees strange and disturbing images due to which she is unable to sleep well. The events of this case have made Diya lose faith in people. Waiting for the Supreme Court to hear her case, she is mentally exhausted and has given up all hope. Her only wish is to be able to go back to her parents.

In our sample, sleep disturbance was positively correlated with Major Depressive Disorder (p value = 0.000) and negatively correlated with the risk of substance use (p value = 0.108). Of the 30 prisoners diagnosed with Major Depressive Disorder, 20 had problems related to sleep.

HOPE AND HOPELESSNESS

I am trapped here. My mother tells me that she would have come to meet me if it was possible. I want to live after my release from here. I have to look after my mother. I can't say if it will be a life term here.—Balasubramaniam

Living under the sentence of death creates a complex psychological state for prisoners where there is a constant push and pull between hope about their own future and their families, and hopelessness about their current lives and a worry about their families. Often these co-exist. Urvi, hopeful about his acquittal and being reunited with his family, nonetheless said, "I have lost, I am broken now. I have lost all hope." As happens with depression and anxiety, there is a yearning to break free of the cycle and yet, it is overshadowed by the helplessness to do so. Some prisoners want to cut off any memory of their families and their lives before prison. Some cope with it in a more spiritual manner, invoking the duality of the body and the soul. Ruminative thoughts about a grim future and a simultaneous yearning for a less dark future while being weighed down by despair and powerlessness is the state in which many prisoners find themselves in.

I don't think of my life anymore. I can't see a future. My mind remains adrift, thoughts keep intruding. I think about my family. My mother doesn't eat food, I think about these things and I cannot sleep. It has been five years.... —Drupad

I think about a lot of things. My body lives here but my soul lives with my family. I think about my son and my family. That is how I am able to sleep. —Chaitanya

SUBSTANCE USE

Maladaptive coping is an unhelpful form of coping with distressing and anxiety-inducing situations. Such coping mechanisms may provide relief for a short time but in the long run are unhelpful. They also often mask the symptoms of disorders like Major Depressive Disorder and Generalised Anxiety Disorder. Once the substance use ceases, the symptoms are noticeable as it fails to address the underlying contributors of the disorder, creating additional complications.

MADHUKAR used to chew betel leaves previously. However, he can no longer afford that. He instead smokes a bundle of beedis every day to relieve stress in prison. His heavy smoking has put him at high risk of heart problems, as per the prison doctor. However, unable to cope with his sadness, he has continued smoking.

Without his regular pack of beedis, weakness, nervousness and headaches plague Madhukar. His intense sadness at being in prison led him to attempt suicide.

Before being acquitted by the High Court in August 2017, that is one month after the interview, Madhukar had already spent around 17 years in prison out of which around half had been on death row.

Most of the prisoners who were diagnosed with Major Depressive Disorder and Generalised Anxiety Disorder used to consume substances before their incarceration. Sanath who developed a hearing problem in prison and was diagnosed with Substance Use Disorder reported, "Whenever I am tense and worried, I chew tobacco. Doctors told me that by thinking more about all these things my chest pain is increasing and advised me not to think so much." About his pattern of substance use, another prisoner, Madhukar, diagnosed with Substance Use Disorder, said, "After I came to prison, I got habituated to beedis. I take a bundle to release stress." On the other hand, Aijaz, who was diagnosed with Major Depressive Disorder, described the need for substance use to deal with stress, "Before coming here, I used to smoke two packets daily but now I sometimes desire to smoke but it is not available here." This is also what may explain the negative correlation between risk of Substance Use Disorder and the risk of depression (p value = 0.041) and anxiety (p value = 0.014), as screened on the DSM-5 Screener. Substance Use Disorder was also positively correlated with time spent in prison (p value = 0.002). The continued presence of stress leads to continued use of substances due to the absence of more helpful means to deal with the stress and the lack of active engagement that may alleviate stress.

SUICIDALITY

Many death row prisoners had contemplated suicide, either actively or passively by wanting to die sooner than later. A few had attempted to die by suicide. Suicide and its ideation are complicated phenomenon, where a single cause remains elusive. It is certainly not an easy way out for the prisoners. While few death row prisoners spoke about wanting to die when they got the death sentence, it was life under the sentence of death that to many more was painful and dark.

The physical and psychological violence of being on death row, a barely present support structure, feelings of shame for being a burden on their families, and the intense loneliness all form a part of and contribute to prisoners' suicidal thoughts and attempts. Desperate to die, they are equally desperate to live for their families and be near them. It is not the end of the road that proved to be difficult, it is the never-ending and ever winding road to hope that prisoners found most agonising.

In our sample, suicidal ideation in the two weeks prior to the interview was positively correlated with Major Depressive Disorder (p value = 0.001).

SACHCHIDANANDA has often thought about suicide, driven, many times, by his worry for his children. "I feel like hanging myself... I am unable to care for my children." The police threatened to book his family if they came to visit him, leaving him bereft of any support. The luxury of a phone call is denied to him due to lack of money. The option of writing a letter is also not possible as he doesn't know how to write. He yearns to go back to his family and take care of his mother. He once dreamt that he had gone home with clothes for his children and played with them. He has forgotten what they look like, apart from the eldest daughter. Meeting them once would mean a year of happiness to him, although the slim chances of such an event taking place scare him a lot. The constant worry makes it difficult for him to sleep, even when he takes sleeping pills. He also has blood pressure issues and if he does not take his medicine, he loses consciousness. Sachchidananda was physically assaulted and faced abuse and stigma from his fellow prison inmates because of the crime he was accused of. He admits having thoughts about ending his life whenever he thinks about the case, indicating the distress caused by it.

Sachchidananda was diagnosed with Major Depressive Disorder. He has spent nine years in prison out of which five have been on death row. He was acquitted in December 2017.

A Few Rays of Hope

Almost universally, prisoners showed signs of distress. However, even in this darkness, for some prisoners, there was some kindness and hope that shone through the cracks.

DATTA was extremely interested and willing to engage in conversation with the interviewers. He mentioned that only after moving to the Central Prison did he learn what the death penalty meant. He contemplated suicide but was dissuaded by another inmate, who he considers his mentor. It was due to this mentorship that he started studying as a way to alleviate some of the tension associated with his punishment. Not having attended school due to his family's poor financial condition, Datta discovered his interest in learning when he came to prison. At the time of the interview, he was filling in the forms for his Class 12 papers. Within three months, Datta learnt to read newspapers in Hindi (earlier he could only understand his native dialect) and now studies English as well. He attributes this "mental balance" to his newly learnt rule-abiding behaviour. He does not get angry or upset over small things anymore, a marked difference from his earlier self. Regardless of the adjustment, sometimes Datta's thoughts spiral out of control, causing him nightmares and interrupted sleep. Every time he is shifted to a new barrack, a familiar anxiety confronts him, manifesting as a rapidly beating heart, shivering, sweating, and shortness of breath. Datta misses his family, but understands that since they live so far away, mulaqaat is not possible. He is also apprehensive because he does not want them to see him in his prisoner's uniform. He, however, looks forward to his mother's calls, so he can speak with her for the allotted 5-7 minutes.

Datta was diagnosed with Major Depressive Disorder. He has spent five years in prison, out of which four were on death row. The Supreme Court remanded his case to the trial court in 2019.

One prisoner who was very young when he was incarcerated, narrated his initial days of despair before he met a fellow death row prisoner, who became a spiritual guide of sorts to him. Dependent on him for advice, the young death row prisoner started looking to his elder as a mentor. Being in prison has provided to him a structure that he lacked as a child. It has given him the opportunity to "talk and think like a person", unlike his earlier self, which he describes as an "animal". This is also an incredible story of rehabilitation of a person who as a child and adolescent lacked all opportunities and socio-economic support, but when provided with an avenue grabbed it as an opportunity that society had never presented him with. Datta still has dark thoughts and prefers that his parents don't see him in a prisoner's garb, but as he put it, "he now knows what it is to be a man".

Sachchidananda has contemplated killing himself but found some support among prisoners. He spoke about the kindness of other death row prisoners. He narrated, "Other inmates with the same punishment consoled me. They also said that if I needed something, they would get from their family members. They were the ones who told me about the appeal process."

Another prisoner, who has a serious mental illness and has been on psychiatric medication for years, gets help and care from prison officials who help him with his medication and comfort him when he is not feeling well.

They give me balance. They tell me to not be tense. They give me courage. They also let me talk on the telephone.... The prison officials are very good. If they get transferred, what will I do? I am anxious about that, I remain tense. —Rivan

Unsurprisingly, prisoners who had even a semblance of support from other prisoners and prison officials tended to fare better than those who had little to no support inside prison.

To be clear, these were not superlative gestures, but acts of kindness and gentleness that one would expect of anyone. For death row prisoners, though, these were acts of a lifetime of gratefulness.

CHAPTER VI

INTELLECTUAL DISABILITY AND THE DEATH PENALTY— A KNOWN UNKNOWN

This chapter is a first of its kind exploration into intellectual dis ability and the death penalty in india. For none of the prisoners who were diagnosed with intellectual disability was their disabil ity recognised or addressed at any level of the judicial process, right from the stage of investigation, to trial, and through the

appellate process. In the case of three prisoners, their mercy petition was rejected without their disability ever having been brought to light.

The issue of intellectual disability is important to criminal law because it speaks directly to some of its core facets, such as culpability vis-a-vis the crime as well as the blameworthiness of the accused to be sentenced to the harshest punishment. The extent to which the disability impacts decision-making pathways and judgment formation, when needs are unsupported, become particularly relevant in determining the blameworthiness of the accused. The increased vulnerability of persons with intellectual disability to coercion in police custody, the hurdles they face in interacting with their lawyers and the trial processes make them extremely vulnerable to victimisation in criminal law processes. It therefore has special significance to the death penalty sen tencing framework in india.

The findings presented in this chapter also have important policy implications vis-à-vis the implementation of guarantees under the Rights of Persons with Disabilities Act, 2016 within the criminal justice system. It highlights the need for devising support systems for persons with disability, including intellectual disability, in order for them to meaningfully realise their right to access justice, while ensuring that principles of criminal law and criminal trial are not compromised. Given the vulnerabilities, persons with intellectual disability are at high risk of facing an unduly harsh criminal justice system.

The chapter first explains the meaning and implications of intellectual disability followed by the legal framework for persons with intellectual disability. We then present our research findings. This chapter briefly touches upon different and associated fea tures of the disability and barriers that persons with intellectual disability face in their day-to-day functioning, particularly within the criminal justice system. The chapter explains the multiple vulnerabilities and risk of victimisation through detailed profiles of death row prisoners with intellectual disability.

The Evolving Understanding of Intellectual Disability

The social and legal response to persons with intellectual disability (ID) has evolved over time, both in the understanding of and approach to issues of ID. Various iterations have been formulated over the years before culminating into the contemporary perspective on ID, which relies, equally, on intellectual as well as adaptive functioning. Adaptive functioning which refers to the skills that the person learns and performs to meet society's expectations of social responsibility and personal independence has been an important addition to the understanding of the disability.

Historically, persons with ID have been discriminated against and considered inferior to persons without ID. Labelled as idiots/imbeciles/feebleminded, they were considered as individuals with little or no ability to reason and think and impaired in their capacity for meaningful engagement in and with societal roles. The construct was also expressed in terms of the 'mental age' of the person. A more recent, though still outdated, terminology is mental retardation. These terms, however, solely focus on the mental and internal capacity of the individual and have now fallen into disuse[1]. The shift away from the focus on the individual is not accidental or without meaning, i.e., it is not just a change in terminology. The construct of disability is a reflection of and encompasses a contextual approach involving social settings and individual capacities. It is a reflection of both the "construct of disability and the multidimensionality of human functioning"[2].

In Indian law, apart from the Rights of Persons with Disabilities Act, 2016, the outdated terminology in various legal texts has continued. For instance, jurisprudence on the insanity defense continues to rely on the construct of an idiot, and defines an idiot as a person "who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like"[3]. The definition has been taken from texts dating back to the 18th Century. The Criminal Procedure Code makes reference to mental retardation, even while not defining the term[4]. The Special Marriage Act, 1954, requires a declaration that the person entering into marriage is not an "idiot or a lunatic"[5]. Even while governing our contemporary lives, these, and many more laws, rely on extremely outdated and problematic understanding of ID and adopt an approach of exclusion towards persons with ID.

The contemporary construct of ID while continuing to rely on intelligence, ensures equal focus on the social surrounding of the individual and the compatibility of these surroundings with the support needs of persons with ID to enhance individual functioning[6]. The DSM-5 has imbibed these ideas in defining ID as constituting deficits in intellectual as well as adaptive functioning.

The Contemporary Scientific Understanding of Intellectual Disability

ID is defined by the DSM-5 as "a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains"[7]. The DSM-5 requires three criteria to be met in diagnosing ID. Criterion A identifies deficits in intellectual functions such as reasoning, problem solving, abstract thinking, academic learning, or learning from experience. Criterion B outlines deficits in adaptive functioning because of which individuals may be unable to meet developmental and sociocultural standards for personal independence and social responsibility across multiple environments, such as home, school, work, and community. Adaptive functioning deficits can be seen in one of three domains, conceptual, social, or practical—these will be defined in depth later in this chapter. A deficit in any one, or combination, of these three domains is sufficient for meeting criterion B. Finally, criterion C requires that the onset of intellectual and adaptive deficits must be during the developmental period[8].

ID may be reported by a clinician as being mild, moderate, severe, or profound depending on the deficits in adaptive behaviour, providing indicators for the level of support that may be required[9]. Equal weight should be given to both adaptive behaviour and intellectual functioning when diagnosing ID. Any deficits in intelligence and adaptive behaviour are measured using standardised tools and assessed using clinical judgment with a focus on important personal factors such as environmental, social and educational to effectively diagnose individuals with ID.

Intellectual Disability is a disorder with onset during the developmental period that includes deficits in both intellectual and adaptive functioning, in any one or a combination of conceptual, social, and practical domains. Equal weight must be given to deficits in intellectual as well as adaptive functioning when diagnosing the disability.

■ INTELLECTUAL FUNCTIONING

Intellectual functioning is defined as intelligence or 'general mental capacity'[10]. It includes reasoning, planning, solving problems, thinking abstractly, comprehension, and learning from experience[11]. These aspects of intellectual functioning make up what is known as fluid intelligence[12]. There is also a facet of intelligence called crystallised intelligence, which accounts for an individual's knowledge-based ability that is dependent on their social experiences, education, and acculturation. Crystallised and fluid intelligence together account for general intelligence which is used as a comprehensive measure of overall intellectual functioning[13].

MEASUREMENT

Intellectual functioning can be measured by standardised psychometric tools such as the Wechsler Adult Intelligence Scale 4th edition (WAIS-IV). The WAIS-IV measures intelligence and cognitive ability in adults and older adolescents by testing different aspects of intelligence and providing an intelligence quotient (IQ)[14]. The full-scale IQ score is compiled from four subscales: Verbal Comprehension Index, Perceptual Reasoning Index, Working Memory Index, and Processing Speed Index. The WAIS-IV, released in 2008, was the latest test available to measure intellectual functioning. Its precursors include the WAIS-III, released in 1997, WAIS-R, released in 1981 and WAIS, which was released in 1995. Another common test to measure intelligence is the Stanford-Binet test.

■ ADAPTIVE BEHAVIOUR

The other factor in diagnosing ID is adaptive behaviour which is defined as skills in the conceptual, social, and practical domains of functioning[15]. These skills allow people to have social and personal self-sufficiency in society, without which people would face barriers in various aspects of daily functioning such as money management, engagement in skilled labour, or effectively communicating with people[16]. Recognising the significance of these skills and the implications of a deficit, the American Association on Intellectual and Developmental Disabilities (AAIDD) introduced in 1961, for the first time, deficits in adaptive behaviours as a diagnostic criterion for ID[17]. The DSM-2 followed in the path of the AAIDD and continues, to this day, to define ID according to these three criteria: intellectual functioning, adaptive behaviour, and age of onset.

Soon after the AAIDD's inclusion of adaptive behaviour, researchers identified 10 adaptive behaviours as significant in diagnosing ID, which were then collapsed and categorised into three domains: conceptual, practical and social skills[18]. As researchers studied adaptive behaviours after studying intelligence, people incorrectly assume that adaptive behaviours are a secondary diagnostic criterion for ID[19]. However, adaptive behaviours are a crucial determinant of overall functioning and adjustment in those that have ID and a diagnosis for ID based only on IQ measures would not reflect the construct of a disability that spans both intelligence and daily functioning[20]. In fact, support needs for those with ID are largely determined by deficits in adaptive behaviours. Deficits in the three domains of adaptive behaviour, conceptual, social and practical domains, often overlap but also have certain distinct features.

Conceptual Domain: Deficits in the conceptual domain may manifest as challenges in short-term memory or developing academic skills when there is a mild deficit in the observed adaptive behaviour. As deficits increase in severity, children may fall behind

on their expected reading, writing, and mathematics ability while adults may struggle with written language or concepts involving time or money.

Social Domain: Those with deficits in the social domain may not accurately perceive others' emotions. They may be unable to behave in an age-appropriate manner or make appropriate social judgment. This can lead to individuals being manipulated by others, undertaking risky activities without understanding their full consequences, and ostracised in social situations. Any relationships formed by individuals with deficits in this domain are affected by communication limitations. With severe deficits in adaptive behaviours in the social domain, individuals may be unable to communicate using spoken language and primarily use gestures and emotional cues to respond to social interactions.

Practical Domain: Deficits in this domain affect the daily functioning of individuals and impair their ability to do tasks such as cooking, shopping, making legal decisions, or performing a skilled vocation. As deficits increase in severity, individuals will likely need an extended period of teaching and training in order to care for personal needs such as eating, dressing, and hygiene. Those who experience severe deficits in the practical domain require supervision at all times, and will need long-term teaching and ongoing support to utilize any practical skills[21].

MEASUREMENT

The DSM-5 requires that adaptive functioning be assessed "using both clinical evaluation and individualised, culturally appropriate, psychometrically sound measures"[22]. The best practise for studying and measuring adaptive behaviour is to (1) assess an individual's adaptive behaviour in the context of their age group and culture, (2) use a standardised scale that has been normed on the relevant population, and (3) seek corroborative information that can support the details obtained from the standardized assessment[23]. Where possible, it is also important to use corroborative sources of information such as educational, medical, and mental health records. Some widely used standardized measures for adaptive behaviour are: Adaptive Behaviour Assessment System and the Vineland Adaptive Behaviour Scales. When standardised tests are not available or cannot be administered, clinicians can assess deficits in adaptive behaviour through family informants, oral family history, school records, medical records, employment history, and any other relevant mental health records. Clinicians must depend on their clinical analysis and discretion while looking at the information collected through these collateral sources to make an informed and accurate diagnosis of ID[24].

TABLE 6.1

Examples of deficits in adaptive behaviour in conceptual, social, and practical domains, with varying severity levels per the DSM-5

Severity level	Conceptual domain	Social domain	Practical domain
Mild	Difficulties in learning academic skills, time and money for school-age children and adults; impairment in abstract thinking, executive function, such as planning and strategizing, and cognitive flexibility	Immaturity in social interactions and social judgment; limited understanding of risk; risk of being manipulated (gullibility); difficulty in regulating emotions and behaviour in an age-appropriate manner	Support required to perform complex daily living tasks, make judgments related to well-being, take healthcare and legal decisions, learn a skilled vocation competently and to raise a family.
Moderate	Slow progress in academic skills such as reading, writing, mathematics, and understanding of time and money compared to that of peers; support is required to use academic skills to complete conceptual daily tasks and responsibilities may have to be taken by others	Have the ability to form relationships but may not have an accurate perception of social cues and during adolescence friendships may be limited; due to limited social judgement and decision-making skills, assistance is required with life decisions	Can become independent with extended teaching; require help in taking care of personal needs like eating, dressing, hygiene, and participating in household tasks as an adult; independent jobs that require limited conceptual and communication skills can be achieved with considerable support to manage social expectations, job complexities and money management
Severe	Limited understanding of written language or concepts involving numbers; extensive support required for problem solving throughout life	Limitations in spoken language; speech is limited to the 'here' and 'now'; can understand simple speech	Support required in all forms of activities of daily living, including as an adult; may resort to maladaptive behaviour, including self-injury
Profound	Conceptual skills generally involve the physical world rather than symbolic processes; certain visuo-spatial skills such as matching based on physical characteristics may be acquired	May understand simple instructions; limited understanding of symbolic communication; self-expression is through nonverbal cues	High support needs for everyday tasks, including physical care and safety; co-occurring physical and sensory impairments are frequent barriers to participation in home, vocational or recreational activities

■ AETIOLOGY OF INTELLECTUAL DISABILITY

Intelligence and adaptive behaviours develop throughout an individual's life, often with childhood origins[25]. Research on the aetiology of ID has largely focused on the biological or genetic origin of deficits in intelligence or adaptive behaviour[26]. However, a purely genetic approach to understanding aetiology is insufficient. Studies have shown that those with ID can have genetic influences as well as acquired influences that may develop over the course of an individual's life[27]. There are many possible origins of ID and its development is likely a result of a variety of factors including genetics and other lifetime influences.

There are factors that may impact an individual's development during the prenatal, perinatal and postnatal periods of their life thus increasing their risk for ID. During the prenatal stage, behavioural risk factors such as parental drug use or social risk factors like poverty could indicate risks for development of ID. Conditions such as hypoxia, premature birth and birth injury during the perinatal stage can also lead to increased risk for ID. Postnatally, social factors such as poverty and inadequate special education services are considered risks for developing ID[28].

Intellectual Disability in Criminal Law

The Rights of Persons with Disabilities, 2016, (RPWD) which gives effect to the Convention on Rights of Persons with Disabilities is the governing legislation reconciling the special vulnerabilities of persons with disabilities with India's obligation to ensure their effective and meaningful participation in all spheres of life; political, public and personal. In line with contemporary understanding and the definition mentioned in the DSM-5, ID is defined under the 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"[29].

Of particular relevance is Section 12 of the RPWD on access to justice, which requires reasonable accommodation and support to be provided to persons with disabilities, in accessing the justice system, including courts[30]. In conjunction with procedural and substantive criminal law, this would mean equipping the criminal justice system as a whole to respond to and accommodate the needs of accused persons with ID within the investigative and judicial processes to ensure that the guarantees of a fair criminal trial are met. It requires the state to actively take into account the unique vulnerabilities of accused persons with ID during investigation and trial, including while judging culpability at conviction and assigning responsibility during sentence determination.

In so far as criminal law is concerned, the CrPC provides for the closure of inquiry as well as of the trial, where the magistrate or the court finds that the accused has ID (referred to in the CrPC as mental retardation) and is incapable of entering a defence[31]. However, the lack of guidelines, within statute or case law, regarding the process of identification of ID and adjudication of the threshold which would make a person eligible for the protection intended by the sections, makes it difficult to ascertain whether all accused persons with ID would be afforded this protection and if not, then the degree of impairment in intellectual as well adaptive functioning that would make a person eligible for this protection.

Substantive criminal law, however, remains bereft of any indication of how ID would be treated in case the disability does not reach the threshold of being unfit to stand trial. Further, due to their vulnerability to victimisation and the need for support in unfamiliar and stressful situations, ensuring support for persons with ID at the investigation stage is crucial, but current practice and jurisprudence are silent on the need for support during this phase of the criminal justice system.

■ INTELLECTUAL DISABILITY AND THE DEATH PENALTY

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"[32]. Mental defects or mental deficiencies are what is today known as ID[33]. Despite the explicit reference to the presence of mental defect at the time of offence, the discourse and treatment of ID is conspicuous in its absence. There might be a few reasons for it, including, lack of documentation regarding the disability, lack of awareness among legal professionals, 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.

While according to the Indian sentencing framework, ID would be a mitigating factor, in international jurisprudence, there exists a bar against the imposition and execution of the death sentence on persons with ID. The UN, for instance, has repeatedly called for the prohibition on the imposition on and execution of the death penalty on persons with mental and intellectual disabilities[34]. Guidance can also be taken from the death penalty jurisprudence developed by the US Supreme Court, where the treatment of ID has progressed from its consideration as a mitigating factor to a categorical prohibition on the imposition of the death penalty on persons with ID.

In one of the early cases, the US Supreme Court considered ID as a mitigating circumstance. The Court held that "mental retardation is a factor that may well lessen a defendant's culpability for a capital offence"[35]. It also acknowledged that someday the "evolving standards of decency" may require a prohibition on the execution of persons with intellectual disability[36]. In reaching its conclusion the Court considered the common law prohibition against punishing 'idiots' who lack the ability to form criminal intent and distinguish right from wrong, i.e., persons who at the time the case was decided were considered to have severe or profound mental retardation[37]. It is important to note that the court's understanding of ID was in line with the scientific discourse at that time. As the scientific understanding evolved, so did the Court's jurisprudence.

In 2002, in *Atkins v Virginia*, the US Supreme Court put a categorical bar on the imposition of the death penalty on persons with ID[38]. The Court held that while persons with ID may be able to distinguish between right from wrong, impairments in cognition and behaviour reduced their moral culpability, making them a class of people who are not the most deserving of the death penalty. The Court also asserted that executing persons with ID would fulfil neither the retributive nor the deterrent purpose of the death penalty[39]. Importantly, the Court commented on the disadvantages that persons with ID face in the criminal justice system in terms of the possibility of giving false confessions, inability to provide meaningful assistance to their counsel, their conduct being conflated with lack of remorse, and ultimately the "special risk of wrongful execution"[40].

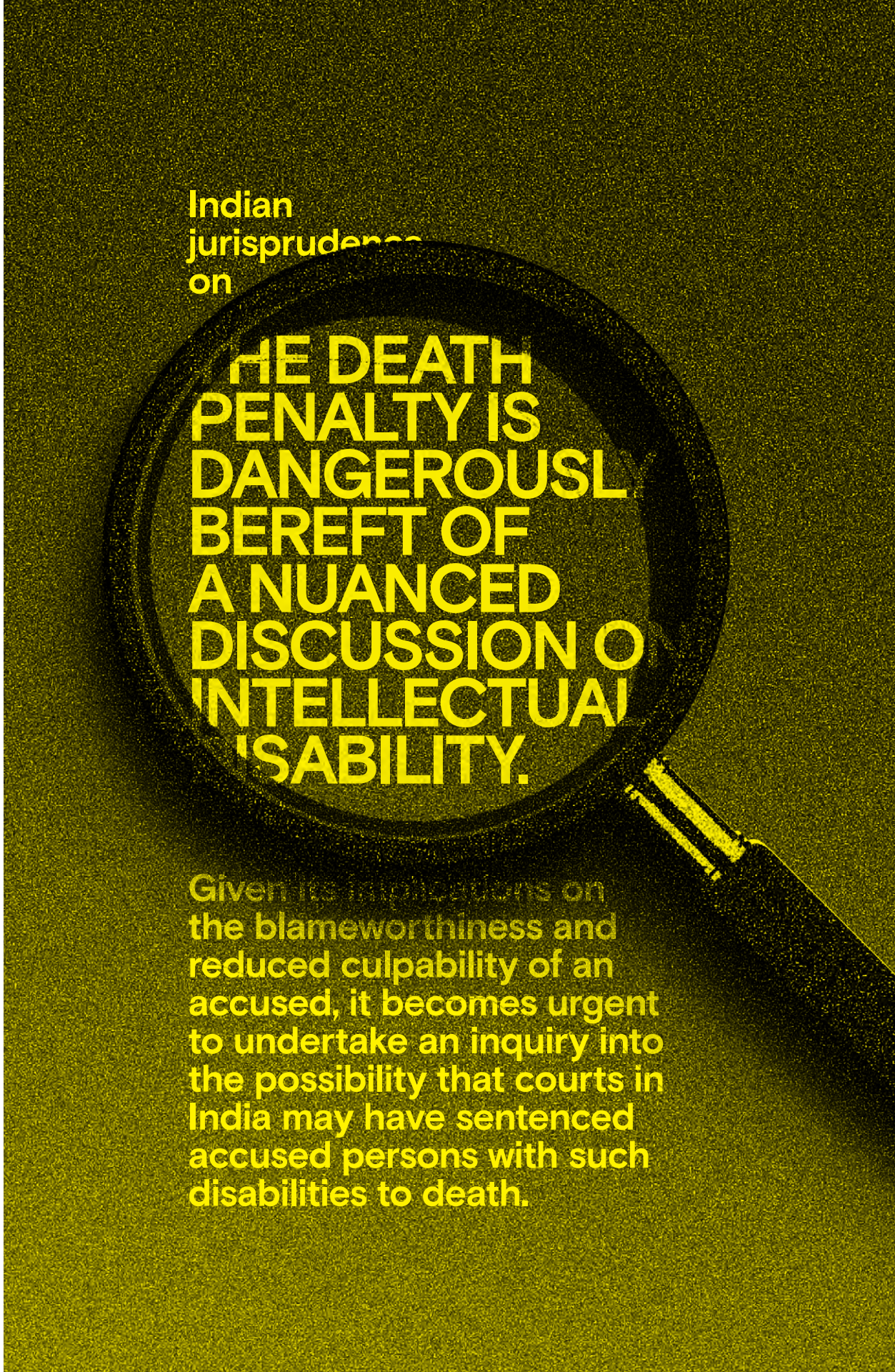
The risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty, is enhanced, not only by the possibility of false confessions, but also by the lesser ability of mentally retarded defendants to make a persuasive showing of mitigation in the face of prosecutorial evidence of one or more aggravating factors. Mentally retarded defendants may be less able to give meaningful assistance to their counsel and are typically poor witnesses, and their demeanour may create an unwarranted impression of lack of remorse for their crimes.... Mentally retarded defendants in the aggregate face a special risk of wrongful execution.

Atkins v Virginia, 536 U. S. 304 (2002) 320-321

Relying on the DSM-5, in 2014, the US Supreme Court, in *Hall v Florida*, recognised ID as a condition rather than "a number" and emphasised the need for looking at adaptive behaviour in addition to an IQ score. Agreeing with medical experts, it rejected a bright line standard of an IQ score of 70 to determine ID as this rigidity disallowed the consideration of deficits in adaptive behaviour[41]. In 2019, the Court further clarified that in line with the understanding by the medical community, courts have to consider *deficits* in adaptive behaviour rather than *strengths*[42]. In the same case in a prior judgment, the Court had held that courts have to look at the established contemporary medical practice rather relying on lay stereotypes[43].

Indian jurisprudence on the death penalty is dangerously bereft of any such discussion. Given its implications on the blameworthiness and reduced culpability of an accused, it becomes urgent to undertake an inquiry into the possibility that courts in India may have sentenced accused persons with ID to death. This is yet another reason for courts to demand and undertake a comprehensive inquiry into the life history of the accused and ensure that persons who are not deathworthy do not get sentenced to death.

It is in this context that our findings assume importance. As the findings show, Indian courts have, in fact, sentenced accused persons with ID to death. There is a category of prisoners living under the sentence of death, who should not have been sentenced to death in the first place.



Intellectual Disability and Death Row Prisoners

Research on mental health concerns of prisoners in India has largely focused on issues of mental illness among the general prison population. Intellectual disability has so far been a largely ignored issue in prison research in India. In the community population however, the study conducted by NIMHANS and the Government of India found that the pooled prevalence of ID from the 12 states in which the study was conducted was observed to be 0.6%[44].

Though there is a lack of research data on ID in the Indian prison population, there have been studies conducted in prisons outside the country. A systematic review of 10 surveys conducted in four countries found that typically 0.5–1.5% of prisoners were diagnosed with ID[45]. With respect to prisoners sentenced to death, a retrospective review of prisoners in the US, including 18 death row prisoners, found that 28% of them had ID[46]. A review of studies conducted on death row inmates in the US found that the mean IQ scores of the death row population were in the average to low average range and that a significant minority of death row prisoners had marked intellectual limitations[47]. Another study which sought to evaluate the competence of death row prisoners to waive their right to counsel found that 42% of the 44 prisoners interviewed had IQ scores of 79 or lower[48].

Our findings are similar, in so far as a significant minority of death row prisoners were diagnosed with intellectual disability, with a majority of prisoners with IQ scores (PRI) below the range of borderline intellectual functioning.

■ PROCESS ADOPTED FOR ASSESSMENT OF INTELLECTUAL DISABILITY

Of the 88 death row prisoners interviewed, five did not give consent to the test for assessing their IQ score and were therefore excluded from the determination of ID.

The Wechsler's Adult Intelligence Scale – IV (India Norms) [WAIS-IV] (available only in English at the time of fieldwork) was administered for assessing intellectual functioning. The test provides for four subtests along the domains of verbal and comprehension skills, working memory, perceptual reasoning and processing speed for calculating a Full-Scale Intellectual Quotient (FSIQ). However, as a majority of the prisoners had low literacy levels and were not fluent in English, the test for Perceptual Reasoning Index (PRI) was relied upon. The scoring manual of the WAIS-IV (India) states that the PRI can be given greater weight as a meaningful estimate of an individual's intelligence and cognitive abilities in instances where the test is administered to someone who is not fluent in English[49]. The PRI is also the highest factor loading component for overall general intelligence, and is a sufficient statistical measure of overall general intelligence[50]. While there are other tests, such as the Binet-Kamat test and the Bhatia Battery that are used in clinical settings in India, these tests were not used for various reasons. The primary reason for not using these tests is that these tests were standardised many years ago, and the score obtained may suffer from the Flynn effect[51]. Another reason was that they include components which require some level of education and literacy. With respect to the Binet-Kamat Test, another concern that arose was that its sample population did not include anyone over the age of 18[52]. Given the outdated norms and the profile of death row prisoners, many of whom have not had the opportunity to engage in formal education and are older than the population to which the Indian tests are normed, the decision to use the WAIS-IV (India Norms) was made.

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 presence of head injury before the age of 18 was also gathered in the course of these interviews.

The diagnosis was made after taking into consideration all the above parameters and based on clinical judgment. A PRI score in the range of 70-79 and below initiated an enquiry into adaptive behaviour. The Rehabilitation Council of India classifies people with an IQ score in and below the range of 55-69 on the Wechsler Scale and deficits in adaptive behaviour as those with ID[53]. IQ scores in and below the range of 70-79 have also been used for the purposes of determining the level of disability in India[54]. As required by the DSM-5, a deficit in any one of the domains was taken to evidence a deficit in adaptive behaviour. Presence of head injury and developmental delay were taken as supporting information and not determinative.

■ FINDINGS

Nine out of 83 prisoners (approximately 11%) were diagnosed with ID. While this number is significant in itself, it is also important to note that 63 out of the 83 prisoners were found to have low intellectual functioning. Both ID and low intellectual functioning are vulnerabilities which put individuals at risk of different kinds of harm, including in the criminal justice system. 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.

DEFICITS IN INTELLECTUAL FUNCTIONING

63 prisoners had low intellectual functioning, i.e., their IQ scores fell within the range of 70-79 and below. 19 prisoners had borderline deficits in intellectual functioning (IQ Range 70-79), 32 prisoners

with mild deficits in intellectual functioning (IQ range 55-69) and 12 prisoners had moderate deficits in intellectual functioning (IQ range 40-54).

For people with borderline/low intellectual functioning deficits impact crucial skills such as reasoning, judgment formation, abstract thinking, and decision-making[55]. Research shows that people with borderline intellectual functioning also demonstrate significant deficits in executive functioning[56], which includes working memory, planning and problem solving. As the individual transitions into adult life, they may not be able to accomplish complex activities such as engaging in skilled employment without the assistance of family members, co-workers or supervisors[57].

Environmental factors play a critical role in the development of intellectual functioning and exposure to adverse social and economic environments during the developmental period has been found to be a risk factor for deficits in intellectual functioning. Adversities which are inherent in poor socio-economic backgrounds such as lack of nutrition, lack of access to essential services such as education and healthcare and poor sanitation, are some environmental factors which create additional hurdles for an individual to attain their full potential, including intellectual functioning[58]. Research has also established connections between childhood abuse and neglect and low intellectual and cognitive development[59].

TABLE 6.2

Death row prisoners with low intellectual functioning (n=63)

IQ Range	No. of Individuals
110-119	1
90-109	10
80-89	9
70 - 79	19
55-69	32
40-54	12
25-39	0
0-24	0

A majority of death row prisoners belong to backward socio-economic communities, which encompasses exposure to multiple adverse experiences during their developmental stage and at the same time have had little to no engagement with opportunities that positively contribute to intellectual functioning. For instance, a strong correlation has also been found between education and intellectual functioning. While it is not clear whether low (and unaddressed) intellectual functioning leads to higher drop-out rates from schools, or education improves intellectual functioning, what is clear is that when unaddressed and unsupported, individuals with low intellectual functioning have a higher likelihood of dropping out of school early[60]. Our data supports this. Median PRI scores were negatively correlated with low education attainment, defined as education attainment less than 10 years of schooling (p value = 0.000). Median PRI score for prisoners with higher educational attainment [77 (45-108)] was higher than the median PRI scores for prisoners who had low education attainment [65 (45-115)].

Those with low intellectual functioning are also at high risk of psychiatric illnesses[61]. This is also in line with our findings – Lower PRI scores were positively correlated with, both, Generalised Anxiety Disorder (p value = 0.035), and Major Depressive Disorder (p value = 0.030).

Persons with deficits in intellectual functioning are also disproportionately represented within many prison populations[62]. Though there are multiple reasons that could explain this phenomenon, almost all reasons pertain to the vulnerability of persons with ID to be implicated in the criminal justice system. It is possible that those with low intellectual functioning are more susceptible to police coercion during interviews and may therefore divulge information that could incriminate them[63]. There is also a chance that those who may have deficits in intellectual functioning are apprehended by authorities more often than those without such deficits[64]. This leads to more convictions of individuals with low intellectual functioning who may not be able to understand convoluted details of the court proceedings[65] and are therefore vulnerable to longer sentences than their counterparts without deficits in intellectual functioning[66].

DEATH POW PRISONERS WITH INTELLECTUAL DISABILITY

Nine out of 83 prisoners were diagnosed with ID. The average age of the nine death row prisoners diagnosed with ID at the time of assessment was 36.43 years (23.42-61 years). The average time spent by them on death row was four years, with 11 years being the longest duration on death row. Three of the 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 interview.

TABLE 6.3

Deficits in death row prisoners with intellectual disability (n=9)

S. No.	Name	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

The following section explains how these findings, such as those on education and abuse are better understood as lifelong barriers for persons with ID. As will be explained, the lack of appropriate support structures results in poorer outcomes for those with ID, particularly children. The findings with respect to death row prisoners with ID are not surprising, in as much as they are a population with no support structures and therefore these experiences and barriers will exist almost by default.

DHARMAKETU was born in the 1960s and is the oldest of three siblings. His parents were farmers and sheep herders. Dharmaketu attended school for only a few days before dropping out as he was not able to study and concentrate like his classmates. From a young age, he helped his parents in sheep farming, and as an adolescent he attempted to work in various jobs requiring unskilled labour.

Dharmaketu had a difficult childhood. He would often forget instructions. When he was asked to buy something from the market, he would often forget what he was supposed to do and simply wander off. Dharmaketu found other simple practical tasks challenging as well. His cousin reports that he would at times not bathe for weeks and was not able to maintain personal hygiene; at times, his hygiene had to be managed by his mother.

When Dharmaketu was 12, his parents took him to a traditional healer as they felt there was something wrong with his brain. Unfortunately, this did not help, and he continued to struggle with simple social and practical tasks. People were able to take advantage of Dharmaketu as everyone in the village knew that he wasn't intelligent. In one such instance, he was coerced into selling illicit liquor. He also could not make any friends and would aggravate those who interacted with him. His behaviour appeared reckless as he was unable to assess risk in various social situations. Dharmaketu's cousin reports that he had "no concept of fear" and would therefore get into altercations, even with his employers.

As a young adolescent, Dharmaketu experienced multiple incidents of sexual abuse from those in his neighbourhood and in his workplace. As a result, he experienced anxiety and sadness, and would smoke beedis and drink water to try to calm down and feel better. He also saved some money to go to a religious healer again in his late adolescence, as he experienced intrusive thoughts and began hearing voices that others could not hear. Dharmaketu was married when he was approximately 23 years old and has three children. His cousin describes him as being kind and loving towards his children. All the money earned from his odd jobs doing daily labour was given to his wife and mother. Unfortunately, Dharmaketu's mental health challenges continued after marriage and he was not able to maintain stable employment. Dharmaketu has tried to die by suicide twice, once by trying to get run over by a jeep and another time by jumping into a pond. Both times he was rescued and required serious medical attention or hospitalisation.

In prison, Dharmaketu continues to experience intrusive thoughts and hear disembodied voices, for which he has been treated. To prevent such unpleasant experiences, he keeps himself busy in prison by doing small tasks, like washing other prisoners' clothes, or praying. Currently, he cannot read, write or do simple arithmetic and experiences forgetfulness. He sometimes forgets to eat his meals and ends up wandering because he forgets what he was doing. He also experiences depression and anxiety regularly and often cries because of these feelings. Since his adolescence, Dharmaketu has expressed feeling afraid of his own brain and believes that his early sexual abuse is the root of all his current mental health concerns.

Dharmaketu's current clinical assessment indicates that he meets the diagnostic criteria for intellectual disability with mild support needs in the conceptual and social domains, and moderate support needs in the practical domain of his life. Dharmaketu's PRI score was 45, indicating moderate deficits in intellectual functioning.

Impact on Childhood Experiences: Children with ID display important characteristics as the deficits in intellectual functioning and adaptive behaviour begin to emerge. Communities that are socio-economically disadvantaged are not likely to have the resources to support children with ID. Research shows that parents of children with ID are more likely to perceive their child as displaying externalising symptoms such as, aggression, noncompliance, and poor impulse control, even though they show no unique observable behavioural problems when compared to other children without ID[67]. This shows how low the threshold is for children with ID to be perceived as problematic or disruptive, a trend which is the leading cause of children and adolescents with ID getting involved with the criminal justice system.

Criminalisation of young people with ID happens due to the lack of community and educational resources[68]. Their support needs fall on the hands of the police who are left to 'manage' them[69]. Their inability to respond to social cues appropriately or communicate effectively can make them appear as though they are delinquent or resisting the officers engaging with them. Unfortunately, after one interaction with the police, young people are more susceptible

GRAPH 6.1

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

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

to come into contact with increasing frequency[70] and are more likely to be charged for a crime when they become an adult[71]. Any deficit in adaptive functioning experienced by the young person becomes exacerbated, and results in negative interactions with an incongruent police response which can result in criminal or civil fines, arrests, detention, and conviction pushing those with ID deeper into the criminal justice system[72].

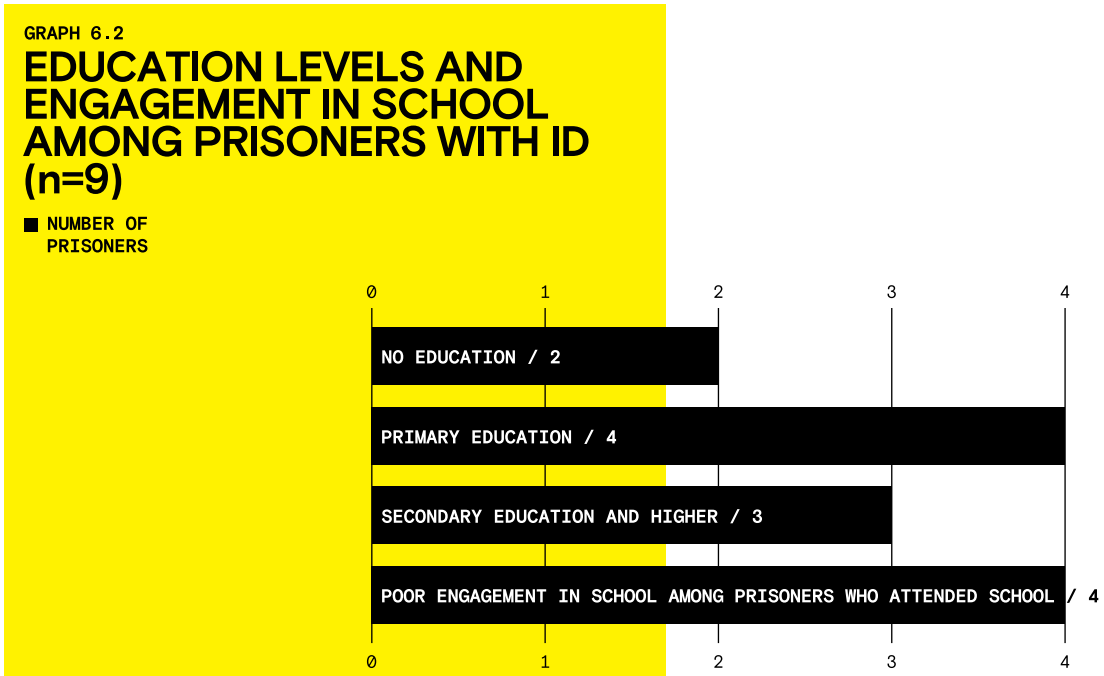
Impact on Education: Research shows that it is adaptive behaviour rather than IQ which better indicates the level of functioning in school[73]. This is likely due to the child's need to concentrate and engage with academic work, both of which are abilities which are affected by deficits in adaptive behaviour. If a child has deficits in the social domain, they might not be able to ask for help when they are unable to cope with academics, withdrawing into themselves. Alternatively, some children may act out in anger and disrupt the class with loud yelling when they are unable to communicate their needs. There are no standard signs to know which specific deficits in adaptive behaviour result in poor academic performance. Without specialised, individual support however, those with ID are likely to drop out of school or have an incomplete graduation from high school[74].

Schools with good educators and safe learning environments can provide a protective factor which can offset the challenging deficits of ID manifesting in an individual's life. Individualised instruction and alternative educational programs have shown to reduce school dropout rates[75]. This allows children with ID to continue accessing resources unavailable to them in their home communities, and remain safe from the risk of criminalisation[76].

Impact on Employment: Employment rates remain low in those diagnosed with ID[77]. Those that are able to gain employment often work sporadically and in unskilled labour such as manual labour or landscaping and yard work[78]. Those with intellectual impairments are also more likely to experience job insecurity[79]. Some hypothesise that it could be the direct impact of intellectual impairment not allowing further studies, which may bar people from joining professions that may require graduate or postgraduate qualifications[80]. However, it is also possible that lower socio-economic status and neighbourhoods lacking basic amenities, both of which are correlated with ID, may be impeding secure employment opportunities[81].

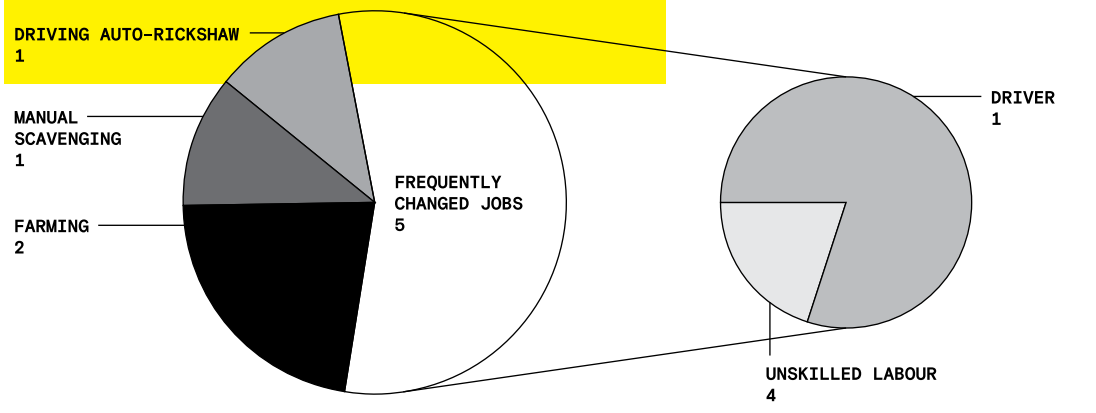
GRAPH 6.2

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



GRAPH 6.3

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



MAYANK Chuhra was born in 1974. His parents worked as sweepers and did not have the money to educate him. As a child, his parents would discipline him by tying him up, beating him, and not giving him food before bed. From a young age he has worked in unskilled labour to try and provide for his family. He began washing dishes, then worked in a market, before eventually working for the Public Works Department in cleaning sewers and digging trenches. This job resulted in many injuries for Mayank Chuhra. During one such instance, he fell down from the sewer line and broke his ribs, shoulder, and hurt his head. Following this, he was unconscious for half an hour, required stitches, and remained in the hospital for a whole week. These accidents cause him to experience chronic pain and other physical ailments to this day.

Mayank Chuhra was married at the age of 17 to a young girl of 16. Together, they had five children and lived in extreme poverty. He did not have the ability to plan and strategise effectively and was therefore unable to steadily provide for his family. He would give all the money he earned to his wife to manage and run the house, but his income was very sporadic. Some days, they would have to beg for money and the family often went to bed hungry. Mayank Chuhra states that he experienced anxiety due to the tension of poverty and got injections at the government hospital to treat this condition.

Since arriving in prison, Mayank Chuhra spends most of his time engaged in religious activities such as praying, singing, playing harmonium, and participating in ritual fasting. Through these activities, he has befriended a few other prisoners. He also attends the prison educational program and has learned how to write his name but is still unable to read or write. Clinical assessments indicate that Mayank Chuhra experiences deficits in short-term memory and is unable to follow simple instructions. He also struggles with more abstract concepts and strategizing skills as is evident through his inability to understand or engage in recreational activities such as chess. Additionally, he is unable to do simple arithmetic calculation, which further indicates his inability to functionally use academic skills.

Mayank Chuhra's mental and physical health has severely deteriorated in prison. Although he tries to do yoga, he has been taken to the hospital for dizziness, blackouts, and fainting. He also experiences severe pain in his chest where his heartbeat increases and he perspires. At night, he experiences anxiety and often has nightmares that disrupt his sleep. His thoughts are disturbed with images of his family and their challenges outside prison. At times, he also experiences lethargy and refrains from bathing. His only source of comfort is his family's monthly visits.

Mayank Chuhra's current clinical assessment indicates that he meets the diagnostic criteria for intellectual disability with mild support needs in the conceptual domain. His PRI score was 45, indicating moderate deficits in intellectual functioning

Studies have also conceptualised multiple barriers to employment, which can be both internal and external[82]. Internal barriers may include difficulties in understanding implicit workplace expectations, low levels of numeracy or literacy, and a lack of motivation or self-confidence[83]. External barriers may be experienced as overt discrimination and stigmatisation in the workplace[84], and a lack of appropriate social and interpersonal support[85].

Impact on Social Relationships: Those with ID may present with social behaviours that deviate from the norm thus putting them at higher risk for social isolation, bullying, and abuse[86]. This social vulnerability suggests that those with ID may not be able to withstand the daily stressors of social interaction. As a result, they are more likely to be socially excluded and have limited social relationships[87]. They may disengage from community-based activities that may be socially beneficial for them as they experience stress and hostility from others[88]. This disengagement could lead to further isolation, and limit support opportunities for future employment.

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 a diagnosis of ID. Knowing these features can allow for better, more comprehensive treatment for individuals with ID. This section explores three commonly associated features observed in those with ID. Many of these features co-exist, including mental illness comorbidities. The following section discusses associated features of ID found among death row prisoners diagnosed with ID.

Trauma: Research shows that those with ID have a greater vulnerability for being victims of sexual and physical abuse, and neglect in their childhood[89]. Such trauma can be risk factors for other mental health concerns such as increased loneliness, depression, and anxiety and may lead to suicidality in adolescents and adults with ID[90]. Specifically, young persons with ID think about, attempt, and die by suicide more often that those without ID[91]. As adults with ID are also more likely to be victims of physical and sexual assault and robbery than those without ID[92], they too, are at a risk for threatening and dying by suicide[93].

Research has identified significant external and environmental risk factors for suicide in adults with disabilities. In addition to internal mental health experiences such as clinical depression, early onset of mental illness, and history of self-harm, adults with ID also indicate unemployment, loneliness, and an increased need for support from others as suicide risk factors[94]. Increased rates of suicidality are also explained by younger age and socio-economic disadvantage[95]. The interaction and association between these external risk factors and suicidality allow for a more comprehensive understanding of the suicidal ideation and action displayed by those with ID.

JAIRAM was born in 1987 and is one of four children. His mother was a domestic helper, while his father worked in a government job before he died in 2016. His father frequently beat his mother, his siblings, and him. Being the eldest son, Jairam took the responsibility to protect his family from this violence and was beaten brutally. Once, his father kicked him down the stairs and Jairam broke his hand. Jairam's only source of support and comfort during such times was his grandmother who died when he was 10 years old. His relationship with his siblings became strained after their shared traumatic childhood experiences, and they are now estranged.

During this challenging time, Jairam discontinued his education after only three years of formal schooling. Jairam would often skip school because he was unable to focus or remain engaged with the topics being taught. Currently, he does not know how to read or write, struggles with simple arithmetic tasks, and is unable to follow simple instructions. He also suffers from poor short-term memory. Jairam had no friends to depend on during his childhood and his social skills did not develop adequately. His future relationships—workplace, platonic or intimate, suffered as a result of this.

After having to drop out of school, Jairam's parents helped him find employment with a goldsmith where he worked for a short period of time. He was unable to maintain stable employment and worked many unskilled jobs during his childhood and adolescence. According to his mother, he needed a lot of repeated explanation from his employers to work efficiently. He worked at a company, at a soap factory, and eventually he spent a majority of his employment pulling a rickshaw. Jairam's mother also stated that he would quit his jobs every few years without informing his employers and run away from home, thus displaying deficits in communication skills. Despite his sporadic employment, he gave whatever he earned to his mother who was responsible for his money management. Jairam was married when he was 17. Despite his efforts to provide a happy home, his relationship with his wife was strained and she would often go back to her maiden home; this relationship has ended since Jairam came to prison.

In prison, Jairam does not engage in any structured work or learning. He has no friends and keeps to himself. His only regular activity is his daily prayers; he says that this provides him some relief. His physical health has significantly deteriorated since he has been incarcerated. In addition to this, Jairam says that he has a weak heart stating, "my heartbeat rises and I sweat often. If anyone says anything to me, I become very nervous...I shiver when people come to meet me."

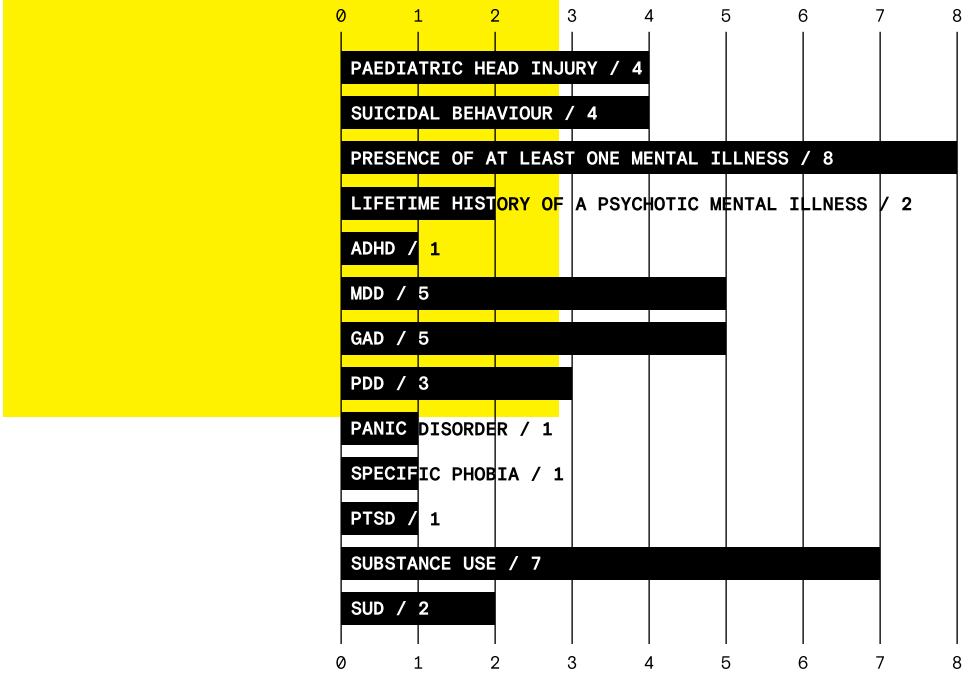
Jairam's current clinical assessment indicates that he meets the diagnostic criteria for intellectual disability with mild support needs in the conceptual and social domains, and moderate support needs in the practical domain of his life. Jairam's PRI score was 46, indicating moderate deficits in intellectual functioning.

It is important to note that in the population interviewed, ID demonstrated a positive correlation with suicidal ideation in the two weeks prior to the interview (p value = 0.105). This finding is congruent with current research regarding the mental health needs of persons with ID.

Mental Illness Those with ID have a higher prevalence of mental illness and often have other features that are known risk factors for suicide such as increased social dependence and a lowered ability to cope[96]. Despite this, psychiatric disorders and their associated features appear to be underdiagnosed in those with ID, likely due to diagnostic overshadowing and challenges in communication between caregivers and individuals with ID[97]. As care and treatment needs for those with ID go unidentified and unmet, they run the risk of becoming further victimised in the long-term without actively involved caregivers. It is therefore important to be aware of the comorbidities between ID and mental illness so that people can receive the care needed.

GRAPH 6.4

FEATURES ASSOCIATED WITH ID PRESENT AMONG THE PRISONERS (n=9)



BALASUBRAMANIAM was born in 1991 in a home birth which resulted in complications that required his mother to be treated with several injections. Six months after his birth, his father eloped with another woman. He was raised by his mother, his maternal aunt and grandmother. His mother eventually remarried and had another son, who is close friends with Balasubramaniam. Growing up, Balasubramaniam had a tumultuous relationship with his father and his father's family. On one occasion, his father's brother almost ran over Balasubramaniam in an attempt to kill him. Balasubramaniam currently has negative and intrusive thoughts about his father, even feeling like he is present in the prison cell while he sleeps.

Aside from familial relationships, Balasubramaniam has no friends. He was unable to relate with other children at school and when he was 12 years old, he dropped out having failed a class. His school life was also marred by violence; he was beaten by other children and was unable to defend himself. In fact, Balasubramaniam reports hating fights and feeling dizzy at the sight of blood. His mother mentioned that he would get stressed easily and would need to roam around the village to calm down.

Soon after dropping out of school, Balasubramaniam began working in a bus company as a cleaner and conductor and would give all his earnings to his mother for household expenses. He changed his jobs frequently because he felt unable to cope with any confrontation with his superiors. If he felt there was a conflict, he would move companies. Due to this frequent movement and poor social communication skills, he did not form any friendships at his place of employment.

During his employment, Balasubramaniam sustained a severe head injury and started to have sporadic fits and convulsions, which have continued in prison and have caused him to fall unconscious. While in prison, Balasubramaniam also experiences other mental health challenges and often cries without apparent reason. He also reports feeling a sense of "suffocation" which makes him feel afraid when people are speaking loudly near him.

Balasubramaniam's current clinical assessment indicates that he meets the diagnostic criteria for intellectual disability with mild support needs in the conceptual, social, and practical domains of his life. Balasubramaniam has a PRI score of 57 indicating mild deficits in intellectual functioning.

The relationship between ID and mental illness is reflected in the current clinical and research findings within the construct of ID[98]. In our sample 16% of the prisoners with at least one mental illness had ID.

Paediatric Traumatic Brain Injury: Another serious issue that often goes underdiagnosed in those with ID, is the long-term effects of Traumatic Brain Injury (TBI), often occurring in childhood. TBI is identified as one potential physiological cause for the development of ID by the DSM-5[99]. It is, however, also possible that ID features may predate the TBI and exacerbate its effects[100]. Although causation cannot be established, there is enough evidence to suggest that there is some association between TBI and ID.

A longitudinal study conducted on children found, in cases of severe TBI, significant impairments in fluid reasoning, inhibitory control, and processing speed—all components of intellectual functioning. These impairments also had an effect on children's long-term adaptive functioning, which means that those who sustain severe TBI during early childhood and have persisting impairments in fluid reasoning and processing speed, are likely to be at high risk for poorer outcomes in adulthood[101]. This may impact their daily functioning in understanding verbal instructions, or meeting the demands of fast-paced employment settings.

This research is in line with the findings of the present study, which shows evidence that ID had a positive correlation with head injury (p value = 0.002).

Comorbidity: As mentioned above, those with ID often have other co-occurring mental, neurodevelopmental, medical, and physical conditions. According to the DSM-5, rates of conditions such as mental disorders, cerebral palsy, and epilepsy can be three to four times higher in those with ID than in the general population[102]. Some of the most common mental and neurodevelopmental disorders observed in those with ID are depressive and bipolar disorders, attention-deficit/hyperactivity disorder, anxiety disorders and major neurocognitive disorder[103].

Individuals with ID who have any co-occurring psychopathology, tend to also have higher deficits in adaptive functioning when compared to those that had the singular diagnosis of ID[104]. Additionally, research found that those with severe or profound support needs, almost always have a co-occurring neurological, or psychiatric impairment[105]. With active involvement from caregivers, those with ID can receive the treatment they need in a timely manner[106].

SAQIB was born at home in 1986 into a family of seven children. He grew up in severe poverty and the family did not have resources to attend to the children's health and educational needs. As a result, Saqib only studied until grade 5. While at school, his teachers were not able to meet his support needs and labelled him as "naughty". (This could perhaps be better understood as Attention Deficit Hyperactivity Disorder (ADHD).) He also had no friends and would spend all his time alone. His own family describes him as a quiet boy who was at times "bull headed" which suggests that he had difficulties in understanding opinions or coping with change and new information. Saqib ran away from home in his early teens in search of work to support himself financially.

When he was 13 years old, he began working in many short-term unskilled jobs. He did not remain at any of these jobs for a significant period of time, and would leave after approximately two weeks. Saqib's sister narrated that if he ever felt challenged or opposed in a workplace, he would become upset and leave, thus indicating poor social communication and coping skills. After approximately 12 years of doing odd jobs, Saqib returned to his family, many of whom believed that he was dead as he did not maintain contact with them while away. After going back to this family, he also went to the Gulf to work but soon returned to India to work in masonry, and in a vegetable market.

Saqib has undergone surgery for a head injury that he had sustained in his childhood. He had a festering boil above his ear which impaired his hearing due to the pus from this condition. Soon after his surgery, he was compelled into a marriage by his family.

Saqib's marriage was fraught with challenges from the beginning as he had no social or practical skills to help provide for his wife and three children. He displayed poor money management skills and would not be able to budget enough money for the care of his family.

Saqib has attempted suicide multiple times. During an argument with his in-laws regarding money, he attempted to die by suicide by drinking alcohol and then pesticide. He was rushed to the hospital and resuscitated. This was not an isolated incident as two years after his marriage, Saqib once again drank poison in an attempt to die and was again hospitalised. These suicide attempts indicate very poor problem solving and impulse control skills by Saqib who appears to think that suicide was the only solution to stressful situations.

Saqib continues to have no friends, and his family rarely speaks to him or meets him. He spends his time working alone and watching TV. He is currently not able to write and has very limited reading and arithmetic skills. He still believes in God and does not fear death, but remains sad. He says he yearns, "to see everybody, especially my children. I don't want to disturb anybody with my worries. They won't tell me about their difficulties. Even if they tell me about any problem, I cannot help them as I am in this jail."

Saqib's current clinical assessment indicates that he meets the diagnostic criteria for intellectual disability with mild support needs in the conceptual and social domains, and moderate support needs in the practical domain of his life. Saqib's PRI score was 58, indicating mild deficits in intellectual functioning.

Intellectual Disability and the Criminal Justice System

Persons with intellectual disability are not more dangerous, they are more susceptible to victimisation by the criminal justice system and at a higher risk of confessions, including false confessions.

The DSM-5 highlights gullibility and a lack of awareness of risk as associate features that could result in criminal victimisation[107]. Research backs this as adults with ID are more victimised by crime than the general population[108]. This may be due to low interpersonal competence as those with ID may have a harder time deciding on appropriate behaviour in some interactions[109]. For instance, they are likely to get coerced into gang-related criminal activity as due to deficits in social skills they may find it difficult to say no when being asked to undertake illegal activities. It is also possible that deficits in emotional understanding in those with ID together with a lack of awareness in the community about ID places them at a heightened risk for criminal victimisation. This vulnerability plays out across the different stages of the criminal justice system.

When the police question someone with ID, whether as a witness or a suspect, they are subject to questions that are meant to elicit information relevant to a crime. Persons with ID are at a heightened risk for confessions, including false confessions. A number of reasons have been identified which put persons with ID at higher risk. These include their reliance on authority figures, feigning competence, accepting blame for negative consequences and the increased likelihood to give into leading questions and responses to negative feedback[110]. In addition to an incorrect belief in the protective nature of their own innocence, suspects with ID are at a heightened risk for falsely confessing when police use any kind of coercive questioning[111].

Factors that put persons with intellectual disability at a higher risk of confessions: Reliance on authority figures, feigning competence, accepting blame for negative consequences, and the increased likelihood to give into leading questions and responses to negative feedback.

RIVAN'S date of birth is unclear. While he reports that he is in his 60s, according to his brothers he is currently in his 50s. Growing up, the brothers were intentionally separated by the parents. According to his older brother, Rivan was not looked after by his family and, therefore, found it difficult to study. At school, he was unable to follow instructions and was assumed to be a disruptive student, indicating deficits in conceptual and social domains. His behaviour often irritated his peers thus indicating that he couldn't perceive social cues. As a result, he was unable to form any friendships or develop social skills. Rivan eventually left school after the 5th grade and joined the workforce as a farmer.

After leaving school, Rivan spent more time in the community where he was unable to understand the risk in social situations and was exposed to harmful influences. His older brother reports that during a fair in the village, some people coerced Rivan to consume ganja. He was 12 years old at this time and the substance was mixed with some other unknown liquids, and caused him to behave erratically. Rivan's entire family, and him, believe that due to this substance, Rivan "developed madness" and engaged in reckless and self-harming behaviours such as sleeping on the edge of a well and throwing stones at other people. Due to his lack of social skills, he was unable to protect himself from such manipulation and coercion.

According to his brother, Rivan has a mental illness for which he required hospitalisation. It is unclear what this illness may be, however, Rivan reports feeling that everyone is conspiring against him and expresses paranoid thoughts about the villagers in his town stating, "They used to have grudges against me and made plans to kill me... They wanted to snatch my land...that is the reason I used to keep a sword with me. I was scared."

At 18, Rivan was married and had six children. The marriage was challenging for Rivan as he did not have money management or childcare skills. They struggled with food and cleanliness in their family, and often needed Rivan's older brother's help. As a farmer, Rivan gained some stability and grew crops, however, this was short lived as he was manipulated into selling off a part of his land by other villagers. This poor decision caused immense conflict within the family and caused Rivan's mental health to further decline and he alienated his wife and children. He reports that his children would sometimes beat him and he felt sure that they were doing it under the direction of his wife.

In prison, Rivan is under medication for depression with abnormal behaviour. His paranoid thoughts affect his already poor social skills and make it tough for him to form any friendships. To pass time in prison, Rivan prays, but engages in no other structured activity. He currently experiences severe impairments in cognitive functioning and is unable to do arithmetic, read, or write, but can sign his name. Most of his incarceration has been defined by his mental health challenges. He continues to experience anxiety, memory loss, paranoia, and hears externalised voices that others cannot hear. Rivan also reports having self-harming thoughts and contemplating suicide two to four times a week.

Rivan's current clinical assessment indicates that he meets the diagnostic criteria for intellectual disability with mild support needs in the conceptual, social, and practical domains of his life. Rivan's PRI score was 48, indicating moderate deficits in intellectual functioning.

When those with ID are in the courtroom, they are faced with challenging language and themes that may be inaccessible to them[112]. Without adequate support in court, those with ID get convicted and end up in prisons or secure living facilities at a higher rate than those without any support needs[113]. However, this is not a situation which cannot be tackled. For instance, in English courts, there is a requirement that police who have come in contact with someone with ID notify the court about the defendant's vulnerability[114]. Courts can then use 'intermediaries' to facilitate defendants to give evidence; they can allow the defendant to sit with members of their family and/or other supporting adults, and in a place where they can easily communicate with the legal representatives[115].

In prison, prisoners with intellectual disability are at serious risk of harm due to their susceptibility to abuse, exploitation, manipulation, misunderstanding of what is expected of them, and inability to benefit from rehabilitative and reformatory activities.

While in the community, those with ID are at risk of being victimised by physical and sexual violence[116]. This abuse continues in prisons where there are no structures in place to support individuals with ID. Research shows that those with ID experience more bullying when compared to their fellow inmates who do not have any deficits in intellectual functioning or adaptive behaviours[117]. People with ID are also more often exploited and abused by other inmates, and are more likely to have difficulties with discipline therefore regressing in the harsh environment of a prison[118]. Prison is a challenging environment for even people who have no deficits in intellectual functioning or adaptive behaviour—those with ID face many more challenges not just in navigating prison rules and structures, but also in their relationships with prison officials as well as other inmates.

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.

This Project was able to bring out information on ID among a small sample of the death row population. But there are undoubtedly many more death row prisoners with ID whose special vulnerabilities were never brought to the court's notice. Our current death penalty sentencing practice is just not geared to capture incredibly crucial information as that presented here. It is a sobering thought that we may have executed or may end up executing people who

EARL Washington is a former death row prisoner in the US who was acquitted of all charges after having spent close to three decades in prison and close to nine years on death row. His case is an insight into the serious miscarriage of justice that persons with intellectual disability are subject to in their interaction with the criminal justice system, putting them at high risk of being sentenced to death.

Earl Washington Jr. had confessed to multiple crimes including the rape and murder of a 19-year-old woman, Rebecca. All charges were dropped against him except for Rebecca's murder. After multiple attempts at recording a rehearsed confession, the police managed to get a statement in writing with his signature. He was sentenced to death in 1984.

Earl Jr. grew up in extreme poverty and was exposed to parental drinking and abuse. He had an intellectual disability and despite attending a special education school, he did not know his alphabets well. He dropped out of school when he was 15. A teacher said of him, "[Washington] is very easily led. He tries to do what is asked, but has no idea what is expected of him." His suggestibility did not go unnoticed at his workplace either where he worked as a helper at a farm. One of his employers said that Earl Jr. would "agree with whatever you said. Sometimes he knew what you were talking about. Sometimes he didn't."

Nine days before his scheduled execution in 1985, Earl Jr. got a stay. A fellow death row prisoner alerted a lawyer about Earl's case. His new defense team argued that Earl was innocent, and that his confession was an attempt to "please his interlocutors by telling them what they wanted to hear." It was a strategy he had adopted to manage his disability. The doctor who examined him at his new defense team's instance said, "It was my impression that if on the evening of his execution the electric chair were to fail to function, he would agree to assist in its repair." Earl Jr. had an I.Q. in the range of 57-69.

About his confession, Earl said, "I guess I just agreed with whatever [the police] told me, that's what I agreed. Whatever they said, I agreed with, I guess." During the police interrogation, most of Washington's answers were monosyllabic. He was unable to correctly identify the race of the victim, the manner in which the crime was committed and the description of the crime scene, among other details that he had gotten wrong.

Earl Washington Jr. was exonerated in 2000, after it was established that it was not his DNA at the crime scene. After almost a decade on death row, he was declared innocent and pardoned. He was released from prison on February 12, 2001. In 2007, a convict undergoing a sentence for another crime confessed to having raped and murdered Rebecca[119].

This case is emblematic of the interaction that persons with intellectual disability have with the criminal justice system. Earl Junior's adaptive strategy to "please his interlocutors" proved near fatal for him. There were serious lapses in his case that the defense team did not highlight during the trial. The exacerbated vulnerability to coerced confessions in police custody and the likelihood of subpar legal representation are typical hurdles that persons with intellectual disability face in the criminal justice system.

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 very likely also means that people with ID have been sentenced to death, who may very well be innocent, much like Earl Washington Jr.. We have no information about such persons.

CHAPTER VII
LIVING WITH THE SENTENCE OF DEATH— PAINS OF DEATH ROW

This chapter is in many ways a difficult task to undertake. It invites the reader to glimpse into the lives of people they may already have judged to be deserving of pain. Still, it is useful to know the nature and depth of pain that persons who are sentenced to death go through and the processes through which this pain is inflicted. The chapter focuses squarely on the internal lives of death row prisoners living with the sentence of death. It is important to keep in mind that a majority of the prisoners whose narratives are presented went through this pain undeservedly and needlessly, if indeed we believe that suffering on death row is warranted. At the time of writing this Report, more than half the prisoners interviewed had either been acquitted or had had their death sentence commuted. (*See Chapter IX on Acquittals and Commutations*)

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. In imposing the death penalty, and regardless of what the theoretical purpose of

punishment may be, the court essentially decides whether the person should be allowed to live. It is indicating to the prisoner that the rule of law will be satisfied when they and only they are put to death. They live under the constant knowledge that their lives are dependent on a host of factors external to them, including the adjudication process, the adjudicator, and the person who is meant to defend them; a system meant to judge them but that hardly hears them. There are additional factors at play which make a life on death row painful – the daily ignomi ny, violence, discrimination, and powerlessness, among others, contribute to constant attacks on the dignity of the person living under the sentence of death. Their identity as a human is slowly replaced with their identity as death row prisoners, both within and outside the legal system. But greater still is the loss of identity for the prisoner themselves. Many times, their lives are limited to that of a death row prisoner, even as they may want to break out of it.

There is a continuous narrative of villainy that permeates legal and public judgments and makes its way into the prison. This is where the dehumanising process starts, when judgments made on a person make them anything but human. The person begins their journey on death row already branded evil and irredeemable. Once in prison and on death row, the person goes through daily incursions into their dignity through multiple pathways, both individual and institutional. This chapter focuses less on the pathways and more on the experience of those daily incursions and the pain it entails.

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 when commuting 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 which, as outsiders, allows us to understand various aspects of the 'pains of death row'[1]. 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 chapter begins with a section that brings to notice a few ways in which narratives of villainy surround a person accused of serious offences. These are many times our first introductions to those we condemn. Before delving into personal narratives, the chapter briefly discusses the meaning of pain and suffering. It then goes on to describe the painful experience of living with the death sentence, regardless of whether it is seen as deserved or as beyond the realm of what the punishment is meant to be.

Villainy

The dehumanisation of death row prisoners is not restricted behind prison walls. It takes place out in the open, in the media, in the public and the law. Brutal, abhorrent, diabolical are descriptors not only associated with the criminal act, but also with the criminal. Judgments sentencing individuals to death often make use of these and similar adjectives to give an account of the crime. They often end with exhortations of 'ends of justice' or resort to 'public outrage'. 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 to such an extent that any attempt by the prisoner to show another side of them is rejected.

The aggravating circumstance as pointed out by us must be such as would have shocked the conscience of the community in general. The accused had acted in a diabolical manner and had designedly lured the unsuspecting Muskan to accompany him on the bicycle. Battering of the head of the girl of tender years was done by the accused with extreme cruelty. The crime has been committed by the accused in an extremely cruel manner exhibiting brutality and utter perversity. The history sheet of the accused which is placed on record exhibits several prose-cutions against him. The accused has not displayed any remorse or repentance for the act done by him and we do not find any material to indicate that there is a possibility of the accused reforming himself. The accused would continue to be a menace to the society and, therefore, according to us, this is a rarest of rare case calling for the extreme.

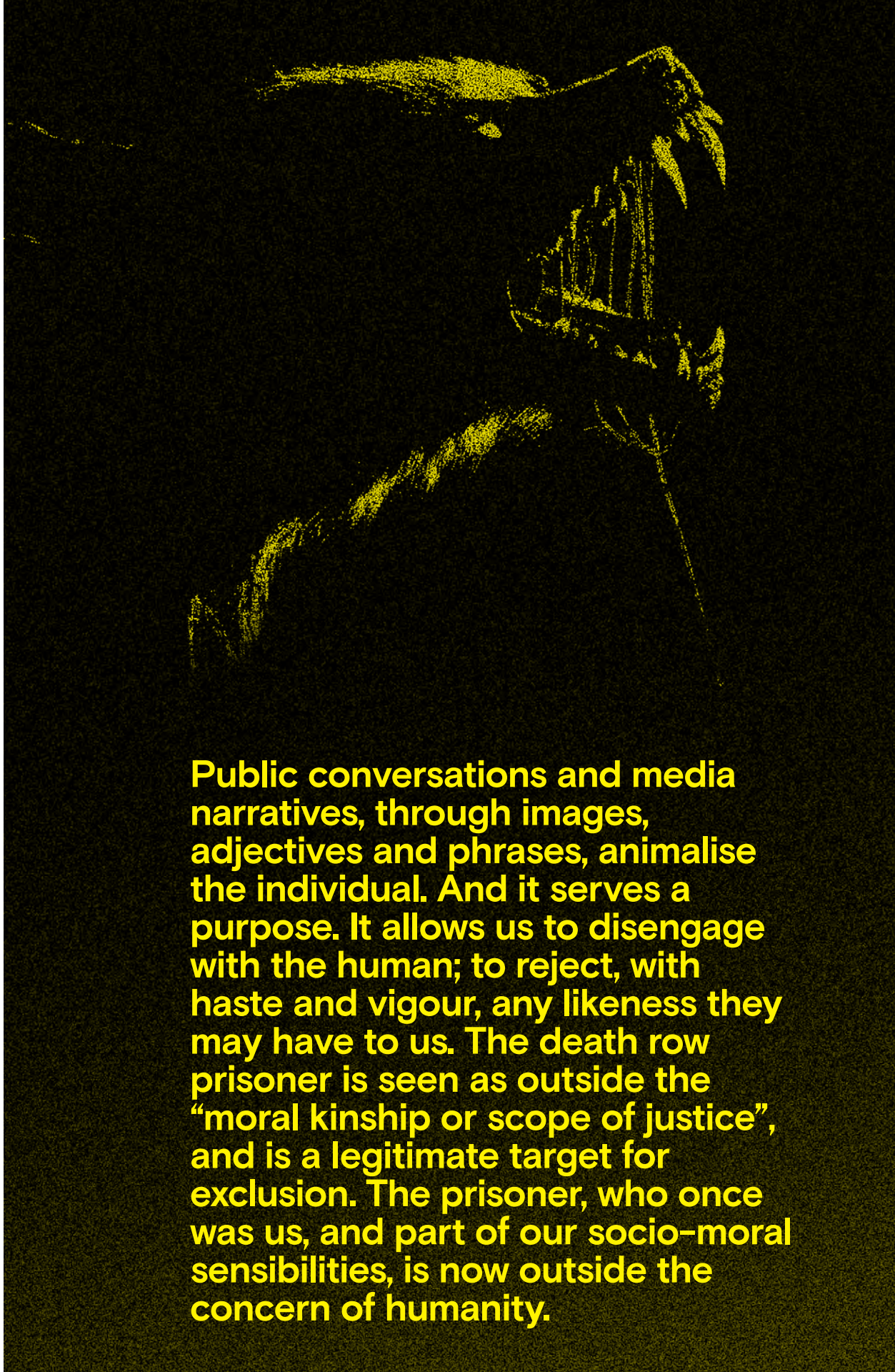
Vasant Sampat Dupare vs State of Maharashtra, AIR 2014 SCW 6952

After seeing the circumstances in which the accused has taken an innocent girl and in the forceful, loathsome manner in which he has committed rape, unnatural sex and murder, it cannot be even slightly expected that such a disgusting person can ever be reformed.... From the deeds of this person, it seems as if there is no value of a human life for this person...

The mitigating circumstances that have been presented by the accused is that he has aged parents. However, his parents have never been present in court. The Jail Superintendent has said that his conduct in prison is normal but it cannot be said on the basis of this normal conduct that his conduct is good in reality and that there is a possibility of reformation.

State of Madhya Pradesh v. Vishnu Bamore, Bhopal District Court, decided on 10.07.2019

Discourse outside the courtroom is more explicit in its intention to other individuals. Public conversations and media narratives, through images, adjectives and phrases, animalise the individual. And it serves a purpose. It allows us to disengage with the human; to reject, with haste and vigour, any likeness they may have to us[2]. The death row prisoner is seen as outside the "moral kinship or scope of justice", and is a legitimate target for exclusion[3]. The prisoner, who once was us, and part of our socio-moral sensibilities, is now outside the concern of humanity.



‘इसे मौत की सजा न दी तो समाज में गलत संदेश जाएगा’

ग्वालियर। दुष्कर्म और हत्या के एक जघन्य अपराध में हाईकोर्ट की खंडपीठ ग्वालियर ने भिंड के जेतपुरा मढ़ी गांव के एक युवक को फांसी की सजा सुनाई है। अदालत ने इस अपराध को दुर्लभतम और पाशविक प्रवृत्ति का मानते हुए कहा कि ऐसे आरोपी को मौत की सजा नहीं दी गई तो समाज में गलत संदेश जाएगा।

इसके साथ ही न्यायालय ने ऐसे मामलों में जांच प्रक्रिया की गाइडलाइन तय कर इसका तत्काल प्रभाव से पालन सुनिश्चित करने के मुख्यालय को दिए

जीडी सक्सेना की बेंच ने मंगलवार को क्रिमिनल रेफरेंस की सुनवाई पूरी होने के बाद हत्या और दुष्कर्म के आरोपी 20 वर्षीय परशुराम कुशवाह को फांसी की सजा सुनाते हुए सत्र न्यायालय के फैसले की पुष्टि कर दी।

मिहोना डिग्री कालेज में बीएससी प्रथम वर्ष के छात्र परशुराम ने पड़ोस में रहने वाली सात साल की बालिका के साथ दुष्कर्म करने के बाद उसकी हत्या कर दी थी। अभियोजन पक्ष के अनुसार, 6 फरवरी 2011 को पुलिस [illegible]

ಎಕೃತಕಾಮಿ ಉಮೇಶ್ ರೆಡ್ಡಿಗೆ ಗಲ್ಲು ಶಿಕ್ಷೆ’

ಕೊಲೆ ಹಾಗೂ ಅತ್ಯಾಚಾರ ಪ್ರಕರಣದ ಆರೋಪ ಎದುರಿಸುತ್ತಿದ್ದ ವಿಕೃತಕಾಮಿ ಉಮೇಶ್ ರೆಡ್ಡಿಗೆ ಬುಧವಾರ ಹೈಕೋರ್ಟ್‌ನ ಏಕಸದಸ್ಯ ನ್ಯಾಯಪೀಠ ಗಲ್ಲುಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಿ ತೀರ್ಪು ನೀಡಿದೆ.

ಈತ ಬಿಡುಗಡೆಯಾದರೆ ಸಮಾಜಕ್ಕೆ ಮತ್ತಷ್ಟು ಅಪಾಯ ಇದೆ ಎಂದು ಅಭಿಪ್ರಾಯಪಟ್ಟಿರುವ ಏಕಸದಸ್ಯಪೀಠದ ನ್ಯಾಯಮೂರ್ತಿಗಳಾದ ಎಸ್.ಆರ್.ಬನ್ನೂರ್‌ಮಠ ಅವರು ಮರಣದಂಡನೆಯನ್ನು ವಿಧಿಸಿದರು.

21 ಕೇಸುಗಳು ಉಮೇಶ್ ರೆಡ್ಡಿ ಮೇಲೆ ದಾಖಲಾಗಿದ್ದು, ಕೊಲೆ ಮತ್ತು ಅತ್ಯಾಚಾರ ಪ್ರಕರಣದಿಂದ ಬೆಚ್ಚಿಬೀಳಿಸಿದ ಉಮೇಶ್ ರೆಡ್ಡಿಗೆ ನಗರದ ಸೆಶನ್ಸ್ ನ್ಯಾಯಾಲಯ ಕಳೆದ ವರ್ಷ ಮರಣದಂಡನೆ ತೀರ್ಪು ನೀಡಿತ್ತು.

ಶಿಕ್ಷೆಯನ್ನು ಖಾಯಂಗೊಳಿಸುವ ಬಗ್ಗೆ ಹೈಕೋರ್ಟ್ ನಲ್ಲಿ ಭಿನ್ನ ಚಿಂತನೆಗಳು ಕೇಳಿಬಂದಿತ್ತು. ಸಮಾಜದ ನೆಮ್ಮದಿ ಕೆಡಿಸಿದ ದುಷ್ಟ ರೆಡ್ಡಿಗೆ ಒಂದೇ ಸಲ ಸಾವಿನ ಮುಖಾಂತರ ಶಿಕ್ಷೆ ನೀಡಿದರೆ ಸಾಲದು, ಜೀವಾವಧಿ ಶಿಕ್ಷೆ ಅನುಭವಿಸಲಿ ಎಂಬುದು ನ್ಯಾಯಮೂರ್ತಿಯೊಬ್ಬರ ಅನಿಸಿಕೆ. ಆ ಬಳಿಕ ಪ್ರಕರಣದ ಶಿಕ್ಷೆಯ ತೀರ್ಪನ್ನು ನೀಡಲು ಮೂರನೇ ನ್ಯಾಯಮೂರ್ತಿಗೆ ಒಪ್ಪಿಸಲಾಗಿತ್ತು.

മകളുടെ വിവാഹത്തില് സംബന്ധിക്കാന് ഇടക്കാല ജാമ്യം ആവശ്യപ്പെട്ട് ഭീകരന്; നിഷ്കളങ്കരായ ആളുകളെ ഭീകരാക്രമണത്തില് വധിച്ചവര് സ്വന്തം കുടുംബത്തെയും മറക്കുന്നതാണു നല്ലതെന്നു സുപ്രീം കോടതി

ഡല്ഹി: മകളുടെ വിവാഹത്തില് സംബന്ധിക്കാന് ഇടക്കാല ജാമ്യം ആവശ്യപ്പെട്ടു ജമ്മു കശ്മീര് ഇസ്ലാമിക് ഫ്രണ്ട് ഭീകരന് മുഹമ്മദ് നൗഷാദ് നല്കിയ ജാമ്യാപേക്ഷ നിരസിച്ച് സുപ്രീംകോടതി. നിഷ്കളങ്കരായ ആളുകളെ ഭീകരാക്രമണത്തില് വധിച്ചവര് സ്വന്തം കുടുംബത്തെയും മറക്കുന്നതാണു നല്ലതെന്നു സുപ്രീം കോടതി വ്യക്തമാക്കി. ചീഫ് ജസ്റ്റിസ് ജെ.എസ്. കേഹാര് അധ്യക്ഷനായ സുപ്രീം കോടതി ബെഞ്ചാണ് കേട്ട് ഞങ്ങള് വിധി പറയും. ഒരാളെ കുറ്റക്കാരനെന്നു കണ്ടെത്തിയ കീഴ്ക്കോടതി വിധി മേല്ക്കോടതി ശരിവച്ചാല്, നിങ്ങള്ക്ക് ഇടക്കാല ജാമ്യത്തിനായി വാദിക്കാനാകില്ല. നിഷ്കളങ്കരായ ആളുകളെ നിങ്ങള് കൊലപ്പെടുത്തിയിട്ടുണ്ടെങ്കില് നിങ്ങള്ക്ക് ജാമ്യമേ ഇല്ലെന്നും സുപ്രീം കോടതി ഉത്തരവില് വ്യക്തമാക്കി.

1996 മേയ് 21നു ലജ്പത് നഗര് മാര്ക്കറ്റില് നടന്ന സ്ഫോടനത്തില് 12 പേര് കൊല്ലപ്പെട്ടിരുന്നു. ഈ കേസില് ആദ്യം മുഹമ്മദ് നൗഷാദിനു വധശിക്ഷ വിധിച്ചെങ്കിലും പിന്നീട് അതു ജീവപര്യന്തം തടവാക്കി. രണ്ടു ദശകമായി താന് ജയിലിലാണെന്നും ഈ മാസം 28നു നടക്കുന്ന മകളുടെ വിവാഹത്തില് പങ്കെടുക്കാന് അനുവദിക്കണമെന്നും ആവശ്യപ്പെട്ടായിരുന്നു നൗഷാദിന്റെ ജാമ്യാപേക്ഷ.

കൊലയാളികളേ നിഷ്കരുണം കൊന്നു കളയാം.. അത് പോലീസാണേൽ എത്രയും വേഗം

ഇന്ത്യയിൽ വധ ശിക്ഷ നിലനില്ക്കുവോളം കാലം കൊലയാളികളേ നിയമം നിഷ്കരുണം കൊന്ന് കളയണം. നീതി പാലകരാണ് കൊലയാളി എങ്കിൽ വധ ശിക്ഷയിൽ കുറഞ്ഞ് അവർക്ക് ഒന്നും നല്കരുത്. പെട്ടെന്ന് ഇത്തരക്കാരേ തൂക്കി കൊല്ലുകയും വേണം. ജിതകുമാർ,ശ്രീകുമാർ എന്നീ പോലീസുകാർ ഒരുളൻ തടിക്കാ[illegible] ലാത്തികൊണ്ടും ഉദയകുമാറിനെ കിടത്തി തുടകളിൽ ഉരുട്ടുകയായിരുന്നു. പോലീസുകാർ ഉരുളം തടിയുടെ ഇരു അഗ്രഭാഗത്തും കയറി നിന്നായിരുന്നു ഉരുട്ടിയത്. രക്ത കുഴലുകൾ പൊട്ടുകയും ഇറച്ചിഭാഗങ്ങൾ ചതഞ്ഞ് എല്ലുക[illegible] വരെ പൊട്ടുകയും ചെയ്തു.

പൊലീസ് ഉദ്യോഗസ്ഥര് ശിക്ഷിക്കപ്പെടുകയും ജയിലില് കിടക്കുകയും ചെയ്തിട്ടുണ്ടെങ്കിലും വധശിക്ഷ ലഭിക്കുന്നത് സംസ്ഥാന ചരിത്രത്തില് ആദ്യം. ഉദയകുമാറെന്ന യുവാവിനെ ഉരുട്ടികൊന്ന രണ്ടു പൊലീസുകാർക്ക് വധശിക്ഷ ലഭിച്ചത് ഉത്തരവാദിത്തം മറന്നു പ്രവർത്തിക്കുന്ന ഉദ്യോഗസ്ഥർക്കുള്ള താക്കീതു കൂടിയായി. 2005 സെപ്റ്റംബർ 27 നാണ് മോഷണക്കുറ്റം ആരോപിച്ച് ഉദയകുമാറിനെയും സുഹൃത്ത് സുരേഷ് കുമാറിനെയും ശ്രീകണ്ഠേശ്വരം പാർക്കിൽനിന്ന് ഫോർട്ട് പൊലീസ് അറസ്റ്റു ചെയ്യുന്നത്. മർദ്ദനത്തെത്തുടർന്ന് ഉദയകുമാർ മരിച്ചു. പ്രതികളായ ജിതകുമാർ,ശ്രീകുമാർ എന്നിവർക്കാണ് വധ ശിക്ഷ.

ജനങ്ങളോട് മാന്യമായി പെരുമാറുക, അന്തസ് കാട്ടുക

13 साल की मासूम से दुष्कर्म के बाद दरिंदों ने की थी हैवानियत, मिली फांसी

तेरह साल की इस पूर्णिया की निर्भया की आत्मा को गुरुवार को शांति मिली होगी। तीन युवकों ने दुष्कर्म के बाद उसकी हत्या कर दी थी। कोर्ट ने तीनों को फांसी की सजा सुनाई है।

पूर्णिया [जेएनएन]। पूर्णिया के बीकोठी थाना क्षेत्र के मलडीहा में 11 मई 2012 को पांचवी की छात्रा के साथ सामूहिक दुष्कर्म बाद जघन्य रूप से उसकी हत्या के मामले में शामिल तीन को कोर्ट ने फांसी की सजा सुनाई।

घटना के संबंध में बताया जाता है कि मलडीहा की रहने वाली 13 वर्षीय नाबालिग का शव गांव के ही सत्यनारायण मंडल के मकई खेत में क्षत विक्षत अवस्था में मिला था। मासूम की हत्या सामूहिक दुष्कर्म के बाद निर्ममता पूर्वक कर दी गयी थी। पोस्टमार्टम रिपोर्ट में खुलासा हुआ था कि उसकी हत्या के बाद उसके गले में दरिंदो ने डेढ़ फीट की बांस की कील घुसेड़ दी थी।

बताया जाता है कि 13 वर्षीय लड़की मध्य विद्यालय लक्ष्मीपुर भित्ता की छात्रा थी। वह घटना के दिन भी स्कूल गयी थी। वह स्कूल [illegible] पढ़ने जाती थी। वहां से आने के बा[illegible] कामत पर जाकर उनके लिए खाना बनाती थी।

घटना के दिन स्कूल से आने के बाद मासूम ट्यूशन भी गयी लेकिन उसके बाद जब वह वापस नहीं लौटी तो उसके चाचा ने उसकी खोज शुरू की। इसी दौरान रात में मकई खेत में एक बच्ची का शव होने की बात कही गयी। इसके बाद जब पिता ने घटना स्थल पर जाकर देखा तो उसकी पहचान अपनी बेटी के रुप में की।

निर्मम हत्या में शामिल सभी तीन दोषियों को न्यायालय ने गुरूवार को फांसी की सजा सुनाई। प्रथम अपर जिला जज सत्येन्द्र रजक की अदालत ने इस मामले में आरोपियों को सजा सुनाई। न्यायालय ने इस मामले में जिन तीन दोषियों को फांसी की सजा सुनाई उनमें प्रशांत कुमार, सोनू कुमार एवं रुपेश कुमार शामिल हैं। दोषी प्रशांत कुमार लड़की को ट्यूशन पढ़ाता था। उसी ने अपने दो साथियों के साथ मिलकर [illegible] को अंजाम दिया था।

9 साल की मासूम से रेप के दो दरिंदों को मिली फांसी की सजा, खुशी में पुलिस स्टेशन को दुल्हन की तरह सजाया, फोड़े पटाखे

मुंबई। 9 साल की मासूम के रेप की वारदात को अंजाम देने वाले दो दरिंदों को जिला कोर्ट ने फांसी की सजा सुनाया है। 1 साल पहले दो दरिंदों ने मासूम का अपहरण कर उसके साथ बलात्कार किया था। वहीं अब कोर्ट के फैसले के बाद पुलिस कर्मियों सहित नगर वासियों ने खुशी मनाई है।

दरअसल यह मामला महाराष्ट्र के बुलढाणा के चिखली शहर की है। जहां 26 अप्रैल 2019 की रात दो युवकों ने 9 साल की मासूम के साथ हैवानियत की। मासूम अपने माता-पिता के साथ सोई हुई थी तो उसे उठाकर दो युवकों ने शहर की सुनसान जगह पर ले जाकर उसके साथ बलात्कार किया था।

पुलिस ने आरोपी सागर विश्वनाथ बोरकर और निखिल शिवाजी गोलाइत के खिलाफ रेप, पॉक्सो व एट्रोसिटी एक्ट के तहत केस दर्ज किया गया था। वहीं अब केस में जिला कोर्ट ने दोनों को दोषी करार देते हुए फांसी की सजा सुनाया है। दूसरी इस फैसले से चिखली पुलिस स्टेशन को दुल्हन की तरह सजाया गया और जमकर पटाखे भी फोटे। वहीं नगर वासियों ने मिठाई बांटकर खुशी जाहिर की।

उल्लेखनीय है कि मासूम के साथ रेप की वारदात की खबर सामने आने के बाद लोगों में जबरदस्त गुस्सा था। विरोध में शहर बंद भी रख गया था। चिखली पुलिस स्टेशन के इंस्पेक्टर गुलाबराव बाघ ने बताया कि मासूम की मां का दिमागी संतुलन सही नहीं है। चिखली पुलिस के सभी कर्मियों ने इस पीड़ित परिवार की हर संभव मदद की कोशिश की। वहीं अब दरिंदो को फांसी तक पहुंचाने के बाद परिवार के साथ-साथ हमें भी खुशी मिली है।

ಎಕೃತಕಾಮಿ ಉಮೇಶ್ ರೆಡ್ಡಿ

ಕೊಲೆ ಹಾಗೂ ಅತ್ಯಾಚಾರ ಪ್ರಕರಣದ ಆರೋಪ ಎದುರಿಸುತ್ತಿದ್ದ ವಿಕೃತಕಾಮಿ ಉಮೇಶ್ ರೆಡ್ಡಿಗೆ ಬುಧವಾರ ಹೈಕೋರ್ಟ್‌ನ ಏಕಸದಸ್ಯ ನ್ಯಾಯಪೀಠ ಗಲ್ಲುಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಿ ತೀರ್ಪು ನೀಡಿದೆ.

ಈತ ಬಿಡುಗಡೆಯಾದರೆ ಸಮಾಜಕ್ಕೆ ಮತ್ತಷ್ಟು ಅಪಾಯ ಇದೆ ಎಂದು ಅಭಿಪ್ರಾಯಪಟ್ಟಿರುವ ಏಕಸದಸ್ಯಪೀಠದ ನ್ಯಾಯಮೂರ್ತಿಗಳಾದ ಎಸ್.ಆರ್.ಬನ್ನೂರ್‌ಮಠ ಅವರು ಮರಣದಂಡನೆಯನ್ನು ವಿಧಿಸಿದರು.

21 ಕೇಸುಗಳು ಉಮೇಶ್ ರೆಡ್ಡಿ ಮೇಲೆ ದಾಖಲಾಗಿದ್ದು, ಕೊಲೆ ಮತು ಅತ್ಯಾಚಾರ ಪ್ರಕರಣದಿಂದ ಬೆಚ್ಚಿಬೀಳಿಸಿದ ಉಮೇಶ್ ರೆಡ್ಡಿಗೆ ನ[illegible] ವರ್ಷ ಮರಣದಂಡ[illegible]

ಶಿಕ್ಷೆಯನ್ನು ಖಾ[illegible] ಭಿನ್ನ ಚಿಂತನೆಗಳು [illegible] ಕೆಡಿಸಿದ ದುಷ್ಟ ರೆಡ್ಡಿಗೆ ಒಂದೇ ಸಲ ಸಾವಿನ ಮುಖಾಂತರ ಶಿಕ್ಷೆ ನೀಡಿದರೆ ಸಾಲದು, ಜೀವಾವಧಿ ಶಿಕ್ಷೆ ಅನುಭವಿಸಲಿ ಎಂಬುದು ನ್ಯಾಯಮೂರ್ತಿಯೊಬ್ಬರ ಅನಿಸಿಕೆ. ಆ ಬಳಿಕ ಪ್ರಕರಣದ ಶಿಕ್ಷೆಯ ತೀರ್ಪನ್ನು ನೀಡಲು ಮೂರನೇ ನ್ಯಾಯಮೂರ್ತಿಗೆ ಒಪ್ಪಿಸಲಾಗಿತ್ತು.

Understanding Pain and Suffering

All pain, physical or mental, is inherently subjective, but that there is the experience of pain is objectively true[4]. Situations in which people suffer pain, its severity, articulation and its meaning may all differ[5], but even so, there are circumstances which are near universal in their infliction of pain on communities and people who experience these situations[6]. Living under and with the sentence of death is one such situation where as much and perhaps more than physical pain is the existence of mental pain—and narratives across jurisdictions confirm the pains of death row[7].

Mental pain has been defined variously—psychological or psychic pain, internal perturbation, emptiness, and psychache[8]. All of these are constructs attempting to indicate the content and meaning that can be attributed to mental pain. A synthesised definition attempting to capture mental and physical pain has recently emerged, where pain is defined as, "An unpleasant sensory and emotional experience associated with, or resembling that associated with, actual or potential tissue damage"[9].

Literature on mental pain has brought forward its many complexities and aspects. It could be the result of separation from significant others, disrupting the sense of individual wholeness[10]; an acute sense of inadequacy of the self[11]; pain associated with intense guilt, anxiety, anguish, fear and shame[12]; a feeling of being broken[13]; or it could refer to the perception of a wide range of negative feelings accompanied by a negative change in the self and its functioning[14]. A close ally of mental pain is suffering. Pain is not the only source of suffering; negative feelings such as fear, anxiety, depression also give way to suffering[15]. Poverty, social exclusion, grief and stress have also been understood as being causes of suffering[16]. Multiple meanings have been assigned to suffering – an inner void and existential vacuum; a state of severe distress that threaten the intactness of person[17], and an alienation from the past, the future and the self[18]. Mental pain and suffering are personal as well as situational experiences, thus defying a universal definition even while being a universal phenomenon. However, both implicate aspects of the self, are relational and have the disastrous consequence of perpetuating an existential crisis.

I tell my sons not to come here. They cry when they see me. I also feel bad seeing them. My wife used to come regularly a few years ago.... Then I told her not to come so often; I feel sad seeing her.—Amarnath

These various iterations of pain and suffering are important in order to gain a better understanding of the meaninglessness of life, and the isolation and alienation from everything around them that largely defines a life on and pains of death row.

Pains of Death Row

Research on prisons has documented exhaustively the pains of imprisonment, which refers to the non-physical, psychological assault on a prisoner's being through deprivations inflicted by the punishment. It was initially conceptualised as comprising four kinds of deprivation, that of liberty, autonomy, goods and services available in the free world, and the deprivation of heterosexual relationships. The 'pains of imprisonment' shifts the focus from the physical infliction of pain as punishment to the psychological experience of pain that prisoners go through. Justified or unjustified, intended or unintended, through deprivations essential to life in the free world, the pains of imprisonment attack the personality of the prisoner and their own sense of worth[19].

Later and contemporary research has expanded the ambit of the theory to include micro-humiliation, existential anxieties about identity, and survival and change that were provoked by long-term detention. Research on prisons has also commented on informal means of control and deprivations not necessarily inherent in the idea of incarceration, such as overcrowding, poor access to healthcare facilities, intimidation and violence to control prisoners, and loneliness[20].

To be sure, the pains of imprisonment are felt by the general prison population and death row prisoners alike. However, there are aspects of death row that are intensified and specific to the punishment itself. The following section discusses the pains unique to those living under the sentence of death.

Killing once is better than dying every day, either leave me or just kill me. If you are repeatedly telling someone that they will die, then either kill that person or leave them. What is the meaning of life when nothing except death can be seen further? This death sentence is like slow poison, it would be better if it could be had in one gulp. —Purab

■ MENTAL AND EMOTIONAL AGONY: THE SUFFERING ON DEATH ROW

That being on death row engenders pain and suffering has found acceptance in Indian jurisprudence on the death penalty[21]. Though largely specific to executive delay, the Supreme Court has acknowledged the mental and emotional agony of death row prisoners due to the uncertainty of the outcome of the final decision on their lives (*See Chapter II on Legal Framework*). Likening the suffering to torture, the Court has noted the dehumanising effect and the physical and psychological stress caused due to keeping the prisoner in suspense[22]. The Court has gone so far as to say that this suffering of the death row prisoner due to the uncertainty is to be presumed and not to be proved[23]. Suffering and infliction of pain, then, is decidedly not the aim of the death penalty, at least as far as the law is concerned.

The content and experience of this suffering as felt by death row prisoners, however, needs to be unpacked. As the narratives demonstrate, the suffering and agony due to the spectre of death is not limited to executive delay. Rather, the pain and suffering for death row prisoners 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 dream about being hung. I have seen the gallows; it has the graves of those who have been executed. I went there and saw it all. When the Supreme Court decision was against us, it broke me. I am afraid of the noose.—Archan Sharma

■ INDIGNITY AND VILIFICATION

ഇവിടെ എത്തിയതിനു ശേഷം മറ്റുള്ളവരുടെ വിനോദത്തിനായി കാണേണ്ട ഒരു പ്രദർശനവസ്തുവായി ഞാൻ മാറി.

After I came here, I have become an exhibit to be viewed for the amusement of others.—Hilbert

In developing the jurisprudence on rights of death row prisoners the Supreme Court has multiple times reiterated that rights which provide meaning to the right to life and dignity continue behind prison walls[24]. Being sentenced to death does not mean that an individual loses their dignity. However, the dignity of death row prisoners remains an aspirational ideal. Daily life on death row is rife with conditions and experiences that attack the self-worth of an individual. As the narratives show, instances where other inmates and prison administration acknowledge the dignity of death row prisoners are few and far in between. On the contrary, the experience of living with the death sentence is a constant attack on the dignity of a person.

They [prison officials] beat us often. They beat us by putting us inside a tyre. We have to lie in front of them, they all are very bad otherwise. They also do not provide us with good food. We get boiled water in the name of food. Let me tell you, I am sitting on a chair for the first time.—Damodar

One of the main consequences of incarceration is an individual's near complete loss of autonomy. Prison rules, formal and informal, control every aspect of an individual's life – timings for sleep and waking up, meals and meal timings, interaction with inmates and family (who they meet, when they meet, how they meet), activities of rest and work, healthcare, education, and so on are restricted, controlled and watched over. Departures are violations and violations lead to sanctions. Those working on the sociology and psychology of prisons have theorised that prisons and prison officials are, in fact, meant to be agents of control[25]. Narratives by prisoners confirm the theory; loss of liberty means the forfeiture of any semblance of autonomy.

One way of understanding the system could be that prison requires the giving up of autonomy because the (involuntary) submission to control is necessary to get the prisoner, who is considered less of a human, a step closer to being more human. This, though, is a paradox. A basic human need is snatched in order to make the prisoner human. Another route to understanding the prison system and the lack of autonomy would be closer to retributive justice; where the commission of crime, necessitates certain kinds of deprivations[26], including autonomy. In either case, it would appear that the pains of imprisonment are an important aspect, if not the aim, of punishment[27]. The loss of autonomy and the presence of pervasive control not only targets one of the main constituents of psychological well-being, it is a step towards the process of dehumanisation—the idea that they are "less than human"[28].

PAUL remains in his cell, does not mingle much, and feels isolated from the world around.

"My family...that is my only concern...I try not to think about the past...", Paul talks about his constant worry about his family. He does not share his worries with anyone, including his family.

Having been verbally abused multiple times in prison, he cannot bring himself to trust anyone. "Here nobody is a friend. Every single person you see here will smile at you and will try to pull you down behind your back."

Describing the power dynamics in prison, he says, "If you have beedis or ganja with you, you are powerful. Whatever [substances] has been caught outside, half of that is inside here. They make a lot of money from this. When you work here for 30 days, you will get about 3300 rupees, but those with beedi and ganja make 15000 [rupees] at the same time."

Having been in prison for about two and a half years out of which one year has been on death row, Paul feels that he is losing touch with his skills. He said he has forgotten how to speak English now.

■ THE MANY ACCOMPANIMENTS OF DEATH ROW

As the previous chapter showed, for death row prisoners, the experience of incarceration is not limited to the loss of autonomy. There are on and off the book forms of control, othering, and incursions into their dignity, related specifically to their punishment. The violence perpetrated against them, rules excluding them from community activities, rules meant to physically segregate them from the community, and the discrimination and stigma are daily processes of othering not inflicted upon the general prison population. (*See Chapter V for Experiences of Death Row Prisoners with Mental Illness*)

If it is life imprisonment, there is no problem. Death penalty detainees do not get jobs here. They will not get parole either. Whatever may be the crime, do not give death penalty to anyone. There are many people here sentenced to death. Even if somebody dies in their family, they are not being given parole. A prisoner on death row could not go for his mother's funeral as he was not sanctioned parole. That is painful.—Ghalib

The environment in which death row prisoners live have daily processes of indignity. They have little opportunity to actively engage with themselves and others and the lack of work takes away any avenue of personal growth and purpose to their day. Being segregated, othered, and the general mistrust that death row prisoners themselves have towards other prisoners, means they are largely socially alienated and therefore unable to make new meaningful relationships, while simultaneously being cut-off from relationships they had pre-incarceration. Their only support remains the dwindling visits from their families; which too sometimes is unavailable. The self-imposed seclusion, aloofness from other prisoners, and sometimes volitional non-participation in any available communal activity, is an internalisation and acceptance of their label and treatment as death row prisoners. Conditions in which death row prisoners live are a frontal attack on their psychological well-being, and being death row prisoners makes them legitimate targets for inflicting pain.

After hearing about my case, my co-prisoners started detesting me. Everybody said that even though I was a woman yet I did something like this.... I went through a lot of mental torture hearing such things. I was extremely afraid in the beginning when I got to hear such remarks from everyone. It used to disturb my mental balance. I used to get suffocated from within as I only heard such comments and could not vent out my anger or even speak in my defense.—Diya

■ DEATH ROW DISTRESS: THE PSYCHOLOGICAL HARM OF THE DEATH SENTENCE

I was not able to sleep for nearly five days after I was sentenced to death. It felt like I really 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. Their lives disregarded; they must continue living. 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.

How can I say that I am happy, this is prison, isn't it? We are controlling ourselves, isn't it? If we think about the punishment, our relay will stop. Then, you will enter into a coma. To avoid the thought of punishment, I read books. I am tense about what will happen to my parents. I hope that I am released before anything happens. Though I am laughing, don't be under the impression that I am not sad.—Rohit

*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?*

My family wasn't there in the court at that time, neither was my lawyer. I was alone.

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 on the street. They all said I should be hanged straight away.—Sushant

THE TRAUMA OF BEING SENTENCED TO DEATH

I started shivering when I was sentenced to death. I didn't know how the hanging would be carried out. I thought I would be taken straight to the gallows. I remain tense. I started smoking beedis in prison to relieve my tension.—Vineet

I was scared that I would be hanged immediately. What will they do to me? Will they kill me? I was very scared. They shifted me here. My wife and family didn't know, even my lawyer didn't know about the shifting. I was very scared.—Sundaram

The mental and emotional agony suffered by death row prisoners, as the Supreme Court puts it, is not necessarily a function of the stage at which their case is or the amount of time they have spent on death row. The pronouncement of death, in itself brief, reverberates throughout the life of the person who has now been deemed deathworthy. The whole trial is wrapped in legalese, con-

founding many, until the very last moment when they are told in no uncertain terms that they must be hanged. Stories of fainting, going numb, crying profusely were all too common. There are no formal mechanisms to help a prisoner make sense of and peace with the pronouncement of death – prisoners are left to their own devices to grapple with this acutely traumatic event. For some, prison officials might sometimes provide some temporary solace and give them hope. Others are not so lucky.

You're doing justice sitting in front of Gandhiji's photo. He should be the one in front. Whatever has happened to me is wrong.—Faisal

[When I was given the death sentence], my whole family was there. They were all crying. Then the guard said, trial court is not all, the High Court and Supreme Court are there too. He explained it all to my mother. I understood the process then. He reassured my mother, he said, "Why are you crying? There is still a long way to go." She thought I would be hanged straight away. I felt then like my mother would break. I thank the guard who told us the procedure.—Lakshmikant

Not being explained the intricacies of the legal system, many death row prisoners were under the impression that they would be hanged immediately.

THE MONOTONY AND APPREHENSION OF DEATH

I don't feel like doing anything now. I am tense the whole day and feel very guilty about it. It's almost every day; I just do not feel like doing anything.—Purab

After the trauma of being sentenced to death, sets in the endless excruciating wait for death, when slowly the will to live ebbs away. It is a psychologically and emotionally stressful period for prisoners not only because they are waiting, but also because this period of limbo is accompanied by large swathes of empty time; tomorrow will be as yesterday was.

Having very few, if any, engagements through the day, time seems to stand still and move forward at the same time. Each day, week and month appears purposeless. In a strictly regimented space like prison where each hour is accounted for, death row prisoners face a unique situation in as much as their hours are accounted for not by looking at work hours, productivity or deliverables, but the number of hours that they do nothing. This is not time where the prisoners can do as they want, instead it reinforces that they can do nothing. Apart from the loneliness, the prisoners have to also bear the slow deterioration of their mental and physical health due to the lack of any meaningful engagement.

It's terrible, I am just passing my days somehow. I've become irritable, angry. I can't focus, my mind keeps wandering....—Aarjav Surya

The government should not convert [my death sentence] to life imprisonment. What will I do in my old age? It is better if they hang me. I feel worried about what will happen. If the death sentence is executed, I will get rid of all of this. They can do either of the two, death sentence or life imprisonment. I neither got mercy nor did they remove it [the death sentence]. My mercy petition has been rejected. I wanted the death sentence to be executed. They should execute me; they should do whatever they want to do soon.—Rivan

The monotony of prison life is sometimes punctuated by the few family visits and phone calls that death row prisoners get. These too are not the salve one would expect them to be. Though they look forward to these meetings, the brief visits with a no-touch policy leave prisoners emotionally wrought. They are a reminder of what they are missing—deaths, birthdays, marriages. It is also a reminder of the financial burden that they are being on their families, having no means to support themselves.

I don't know how my wife died. I was in jail. I didn't perform her last rites, my family did. She was only 32. I assume she died because of all the stress from me being in jail.—Aarjav Surya

In addition to the loneliness and purposelessness, is 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 neither know how to comprehend it nor how to interpret it. The alienation from the system, when they are in the middle of it, adds to the sense of powerlessness. They want to be heard, but the system gives them few opportunities – it is incomprehensible to many that the system sentences persons to death without a meaningful opportunity to hear them and know them.

Before entering the court, the police told me not to say anything. I feel guilty now that I could have spoken that time. If I get a chance to speak, I want to share my problems and bad experience in the High Court.—Mahadev

THE MISSTEPS OF THE DEATH PENALTY

I thought no appeal had been filed and that is why the death warrant was issued. I couldn't sleep. I kept thinking about how I was going to tell my family about the warrant. I remembered them, thought of how my father will take care of all of my family. I think about how they're managing, even now, even after the private lawyer. I stopped eating. I was very sad for a few days. I didn't see the need in talking to my family about lawyers or the case.—Sushant

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 Lakshmikant'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, Lakshmikant 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. He says, "Everyone here has the same hope– maybe I'll also go home."

Some of the cruellest aspects of the death penalty and its administration lie in the law and the legal system's fallibility. This is not a rare phenomenon. Six out of the 88 prisoners had had a death warrant issued against them. The death sentence of four of them had been commuted at the time of writing the Report.

Not only is there little predictability in the outcome of the cases while prisoners wait, in some cases, all of which were avoidable, prisoners came very close to death. In some cases, warrants for executions were issued while multiple judicial remedies were still available. In a few other cases, prisoners were close enough to the execution that the preparation for the actual hanging was underway – measurements of prisoners taken to prepare the sand filled dummy bags, mock executions, last meetings with families were all done. Fortunately, they were snatched from the jaws of illegal death. As non-participants in situations such as these, we might be optimistic in the ultimate outcome in these cases, but for prisoners and their families who go through these experiences, the psychological ill-effects linger despite the course correction. 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.

I have not studied since my mercy petition has been rejected. I was learning English for 2-3 weeks, then I came to know about the rejection of my mercy plea. I feel disinterested in working now. I used to draw from time to time, but I don't feel like doing that anymore. For the past two weeks, I have thought of attempting suicide.... I think of getting something from the kitchen and pouring hot oil over me. I want to burn myself.—Drupad

POWERLESSNESS: "THEY DON'T BELIEVE US...", "THEY DON'T HEAR US..."

I have not met my family members since my arrest. They are not even aware that I am in prison. I have written so many letters from jail. I pleaded with the police officers to return my mobile for five minutes. It has my son's number. I want to tell them that I am in prison. I told the government lawyer. I told the judge, so many prisoners. No one bothers to help (breaks down).—Kartikeya

राष्ट्रपति ने जब खारिज की तो तैयारी होने लगी। तब हमने सोचा की जो आएगा, सामना करेंगे। मम्मी को कह दिया की मम्मी मेरी वजह से मत रोना। जेलर ऑफिस में मिला था उनसे, भावुक हो गया। मैंने बोला की आखरी बार रोना, मेरे मरने के बाद सपने में भी नहीं रोना या सोचना| मैंने एक्सेप्ट कर लिया था, सोच लिया था की पैरो को लड़खड़ाने नहीं देंगे, गिड़गिड़ायेंगे नहीं।

When the President rejected my mercy petition, all preparations began. I was determined to face whatever was going to happen next. I told my mother not to cry for me. I was sitting in the jailor's office and I got overwhelmed. I told her to cry one last time and then never cry for me or think of me; not even in her dreams. I had accepted my fate. I was not going to stumble and I was not going to beg for mercy.

LAKSHMIKANT

There is an immense power differential between death row prisoners and every other stakeholder in the justice system, including other prisoners and medical officers within prison. The power differential is a function of multiple factors. The socio-economic status of prisoners, who are overwhelmingly from lower socio-economic communities, the crime that they have been accused of and the nature of punishment create a climate where, in addition to traditional and more visible forms of discrimination, are injustices which are relatively more intangible. These injustices are a regular feature of a life on death row and stem largely from their identity as death row prisoners. This kind of injustice, also known as epistemic injustice, rejects persons as knowledge holders or those who have legitimate experiences, due to bias[29]. It constitutes disregarding, disbelieving and presumptively discrediting experiences of individuals, in this case death row prisoners, because of a bias which allows others to view their experience and voice as more suspect and liable to be disbelieved, and less legitimate and honest. The lower socio-economic status of an overwhelming majority of death row prisoners means that any equation they enter is already skewed against them.

I feel hurt. Until yesterday everyone was talking to me nicely, I don't know what's happened now. Prisoners taunt us. They joke with people who are not on death row about our hanging.—Adnan

Jail is a place that nobody pays attention to. Here there is no future. Nobody cares when we tell our problems to the authorities.—Purab

It is not about the prison. I used to live there [previous prison] as I live here. They sent me here after sentencing me. They sent me in haste, they did not even let me pack my clothes. They sent me at midnight without telling me anything. They stuffed me in a jeep and brought me here.—Roshini

Narratives of death row prisoners are rife with instances of testimonial injustice, where their accounts and needs are dismissed because they belong to a class of persons considered by others as lesser than. In turn, for death row prisoners, this creates suspicion towards the system and a belief that they will not be believed. This often translates into death row prisoners being aware of the injustice but accepting it without actively opposing it. Those who do oppose are seen as troublemakers.

When we go to the doctor, he just lifts his hand, ignoring us. Doctors just see us from a distance, they don't even touch us. If we tell the jail authorities, they start threatening us and saying, "we will send you to another prison, then your family would also not be able to visit you."—Drupad

Interviewers too were met with warnings from prison officials to not give too much weight to accounts of death row prisoners, because they are after all death row prisoners. It becomes important to highlight the systematic testimonial injustice that death row prisoners are subject to, because as a result of this powerlessness, frustration too becomes a daily emotion for death row prisoners to grapple with. Their accounts are discredited in the court, their lawyers do not consider it important to hear them and the prison administration discredits their experiences or in any event dilutes the credibility of their experience. It is no surprise, then, that in many cases the chance to be heard and their experiences taken at face value is disproportionately appreciated by the prisoners. The insistence on their behalf to be introduced to lawyers who will hear them out is not only a function of wanting better legal representation, it is also linked to their experience of being negated by everyone else they have encountered.

Who will listen to my voice? You are listening to it [talking to the interviewer] but no one else is willing. Inmates in other prisons used to make fun of me.—Dharmaketu

The Supreme Court's assertion (though temporally qualified) that suffering of death row prisoners is to be assumed and not proved restores, in one stroke, the dignity of death row prisoners. However, while this is the kind of dignity that ought to be accorded to the experiences of death row prisoners, it is not a dignity that is accorded. As the narratives show, with the constant discrediting of their suffering and experiences, there is a wide chasm between the two.

■ SELF-INJURY AND SUICIDE

Instances of suicidal ideation and behaviour and non-suicidal self-injury were overwhelmingly present in prisoners who were diagnosed with depression. However, this does not explain the full picture or shed light on why prisoners harmed themselves, whether with the purpose of dying by suicide, or as non-suicidal self-injury.

SAARU'S mental health has severely deteriorated because of the looming threat of the noose. He has considered killing himself several times in the past and says that he will definitely go ahead if the Supreme Court confirms his death sentence. He thinks that once his worst fears have turned into reality, there is no point in prolonging his fate. His only hope is watching others' sentences get commuted. He prefers life imprisonment over the death sentence as that remains his only chance of reuniting with his family.

At the time of the interview, Saaru had been in prison for over eight years and was awaiting a decision on his appeal to the Supreme Court.

I tried to gouge my eyes with a pen because I don't want to see the world. But I was stopped by a prisoner that day, otherwise I would have been blind today.—Suryakant

Self-harm, or non-suicidal self-injury (NSSI) has been defined as the "direct, deliberate destruction of one's own body tissue in the absence of suicidal intent"[30]. It is important to emphasise that NSSI is not necessarily related to a psychiatric disorder. Individuals without any psychiatric disorders also engage in NSSI[31]. However, a history of self-harming behaviour is a predictor for future suicide attempts[32]. Thoughts and behaviours of self-harm are an unhelpful coping mechanism adopted by individuals to relieve psychological pain[33]. The physical pain of the injury acts as an outlet to relieve the unseen and unarticulated pain. Physical hurt is pain that can be seen and reduced, unlike mental and emotional pain, which defies articulation and is, therefore, made sense of to a much lesser degree. Self-harm is a physical response to a purely psychological and emotional condition. Linked to self-blame, self-disgust, negative views about the self and a lack of self-forgiveness, among other negative emotions, NSSI behaviour is also often self-punishing[34].

Dismissing self-harming behaviour in death row prisoners or punishing it, is to disregard the psychological state which may lead them to engage in self-harming behaviour; whether as self-punishment or to offset pain.

When I was in the previous jail, I injured my head when I was feeling low. I used to bang my head and because of that they had put me in the high-risk ward. I was alone when I was shifted there. I felt very odd there. I was not feeling connected. There were no facilities for playing sports. We couldn't even roam around. The lock up also used to happen very early. I did it [hurt myself] the second time because I was put with high-risk prisoners and that made me tense.—Subodh

If NSSI is an expression of pain and a highly negative self-image, suicidal ideation is largely understood as an outcome of how a person views themselves in relation to others. It is the result of two types of interpersonal relationships – perceived burdensomeness and thwarted belongingness, separately and, more severely, together. Suicidal behaviour is an expression of such negative perceptions along with both a willingness to die and the capability to do it[35].

I am too ashamed; I can't bring myself to talk to my sister. I feel guilty that I am a burden on my family. I tried to kill myself in prison but a prison official cut the rope with which I was planning to take my life. I feel ashamed when I talk to my parents and so I don't feel like talking to them. I talk a bit with my mother. I feel guilty from within. I requested officials to let me stay alone. I don't want to depend on anyone for living. If we live together, then misunderstanding arises and we also get dependent on each other.—Archan Sharma

Perceived burdensomeness, in a nutshell, is the feeling that a person is a burden on their families and friends – that they are better off dead than alive. Thwarted belongingness relates more to the social exclusion and alienation from those around – a feeling of being intensely lonely. Not all who ideate go on to act on it. The capability to make an attempt often arises due to fearless endurance of pain brought about through exposure to painful and provocative events[36]. The painful event and experience, of course, need not be limited to physical pain or injury. Psychological pain is equally relevant. As mentioned before, psychological pain affects the self-worth of an individual. It hits at the "very core of their human condition and threatens life, which cannot be accepted in its present condition"[37].

I feel I am responsible for all the problems at home. I feel very sad for all the problems that happened at home. I feel sad for being a bad son in such a good family, it is a mistake that I was born in that family. Because of my behaviour I have given injustice to my family. I made them lose their family honour and respect.—Divyesh

The pains of death row, the psychological distress of living with the death sentence, the constant attack on their identity as individuals, feeling that their families are better off without them, presents a dark picture of a life on death row. A life of pain, frustration and agony, that we very well might not even care about. The wait for death is filled with a hopelessness about the present and the future, with no way out. With the uncertainty of death looming, they can neither live nor can they die.

They may yet be Human

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 we not only do 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.

As this Report shows, death row prisoners are no strangers to harm. There is a multiplicity of harms that death row prisoners have been through—the chronic abuse, neglect, trauma, serious mental health concerns, structural and social violence and barriers that they have faced, very often, every step of the way. The psychological repercussions of death row are an added harm. The lives of death row prisoners beyond or before the crime remains hidden, but when looked into, it reveals a web of adverse experiences that they could not get out of.

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. That they deserve the death penalty necessitates an inquiry into who they are. 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.

He liked exercising and the second thing that he liked was serving people. He cannot see anyone sad. I mean my whole family is like that (laughs). If someone is shivering in the cold, then they will remove their sweater and give it to the person. One day Akul saw someone shivering. He had nothing to cover himself with. Akul gave his sweater and his cap; he gave everything. And then he comes here and says that I have got a cold. I asked him what happened, I had given you warm clothes and everything. He said there was a man dying in the cold, I gave him everything.— Akul Soni's mother

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

Listening to the families of prisoners, it is impossible to not consider death row prisoners as people who have, contrary to the narratives spun around them, been kind and loving.

As a later chapter shows, those we consider the worst—those we are told are the worst—are often misjudged, not only in terms of how much they deserve but whether they should be the recipient of our outrage at all. And as both this and a later chapter show, our legal system is fallible and prone to mistakes. That should give us some pause.

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, we humanise ourselves.

दामाद जी और छोटी को आशीर्वाद। राम राम...खेती अच्छे से करना और बेटी को अच्छे से रखना। *[My blessings to your husband and your child. God bless you.... Be successful at your farming and keep my daughter safe and well.]*

My father used to write to me earlier. I have been going to meet my father twice a year for the past 14-15 years. When I meet him, he caresses my head and tells me he worries about me. He told me he gets worried if I don't call him regularly. I don't have anyone but him. I am like an orphan. —Rivan's daughter

CHAPTER VIII

DEATH ROW FAMILIES– UNINTENDED CONSEQUENCES OF THE DEATH PENALTY

At least whoever is alive should be given a chance for refor mation. Since you are an educated person you can very well understand this.... It's shocking to know that even highly edu cated people are unable to grasp this concept.—Vasav's father

The Death Penalty India Report lay bare the adverse emotional as well as socio-economic consequences that families of death row prisoners face, not just as a result of the punishment but from much earlier on in their exposure to the criminal justice process. However, there is currently no moral, legal or social framework in India which considers and responds to the unique experience of families of prisoners sentenced to death—a community which, as one family member put it, "dies everyday"[1].

This chapter puts a lens to the narratives of families of death row prisoners to develop a framework within which their experiences can be understood and responded to. These narratives were gathered during field interviews with the families. While the main purpose of interviewing families was to understand the life history and mental health history of the prisoner, an important aspect was to continue giving voice to the families as legitimate stakeholders in the criminal justice system.

There are multiple sites from where families, already exposed to structural vulnerabilities, are either passively or actively excluded. Whether it is the justice system or community spaces, families of death row prisoners are considered irrelevant stakeholders. All of these add to the process which ultimately pushes families to the fringes of their community and society. This not only has social consequences of, for instance, ostracization, but also financial consequences through lost wages and debts, and emotional consequences of dealing with their situation as well as the ever-looming possibility of the execution of a loved family member. Seemingly distinct, these consequences are deeply entwined. The stripping away of all these support systems leave families naked to the forces of the trauma of having to interact with an apathetic criminal justice system, a hostile society and the precarious fate of a loved one.

The criminal justice system is neither equipped nor meant to be equipped to accommodate and consider families of death row prisoners. Though the death penalty framework considers the circumstances of the accused in the form of mitigating circumstances, the debilitating impact of the death sentence on families is mostly outside the realm of this or any legal framework.

With this in mind, the chapter presents the experience of families in the criminal justice system within a framework of vulnerability, the process of being pushed to the margins and the emotional and psychological repercussions of marginalisation in this context. The chapter also proposes a theoretical framework to grasp the nature of loss and the ensuing grief that families experience.

The Criminal Justice System and Exacerbated Vulnerabilities

कानून अँधा होता है, मजिस्ट्रेट नहीं ।
"Justice might be blind; the Magistrate isn't."—Girindra

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 and the intensity of the consequences leaves the families relatively unprotected in their struggle. Like their vulnerability to hazards like natural disasters, socio-economically backward communities are vulnerable to the harshest face of the criminal justice system and have little to protect them from its debilitating effects. They are essentially trapped in a 'risk zone' and, when exposed, their vulnerabilities are exacerbated in surviving the risk.

VASAV'S family was constantly exploited by different stakeholders in the criminal justice system. They were falsely assured by the lawyer overseeing his case that Vasav's death sentence had been commuted. The lawyer was proactive only until the family paid for the legal services and turned unresponsive immediately after receiving these payments. The complicated court documents and legal processes left the family unarmed against the criminal justice system. The lawyers and police officers manipulated them into signing blank sheets of paper and selling all their property.

A police officer demanded a hefty sum from the family in exchange for sparing Vasav from the violence they intended for him. The family needed time to collect the money and even then they could not be sure of the policeman's promises. They stopped meeting Vasav entirely.

Similar is the case with families of death row prisoners. An overwhelming majority of death row prisoners and their families are socio-economically vulnerable and exposure to the criminal justice system plays out in largely similar patterns of exploitation and harassment across families. The adverse experiences of the family in the aftermath of the incident and the penalty signal a characteristic feature of vulnerability – a reduced and often lack of bargaining power, rendering them powerless against the system and society.

In the context of poverty, powerlessness encompasses dimensions of security, health, social relations and capabilities[2]. Lacking the capacity, social capital and resources, an overwhelming majority of families are excluded from a previously unknown reality which has now become integral to their lives. They are excluded 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 exclusion that is a telling sign of the extremely skewed power equation between families and the justice system. As a consequence, an overwhelming majority of families feel alienated from and resent the justice system and view it as untrustworthy.

These experiences of the families at every stage of the justice process are a function of their vulnerabilities. The criminal justice system further depletes the material, physical, psychological and emotional resources of the family, perpetuating and intensifying their vulnerability.

While the vulnerabilities of death row families are heightened during their interaction with the criminal justice system, the nature of these vulnerabilities differ, not only between different groups but also within members of the same family. Members belonging to socially excluded communities face compounded social exclusion, for instance, due to their caste or religion as well as their association with a death row prisoner. Vulnerable groups within families, such as older people, women and children face particular barriers and consequences of the death sentence that they have to overcome.

FAISAL wasn't there when the police went to his house. They instead arrested his family to force him into giving himself up. The family was unaware that this was not regular procedure. Faisal's aunt was beaten up at the police station as the family watched helplessly.

The effects of this experience have lingered. Faisal's uncle hides every time he sees a police officer. Even the thought of one causes him to panic. These episodes started after he was taken in by the police, and now he constantly mutters to himself, saying, "the police are coming, Faisal will be hanged". This incident has affected his entire life, making it impossible for him to work at his paan shop. The neighbourhood children mockingly mimic his almost compulsive murmuring.

"Those in Aisha's [Wasiq's wife] class used to ask where her husband was employed. She tells them that he is in the Gulf. For everyone, she is a Gulf man's wife."—Wasiq's Uncle

■ CHILDREN OF DEATH ROW PRISONERS—SPECIAL AND DIFFERING VULNERABILITIES

"They (the victim's family) passed comments on us too. They said that they wanted a child for a child... so in order to avoid these kinds of situations, we do not go near the old house."
—Dharmaketu's son

The sudden loss of a parent, deterioration of material conditions, and the stigma of being associated with a person condemned by society impact a child in ways different from the experiences of other family members. The complexity of their experience and its consequences have been well documented internationally[3], but there has been little focus on children of death row prisoners as a uniquely vulnerable population in India. The stark consequences of the death penalty and the stigma associated with it make for qualitatively different experiences, particularly for older children who are more aware of the reality of their parent living under the sentence of death.

Minor children of death row prisoners were not interviewed for this study. The circumstances mentioned are a reflection of the information provided by family members under whose care they lived at the time. Most of the children of death row prisoners who were interviewed for the study were minors at the time their parents were arrested and sentenced, but not at the time of the interviews.

Though similarly debilitating, there is a difference between the experiences of younger and slightly older children who are in a position to understand the implications of their parent's death sentence. Where 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 death penalty results in the disappearance of the "child".

FAISAL'S three children have been convinced that their father works at a plant. The family goes through great lengths to create an alternate reality for the children to protect them from the truth. Prison officials participate as well. They tell the children, "this is a plant, your father works here, he is on duty, he is working upstairs. We will go and call him and then you can meet him." Even when the children are taunted by someone, they are immediately told that the comment was made in jest and that having seen where Faisal lives and works, there was no reason to think otherwise.

The absence of a parent also exposes some to exploitation against which they have little protection. This is not to say, however, that the impact on one group is worse than the other, but to emphasise that given that there are different contexts, any responses that may be formulated would need to be tailored to the differing needs.

This new identity imposed on children often results in hostility at school, as a result of which, several children are either moved to another school or are forced to quit education. Having to make up for the loss of financial support, older children, on the other hand, face adulthood unexpectedly. This 'adultification' happens while they have to deal with the emotional and psychological consequences of a parent on death row. Generally, young adults approach new opportunities in anticipation of devising their own future—but children of death row prisoners have it mapped out by limitations over which they have no control, and resort to settling for opportunities limited by their current capacities.

The label of a death row child being sewn onto their identities, educational and employment opportunities are restricted for them which further deepens their socio-economic vulnerability. Additionally, the stigma becomes a barrier for them to enter into social relationships, like marriages or friendships, that can provide external support structures. This parallel yet hidden life results in long-term adverse emotional and psychological consequences for the children, who have to, from a young age, build and maintain an alternate reality.

The effect of the death sentence is limited neither to one person nor even to one generation. It has an intergenerational impact and restricts the present prospects of upward social mobility and forecloses future opportunities for rebuilding the capacity, security and social capital of death row families.

From Vulnerability to Marginalisation—The Role of Labelling and Stigma

There is yet another fallout of being associated with a person accused of, what are universally condemned as, heinous crimes. The legal system might presume an accused innocent until proven guilty, but the immediate social reaction to a criminal act, especially murder or sexual offences, is one of presumption of guilt rather than innocence. This reaction is not necessarily a function of the death penalty but starts manifesting as soon as a crime is committed and the accused is arrested. While the accused faces horrors of a different kind, families are left behind to face the wrath and collective condemnation of their immediate community and society.

When **DHARMAKETU** was arrested, his family was attacked by a mob in retaliation. His cousin narrates, "people tried to pour petrol on us and set us on fire... they doused us with petrol. My parents were aged and so they could not fight back. We were saved only because we were not home at the time. A younger person caught in that incident would not have been spared by the mob". They were forced to move houses.

Hiding identities has become a way for them to live their lives for over 20 years. Dharmaketu's cousin, Rishi, created a new identity, guarding against any new friends learning about his past. He lives with the chronic fear of being exposed which has a chilling effect on the family's job opportunities and socialisation, and also puts their lives at stake. "Nobody knows the truth in this colony because if they did, then I would not get any work whatsoever."

Still, every time he hears of other cases like Dharmaketu's, and sees the clamour for the death penalty around them, he is reminded of what happened to him.

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.

The stigmatisation is also bolstered by the media's demonisation of death row prisoners. Media plays a role in influencing our idea of justice[4] and these portrayals paint a grotesque picture of the accused not just as reportage but reinforced as mass entertainment to be believed and consumed. Profiting off a certain kind of portrayal of crime and the criminal, the media constructs fixed narratives, through which the incident and those involved are now perceived. This is not only an intrusion into the lives of the families, but they are also forced to relive the entire experience as it is recreated on television. As a result, several families perceive the media as influencing the outcome of the case, holding them responsible for snatching existing community support.

The othering and stigma become the vehicles through which death row families are marginalised—a state of existence characterised as a form of acute and persistent disadvantage, rooted in underlying social inequalities or involuntary exclusion from society[5]. Death row families are unable to afford an ordinary life; mental wellness is then a far-fetched goal. Their identity reduced to the incident and the punishment, they become receptacles for the community's anger, and their existence is viewed as a continuing

While the accused faces horrors of a different kind, families are left behind to face the wrath and collective condemnation of their immediate community and society.

threat. The perception of the justice system as infallible also lends legitimacy to the stigma and marginalisation as being 'deserved'.

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.

VEDYAANT'S family does not watch the news on TV anymore. When his death sentence was pronounced and telecast, his eldest son cried out, and the family stopped watching television fearing that they would also air the video of his execution. Vedyaant's mother refused to speak with the media, but some local newspapers, nonetheless, published false information about the family, leading to further harassment. They did not leave their house for 5-6 months, and the children stayed home from school for a couple of months as well. They eventually changed schools.

At the time of the interview, a fictionalised version of the case was being shown on a local TV channel. This has refreshed the case, both in their memories, and in that of the public.

The Unique Loss of Death Row Families

I don't tell people I have parents, because then I have to explain where they are, what they are doing.—Akira's Daughter

Because of the stigma, marginalisation and the atypical nature of the loss, death row families are unable to publicly express their grief and mourn their loss. Marginalisation ensures the removal of support structures that could potentially enable death row families to grieve and cope with their unique situation. The experience that death row families have with the criminal justice system results in the depletion of their material, emotional and internal resources, which in turn limits their ability to deal with the ever present but fluctuating threat of loss of another family member. Further, that it is a death deliberately imposed by the state and not a natural or accidental death compounds the trauma of the families. The impending yet uncertain nature of the death penalty does not allow the loss of death row families to be "resolved".

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

This kind of loss, also referred to as "ambiguous loss" is characterised by the feeling of a loss suffered but one which is not clearly identifiable due to its indeterminate and uncertain nature[6]. 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[7] of hope and helplessness.

When a man is dead, one can easily grieve for a few days and overcome the incident, but how is one to process the loss of a man in prison for 25 years?—Aslam's son

This complication in the grieving process leaves families with acute and unresolved grief[8], 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[9].Where the 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[10]. The only support available to families is the little 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 are facilitated by the state but are riddled with barriers which prevent any meaningful interaction.

Coping with Loss

He (referring to Dharmaketu) left when I was 5 years old, how can I accept him? I have told everyone that Papa is dead, and now if he comes back suddenly... it is not a Hindi movie where a dead person is resurrected...

My mother lives like a widow despite her husband being alive. She has stopped wearing sindoor and mangalsutra. She tells us that we have to do everything ourselves. So I dig a well every day and I draw water from it every day. —Dharmaketu's son

For death row families, public grieving as a form of coping becomes nearly impossible because of implicit and explicit societal disapproval. Having to uproot themselves and create new lives elsewhere, conceal their identity and relationship with the prisoner and curtail social interaction, families are stripped of social support, which acts as an essential support during grieving. In some cases, coping abilities are further compromised due to a breakdown in relations within the family and often complete rejection by the extended family.

Despite these odds, an overwhelming majority of families marshalled on, determined to provide support to and derive support from the prisoners, regardless of whether they believed in the prisoner's innocence.

Having said that, some families did abandon the prisoner or reduce their interaction with them, because of the crime that the prisoner had been accused of.

In some other cases, to protect themselves from the trauma of the meeting, families preferred not to go for mulaqaats, and sometimes prisoners themselves encouraged family members to not come for what are very infrequent and short meetings.

Formally there are three means for the family to contact the prisoner—through mulaqaats, over the telephone, and letters. However, due to structural and institutional barriers, none of them prove to be adequate means of support. The inability to write letters due to poor education, the problems in contacting through phone due to poor connectivity, prison restrictions on time and the financial implications coupled with the dissatisfaction of a very brief mulaqaat after elongated anticipation, make these avenues ineffective.

In addition to belonging to socio-economically vulnerable communities, most families live in rural areas, far away from the Central prisons where death row prisoners are lodged. As a result, though mulaqaats are the main avenue accessed by the families, they are expensive, time-consuming and literally impossible for some families.

Nonetheless, and however infrequently, most families did go for mulaqaats. For some, a sense of familial obligation was the driving force, for others the motivation lay in a want to support and connect with the prisoner. In many cases, especially when it was a son or a daughter who was on death row, parents would treat them with the same care and worry as if they were children again, providing them with food, clothing and any other material support which could provide any semblance of comfort to their child. It helps maintain the emotional bond between the family and the prisoner. The need to meet the prisoner often trumps financial losses, only for the families to face deeply entrenched institutional prejudice and barriers in meeting the prisoner.

What does a poor man have to give? Whatever we have, we take for him. The jail doesn't allow us to take home-cooked meals for him.... There is a glass separation when we meet him. The jail officials don't let us touch him.—Datta's mother

The brief meetings in a room overrun by other prisoners and their families comes after hours of waiting, accompanied, at times, by humiliation. The limited meeting time is often further reduced waiting for the prisoner to come to the mulaqaat area. Barriers like glass, wire meshes and a no-contact policy only add to these already grim meeting conditions. For some families, mulaqaats provide an opportunity to briefly share their respective lives, many others are hesitant to share their problems with each other to protect the other. Though done with the purpose of showing support, the reluctance to share also closes an avenue for the families to express their struggles.

They don't make him work; he was saying there are 14 people in a room. He says that if it is cold, they don't give him anything to wrap around him and keep warm. Everything is sold inside, oil, soap, mixture, biscuit, whatever is not there, we give it to him.—Lucky's family

The obstacles associated with mulaqaat not only chip away at the only potentially effective coping mechanism available to families, but also magnify the loss related to the trauma of the penalty, at times leading family members to engage in maladaptive coping mechanisms.

RUDRA'S family undergoes great personal and monetary expenses to meet him in the Central Prison. They must hire a car which takes a whole night and then take a tempo to the prison the following morning. Their journey back includes a bus ride and train travel, making the process of mulaqaat cumbersome for the family. This whole excursion costs them around Rs. 2000. The cost for food and drinks is additional. The travel is so tedious for the family that they can either meet the prisoner or continue with the rest of their lives. As a result, visits are by selected family members and extremely few. Even after such an expensive undertaking, the family is given only thirty minutes to meet Rudra. They are not allowed to meet him properly and hug him. They talk through a glass window through a phone.

When we go and meet, he is concerned about us. When I tell him about my problems, he says he is helpless. He is more hesitant about sharing his problems. I am more open about my problems. The expenses of the family have increased now. All the responsibility is on me. Lambodar keeps telling me not to take tension and tells me to share my worries. But I do not share my problems with him anymore.—Lambodar's wife

VIGNESH'S wife was left devastated by the arrest of her husband. She was abandoned by her brother-in-law who was in the police force, and found herself crying at the steps of the police station. She was then arrested when she enquired about her husband's injuries in prison. During this time, a policeman helped get her children into government schools, and into boarding. She was released after 12 years. She now works as a domestic help and supports her children through higher education.

There are some instances of *ad hoc* support provided to death row families, but it is more out of the kindness of a stranger than at a systemic policy level. Families are certainly collateral damage, but they are not collateral consideration within the law.

JAMEELA (Asad's wife) continues to maintain strong relations with him. She is convinced of his innocence even if the rest of the world disagrees. Her sister and other relatives rebuke her for still maintaining a relationship with him. Despite this, she believes that by virtue of being married to him, she must remain by his side through this ordeal. Her consistent support for Asad has raised police suspicions leading her to be harassed several times. All the money she'd get, she would spend on Asad. She said, "I used to deposit trousers, undergarments, clothes et cetera and some other clothes. He has this habit of distributing clothes, so I kept bringing them." She continues to fight against all financial and societal hindrances to make a life for herself and Asad.

"Will you get lost from here or not?"
—Trial court judge in Bunty's case

Even before his imprisonment, Bunty's family lived in extremely impoverished circumstances. After the incident, their relatives, friends and neighbours abandoned them and this lack of support worsened their socio-economic condition.

Bunty's family said that when Bunty was first taken by the police, they managed to secure bail for him through a lawyer. This was followed by daily visits to the courtroom for two months, after which he was taken to jail. "The judge gave us an ultimatum; either pay Rs. 1.5 lakh, or Bunty stays in jail". After they expressed their helplessness and inability to pay, he threw them out of court. Bunty was sentenced to death by the same judge.

URVI and Roshini's eldest daughter had quit school owing to incessant teasing about the case and the caustic environment created by other students and teachers. Due to such behaviour Roshini's sister used to go out of her way to ensure that the children did not fall victim to taunts. She was constantly around the children and refused to get married in order to protect them. Even when she took the children to her uncle's wedding, she allowed them to attend only the last day of the pheras and even then she was always around them, forbidding anyone from speaking to them.

RAMANAND'S wife refuses to meet her husband in prison. She says that she does not wish to meet him considering what he has done. If it was a mistake he had made for her or their children, that would have been acceptable to her. Despite this, she does not believe that Ramanand could do such a thing. She, however, feels compelled to trust the criminal justice processes.

VASAV'S son faced several hardships at the hands of his relatives. Vasav's mother-in-law told him that his father had died due to excessive drinking and repeatedly abused him for being Vasav's son. He was not sent to school by his maternal grandparents. Soon after, they refused to raise him and told Vasav's father to take him away.

MAYANK Chuhra's family was told to leave the locality 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'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 we feel scared."

SURAJ Kumar, Nirmal's son, was 13 years old when his father was arrested. He remembers the abject helplessness he felt when he accompanied his uncle to the prison. As the case went to court, intense social stigma forced him to withdraw from school for almost a month, as he stayed home and took care of his mother. While listening to him, it is easy to forget that he is barely an adult. He understands his father's position, and how much to disclose it to other people. Even as he sees his friends in college figuring out the world around them, his plans for the future are restricted to his village, and his family. After school, he started work at a gas agency, and soon became the primary earner in the family. Along with this, he joined a private college where he sits for exams. He speaks reluctantly of his earlier plans to become an engineer in the city; now he wants to work closer to his family. He chokes up at some points in the interview, but believes it was his responsibility to "step up" and look after his family.

CHAPTER IX
ACQUITTALS AND COMMUTATIONS

ഇവിടുത്തെ ജീവിതം വളരെ ദുഷ്കരമാണെങ്കിൽ, നിങ്ങൾ ഭൗതിക ശരീരം ഉപേക്ഷിക്കുമ്പോൾ, ദൈവം നിത്യതയിൽ നിങ്ങൾക്ക് ഒരു ഇടം ഉണ്ടാക്കും. ഞാൻ അതിൽ വിശ്വസിക്കുന്നു. ഇവിടെ, ശരാശരി ആയുർദൈർഘ്യം ഏകദേശം 75 വർഷമാണ്. ഇവിടെ ഈ ലോകത്ത് നിങ്ങളുടെ ഭാര്യ നിങ്ങളെ കാണാൻ വരില്ല; നിങ്ങളുടെ മകൻ നിങ്ങളെ ഉപേക്ഷിച്ചേക്കാം. എന്നാൽ ദൈവം വാഗ്ദാനം ചെയ്ത നിത്യത സത്യമാണ്.

If life is too tough here, when you leave the physical body, God will make a place for you in eternity. I believe that. Here, average life expectancy is about 75 years. Here in this world, your wife may not come to meet you, your son may leave you. But the eternity promised by God is true.

— Padmanabhan (Commuted to life imprisonment without re mission for 25 years)

The previous chapters in this Report provided a glimpse into the lives of death row prisoners, the daily trauma of living with the death sentence, and its mental health repercussions in terms of psychiatric illnesses as well as the pains of death row. The findings presented in this last chapter of the Report must be seen in this context.

The two generally accepted justifications for the death penalty, from a policy and a philosophical lens, are retribution (just deserts and individual deservedness) and deterrence (deterring others and the accused from committing the death eligible crime). As important as these considerations and the ensuing debates are, examining the death penalty and its consequence on the individual are equally important from both, policy and ethical, perspectives. The former perspectives are geared towards and are primarily invoked in justifying the death penalty assuming that the system is mostly, if not always, accurate. The latter arises more from the empirical reality that the system is largely inaccurate.

The limited aim of the chapter is to present the findings on acquittals and commutations, related geographical, legal, and temporal aspects and lastly, the distribution of psychiatric concerns—including those which predate the offence. The chapter does not answer how the system should respond to these realities, it only alerts the reader to an important and often overlooked reality of the Indian death penalty regime.

Findings

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. On an analysis of cases from 2000-2015, it found that only 4.9% of death sentences were confirmed by the Supreme Court[1]. The 88 death row prisoners interviewed for this study faced a similar judicial fate.

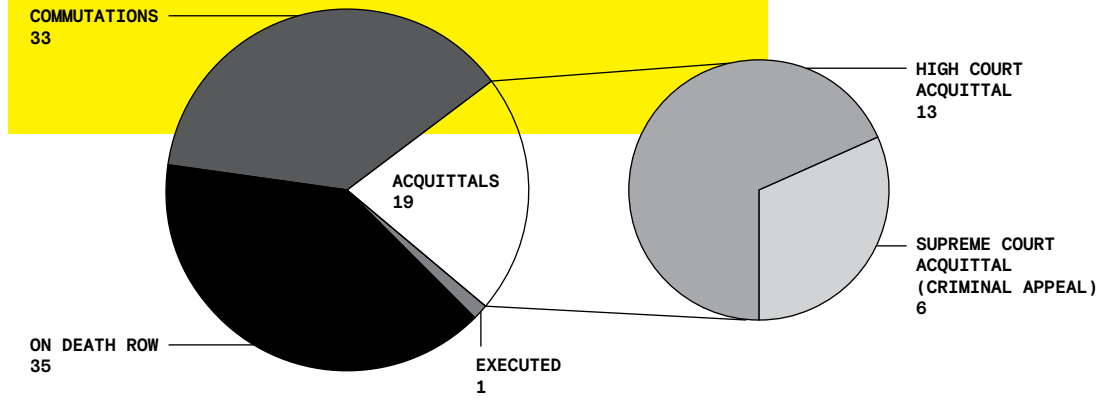
When categorising prisoners as acquitted or those whose sentence was commuted, there were a few prisoners who had been sentenced to death in multiple cases. In some of these cases, they were acquitted and in the remaining, the sentence was commuted. In such cases, their status has been categorised as 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. One other case 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 35 prisoners out of the 88 were still on death row. 52 prisoners were either acquitted (19) (Graph 9.1) or had their sentence commuted to various terms of life imprisonment (33) (Graph 9.2). One death row prisoner in Tihar Central Prison, Delhi was executed on 20.03.2020.

GRAPH 9.1

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



From the manner in which the murder has been committed and the subsequent cutting of a deceased human body into pieces, it is found that the act of the accused persons is heinous, and if the accused persons are sentenced to death in such a matter, then the society will also accept the punishment, and in such matters, it is the demand of the society that the accused persons be sentenced to death; such accused persons who were cutting a human body into pieces without any fear, are a curse not only to themselves, but also to their families as well as the society; and there are provisions for maximum sentence for murder, and if they are not punished by the maximum sentence, then there will be no justification so as to keep the provision of death sentence for cases pertaining to murder.

State of Madhya Pradesh v. Shaikh Aamin & Ors, Shajapur District Court, decided on 10.06.2016. All accused persons were acquitted by the judgment of the High Court of Madhya Pradesh (Indore bench), in State of Madhya Pradesh v. Aamin & Ors in Criminal Reference No. 3 of 2016, decided on 28.07.2017

The Trial Court was at a tangent in misreading the evidence on record. It failed to consider the evidence of the prosecution which is insufficient to prove the guilt of the accused. When there are various loopholes in the case of the prosecution, the conviction of the accused therefore is incorrect. It is not based on evidence. Such being the case and on re-appreciating the entire evidence, we are of the view that the trial court committed an error in sentencing the accused to death. When there is no evidence even to prove the case of the prosecution against the accused, the question of awarding a death sentence would not arise... we are of the view that based on the evidence and material on record, the accused cannot be held guilty even for a lesser offence.

The Registrar General, High Court of Karnataka v Doddahnuma, Venkatesh@Chandra, Munikrishna@Krishna, Nalla Thimma@Thimma, Lakshmamma@Lakshmi, Krishnadu@Krishna@Chandra (Karnataka High Court, Dt. 09.08.2017)

In the present case, the following are the mitigating factors/ circumstances:

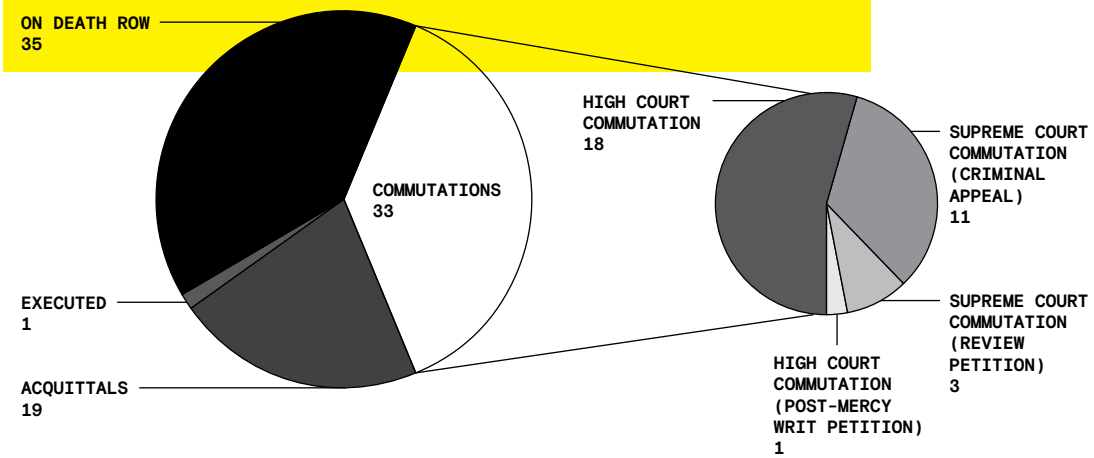
i. That the offence was committed under the influence of extreme mental or emotional disturbance. The accused was emotionally disturbed due to the elopement of his wife with the uncle of the deceased and that his children were suffering in absence of their mother with them....
ii. There are no criminal antecedents.
iii. At the time of commission of the offence the accused was 28 years of age and his conduct in prison is reported to be good.
iv. That he belongs to a poor family and is the only son of his parents, and
v. That he has got an old aged mother who is taking care of two daughters of the accused, out of which one is married now.

The mitigating circumstances as observed by this Court in the case of *Bachan Singh* and the mitigating circumstances in the present case, if are considered cumulatively and more particularly, that the accused was under the extreme mental disturbance because of the reasons stated hereinabove, we are of the opinion that, in the peculiar facts and circumstances of the case, the death penalty is not warranted and the same be converted to life imprisonment.

Manoj Suryavanshi v State of Chhattisgarh, (2020) 4 SCC 451

GRAPH 9.2

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



■ DISTRIBUTION ON THE BASIS OF OFFENCE

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.

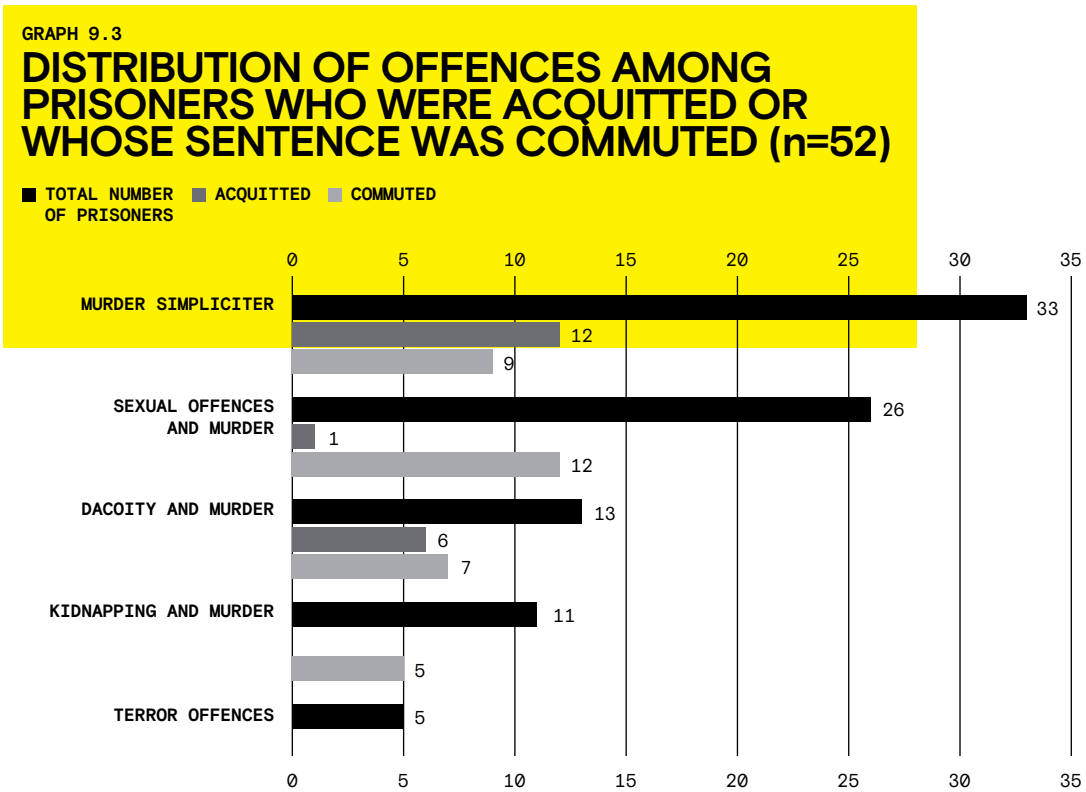
With respect to the 33 prisoners whose sentence was commuted, the highest number of commutations was seen for prisoners charged with murder involving sexual offence (12). Eight of these prisoners were from Madhya Pradesh. 10 of the 33 prisoners who had their sentence commuted were charged with murder simpliciter. (Graph 9.3)

It is required to be noted that the accused was not a previous convict or a professional killer. At the time of commission of offence, he was 19 years of age. His jail conduct was also reported to be good. Considering the aforesaid mitigating circumstances... we think that it will be in the interest of justice to commute the death sentence to life imprisonment.

***Vijay Raikwar v State of MP,* (2019) 4 SCC 210**

GRAPH 9.3

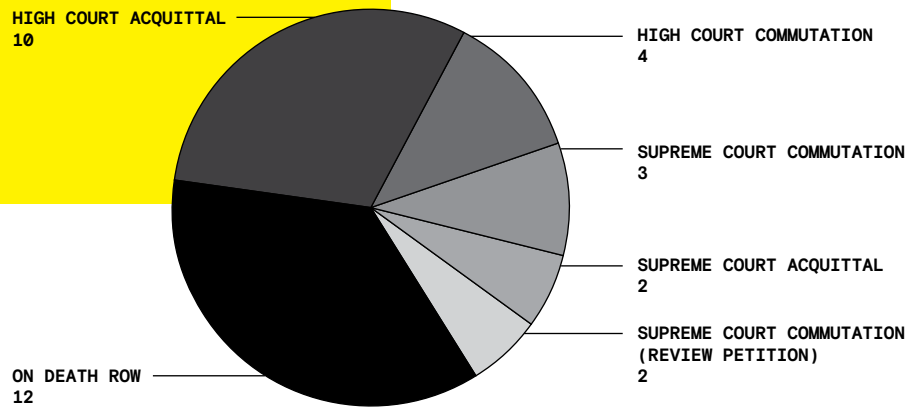
DISTRIBUTION OF OFFENCES AMONG PRISONERS WHO WERE ACQUITTED OR WHOSE SENTENCE WAS COMMUTED (n=52)



The highest number of acquittals (12) was seen for prisoners accused of murder simpliciter—10 were acquitted at the High Court stage while two prisoners were acquitted at the criminal appeal stage at the Supreme Court. In total, of the 33 prisoners charged with murder, 21 prisoners had either been acquitted or had their death sentences commuted to various terms of life imprisonment.

GRAPH 9.4

MURDER SIMPLICITER

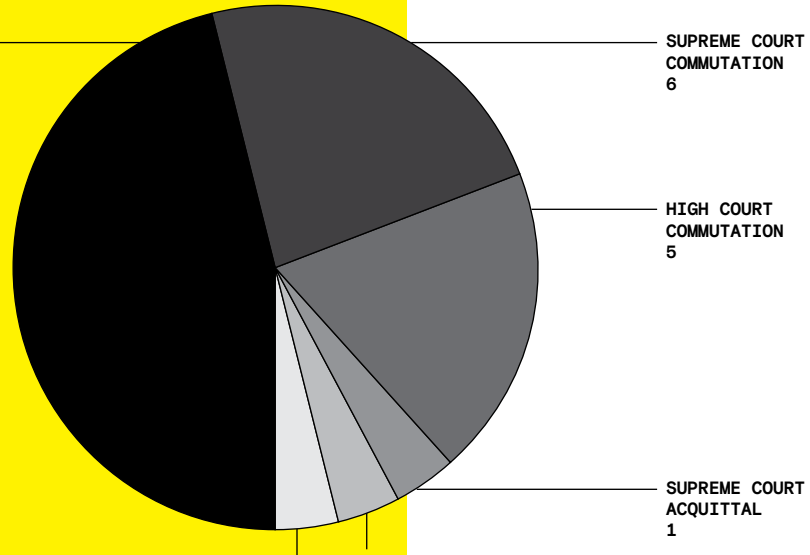


Most sentence commutations of prisoners charged with murder involving sexual offence were at the High Court stage (5), followed by the Supreme Court stage (6). Of the 26 prisoners sentenced to death for murder involving sexual offence, only 12 remained on death row. One was executed in March 2020.

Of the 13 prisoners who had been charged with dacoity and murder, only one remained on death row. Three prisoners were acquitted at the High Court stage and three by the Supreme Court. Five prisoners were commuted at the appellate stage, while one prisoner was commuted at the post-mercy writ stage by the High Court.

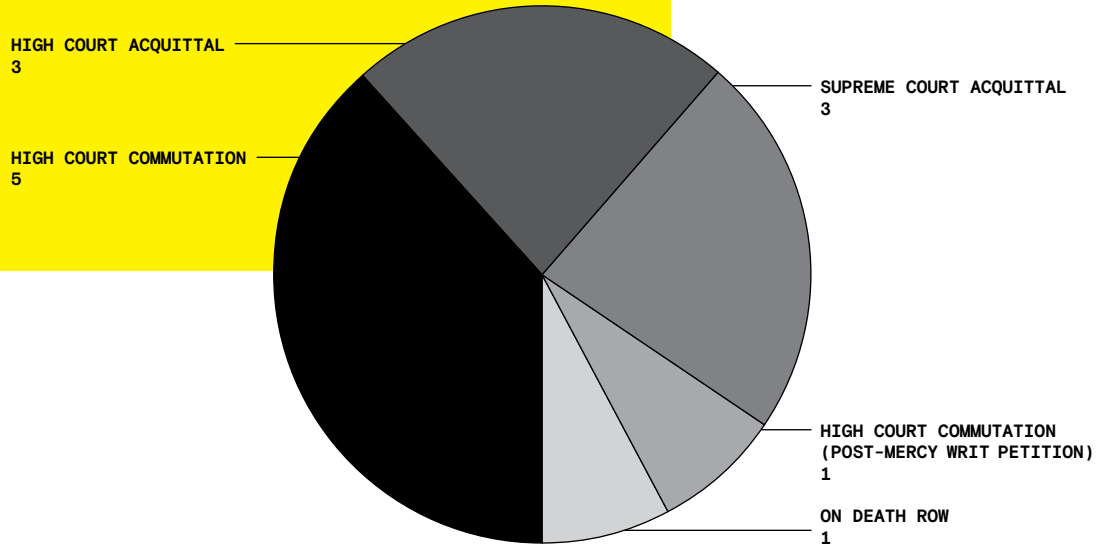
GRAPH 9.5

SEXUAL OFFENCE AND MURDER



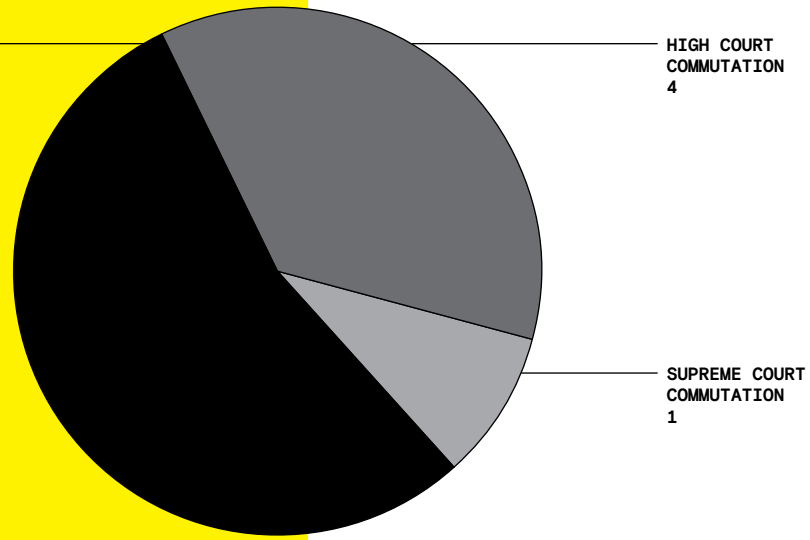
GRAPH 9.6

DACOITY AND MURDER



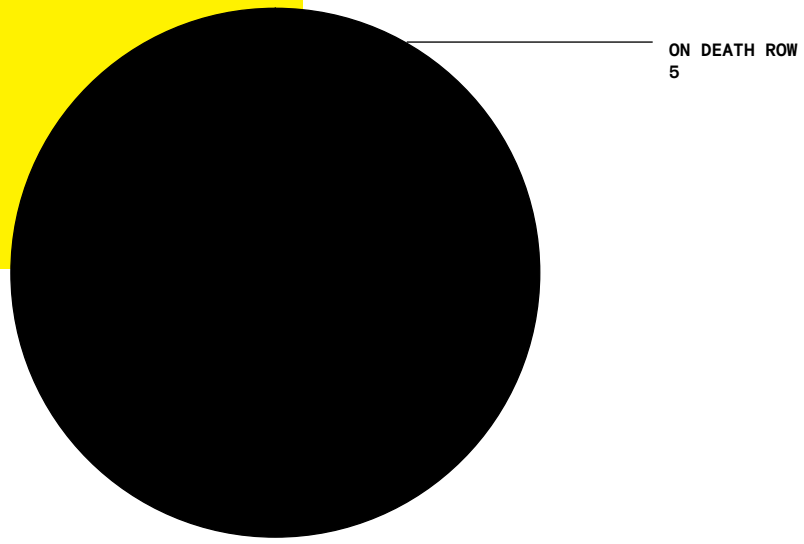
GRAPH 9.7

KIDNAPPING AND MURDER



GRAPH 9.8

TERROR OFFENCES



The death sentences of five out of the 11 prisoners charged with kidnapping with murder were commuted to various terms of life imprisonment at the High Court (4) and Supreme Court (1) stages.

All the prisoners charged with terror offences remained on death row.

■ STATE-WISE DISTRIBUTION OF ACQUITTALS AND COMMUTATIONS

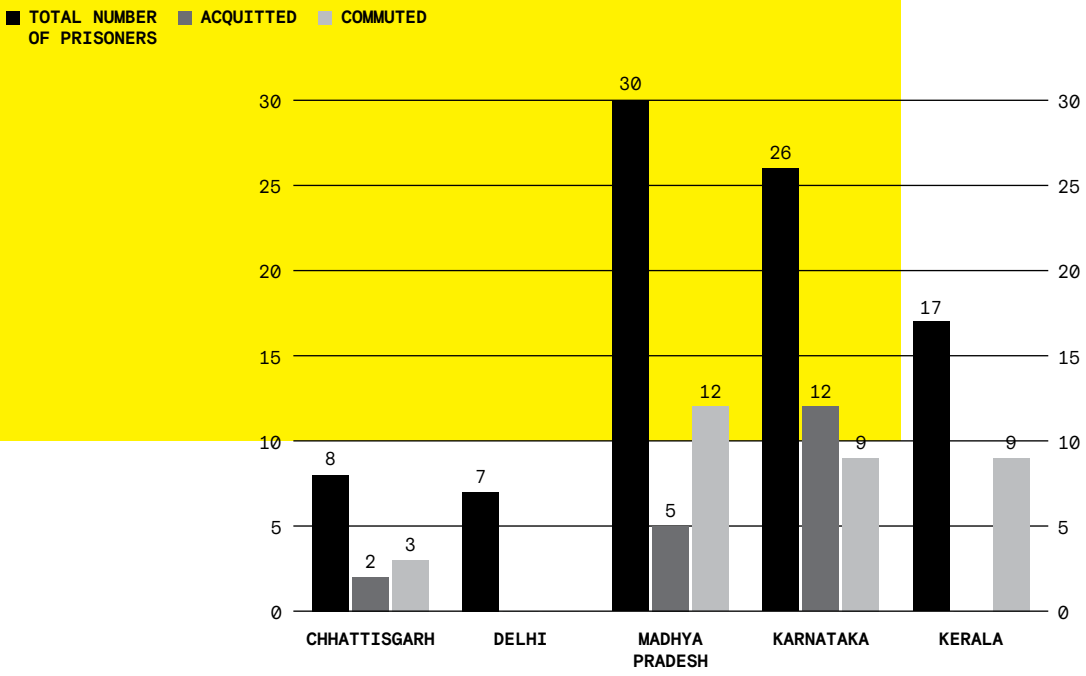
The largest number of acquittals was from Karnataka (12). Of the 33 commutations, Madhya Pradesh accounted for the largest proportion of prisoners whose sentence was commuted, at over 36%. (Graph 9.9)

Even though the charges were framed and the consequential points for determination were also framed, the trial court has not answered all the points for determination. This would clearly indicate an absolute lack of application of mind by the trial court. Even after framing the points for consideration, the trial court has not taken care to ensure that all the points have been answered. In view of the non-application of mind by the trial court, the judgment cannot be sustained.... For the aforesaid reasons we are of the view that the judgment of the trial court is opposed to the mandatory Provisions of Section 354 of Cr.P.C. The judgment of the trial court requires to be set-aside purely on a question of law.

The Registrar General, High Court of Karnataka v Doddahnuma, Venkatesh@Chandra, Munikrishna@Krishna, Nalla Thimma@Thimma, Lakshmamma@Lakshmi (KarnatakaHigh Court, Dt. 27.7.2017)

GRAPH 9.9

STATE-WISE DISTRIBUTION OF PRISONERS WHO WERE ACQUITTED OR WHO HAD THEIR SENTENCE COMMUTED (n=52)



All aforesaid aggravating circumstances without mitigating circumstances lead to the only inference that the appellants have committed brutal murder.... It was planned act of the appellants shocking not only to the judicial conscience, but even the conscience of the society. Case of the appellants falls within the ambit of rarest of rare. There is no chance of reformation of these appellants.

Judgment confirming the death sentence
(State of Chhattisgarh v Digambar Vaishnav and Another, (2015) SCC OnLine Chh 540)

The forensic evidence against the appellants to prove their presence at the scene of crime is insufficient. The findings of the hair analysis are also inconclusive. The report only concluded the specimen to the human hair. The same is not sufficient to substantiate the presence of the appellants.

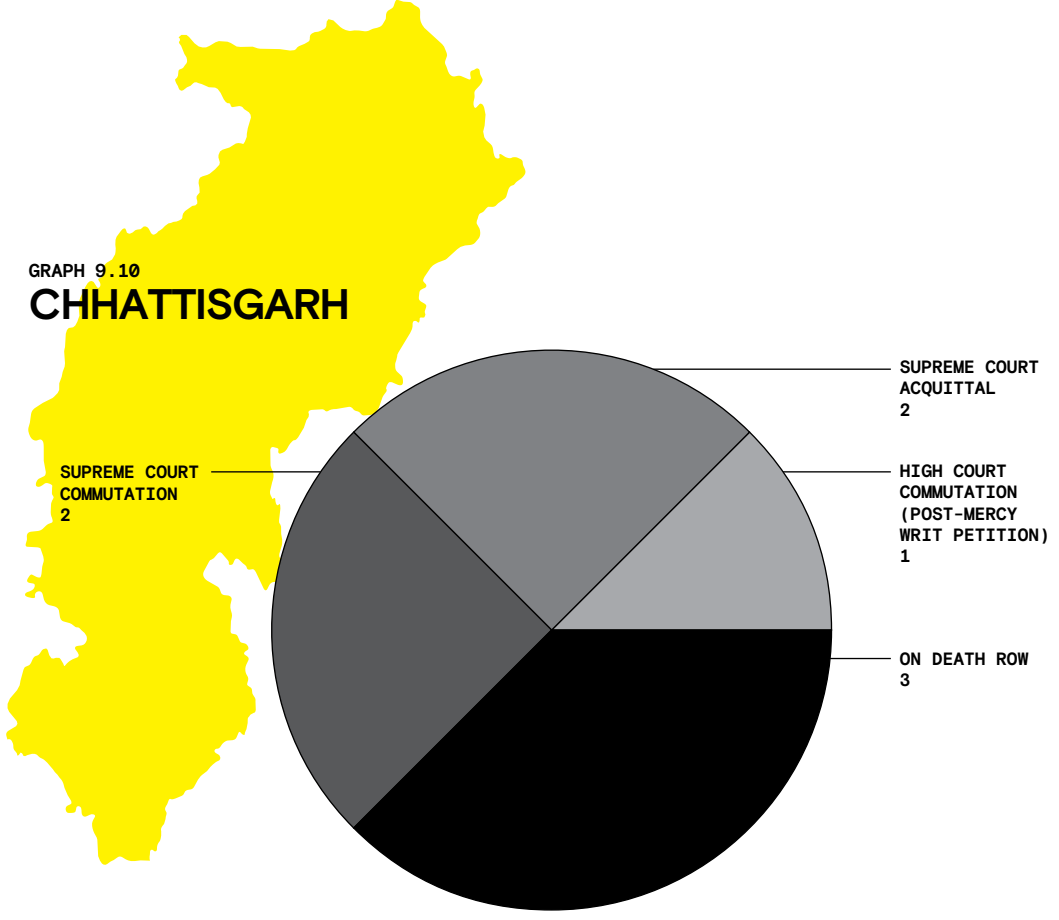
Judgment of acquittal
(Digambar Vaishnav v Chhattisgarh, (2019) 4 SCC 522)

STAGE-WISE DISTRIBUTION OF PRISONERS WHO WERE ACQUITTED OR WHO HAD THEIR SENTENCE COMMUTED ACROSS DIFFERENT STATES

In Chhattisgarh, two prisoners were acquitted by the Supreme Court after spending close to five years on death row, and three were commuted—two by the Supreme Court and one by the Delhi High Court in a writ petition. (Graph 9.10)

GRAPH 9.10

CHHATTISGARH



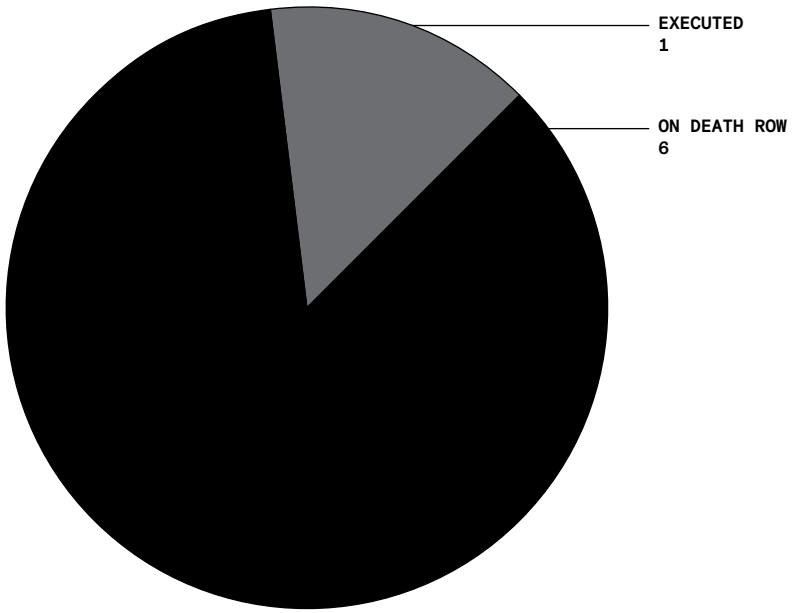
In Delhi, six out of the seven prisoners we interviewed remain on death row. (Graph 9.11) One prisoner, after spending around seven years in prison, out of which six and a half years were on death row, was executed.

In Karnataka, out of the 26 prisoners we interviewed, only five remain under the sentence of death. Nine prisoners were acquitted by the High Court, while three were acquitted by the Supreme Court. Eight prisoners were commuted by the High Court and one by the Supreme Court.

One of the prisoners acquitted by the Karnataka High Court had spent over 14 years in prison and close to seven years on death row. The three prisoners acquitted by the Supreme Court had spent close to 10 years in prison and over six years on death row. (Graph 9.12) One prisoner whom we were unable to interview had his sentence commuted by the High Court as well.

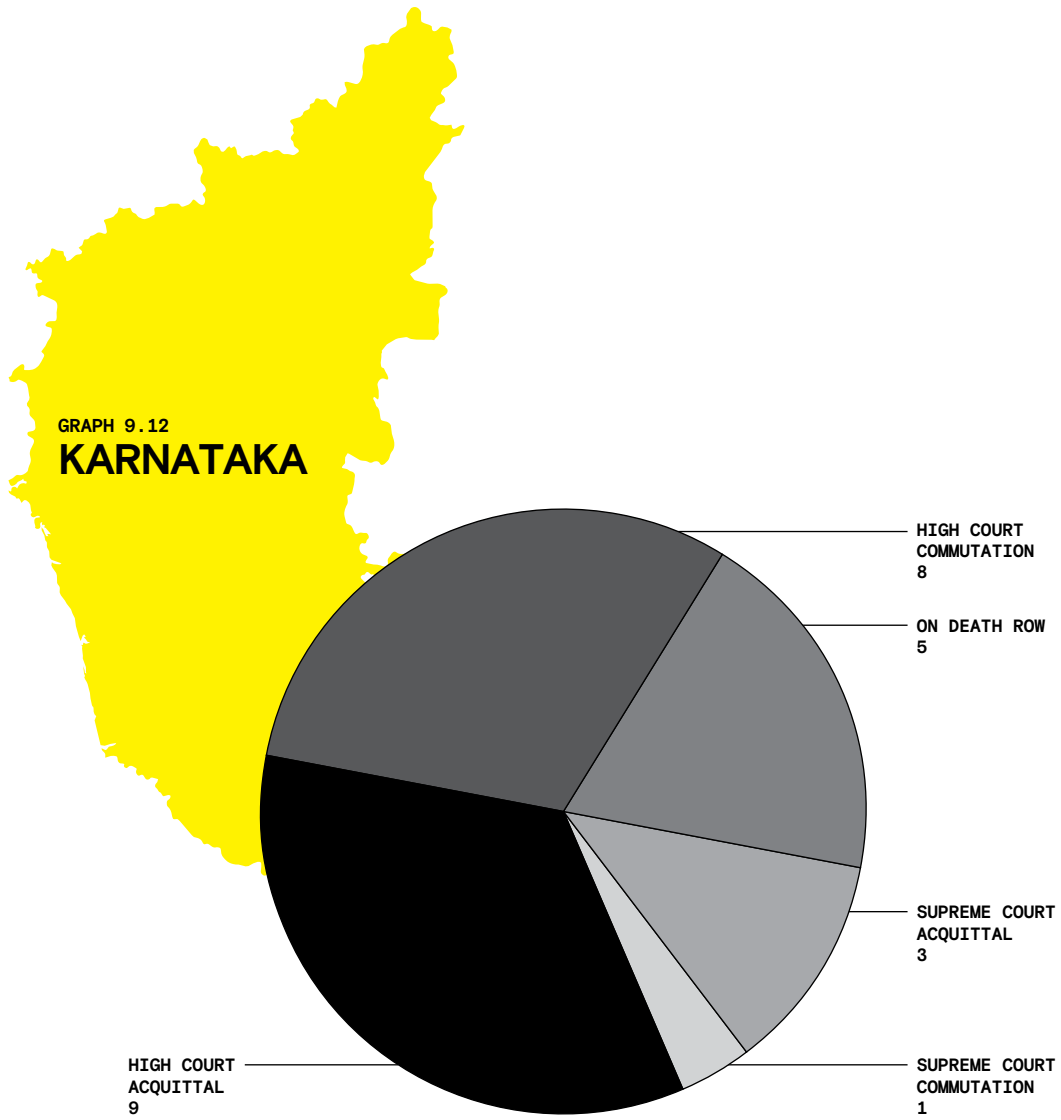
GRAPH 9.11

DELHI



GRAPH 9.12

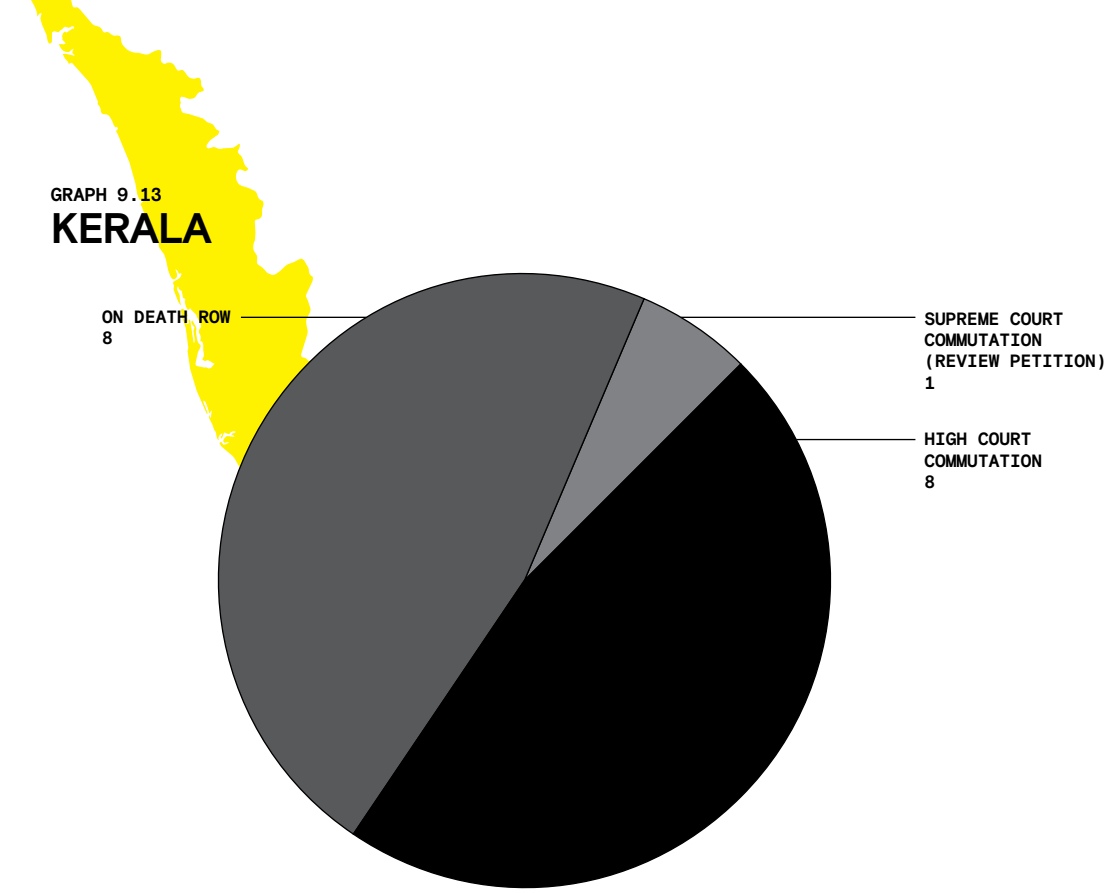
KARNATAKA



In Kerala, out of the 17 death row prisoners we interviewed, nine were eventually commuted—eight by the High Court and one by the Supreme Court. The prisoner commuted by the Supreme Court had spent close to 14 years on death row. His mercy petition had been rejected by the President. (Graph 9.13) The only prisoner we did not interview in Kerala also had his sentence commuted by the High Court.

GRAPH 9.13

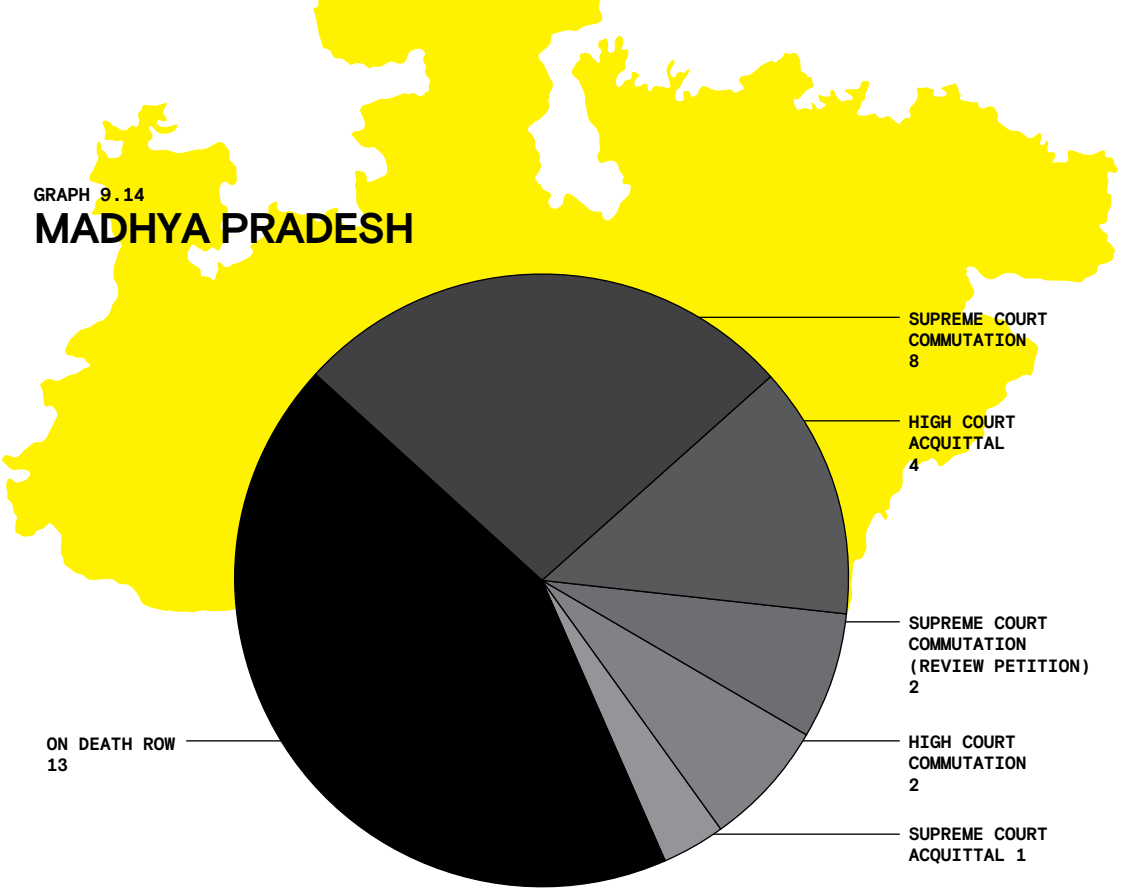
KERALA



Madhya Pradesh saw the highest proportion of its death row population commuted by the Supreme Court. The sentences of 12 prisoners were commuted, out of which 10 were commuted by the Supreme Court. One of the prisoners who was commuted had spent close to 13 years on death row, and had already had his mercy petition rejected by the President. The four prisoners acquitted by the High Court had spent over two years on death row. (Graph 9.14)

GRAPH 9.14

MADHYA PRADESH



THE STORY OF MA ANTONY

The accused is a hardened criminal beyond correction and rehabilitation. In this case the culpability has assumed the preparation of extreme depravity.

The accused is a preferred example of blood thirsty, irreclaimable [sic] and hardened criminal. This court is of the view that, to spare such a criminal from the gallows is to render the justice system suspect and to have recourse to the lesser alternative in sentencing this accused will be a mockery of justice.

As this incident had sent tremors in the society and the collective conscience of the community as such was shocked, it is not to be humane but to be callous to allow such a criminal to return to the society.

Judgment imposing the death sentence
(State of Kerala v MA Antony, Session Case No. 154 of 2004, 31.01.2005)

In cruelty and brutality, he exceeded all limits. It is unimaginable, unthinkable and difficult to believe that after causing six murders by splashing blood all around the house, he would sit in the same house for almost five hours as if he was not sitting amongst six dead people, but amongst trophies won by him in a prestigious event. He has no respect, no care, no dignity, no mercy for human life. His living in this world is most dangerous to the society.

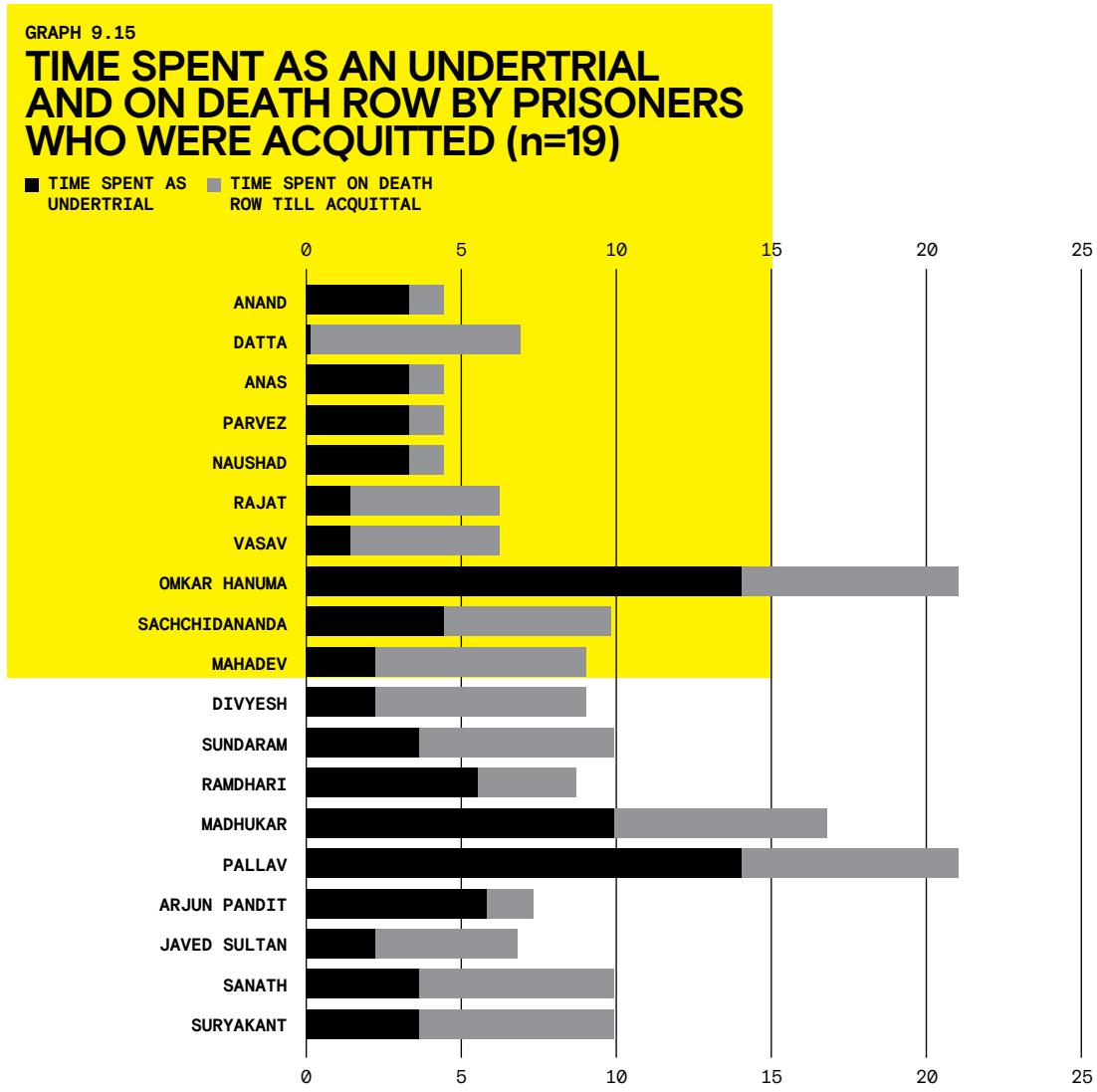
Judgment confirming the sentence
(State of Kerala v MA Antony, High Court Crl. A. No. 385 of 2005, 18.09.2006)

We are also of opinion [sic] that all the courts including this Court overlooked consideration of the probability of reform or rehabilitation and social reintegration of the appellant into society. There is no meaningful discussion on why, if at all, the appellant could not be reformed or rehabilitated. The Trial Court was in error proceeding on the basis, while awarding a sentence of death to the appellant by observing that he was a hardened criminal. There is no such evidence on material or on record. The socio-economic condition of the appellant was a significant factor that ought to have been taken into consideration by the Trial Court as well the High Court while considering the punishment to be given to the appellant. While the socio-economic condition of a convict is not a factor for disproving his guilt, it is a factor that must be taken into consideration for the purposes of awarding an appropriate sentence to a convict.

Judgment commuting the death sentence
(State of Kerala v MA Antony, (2018) SCC Online SC 2800)

GRAPH 9.15

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



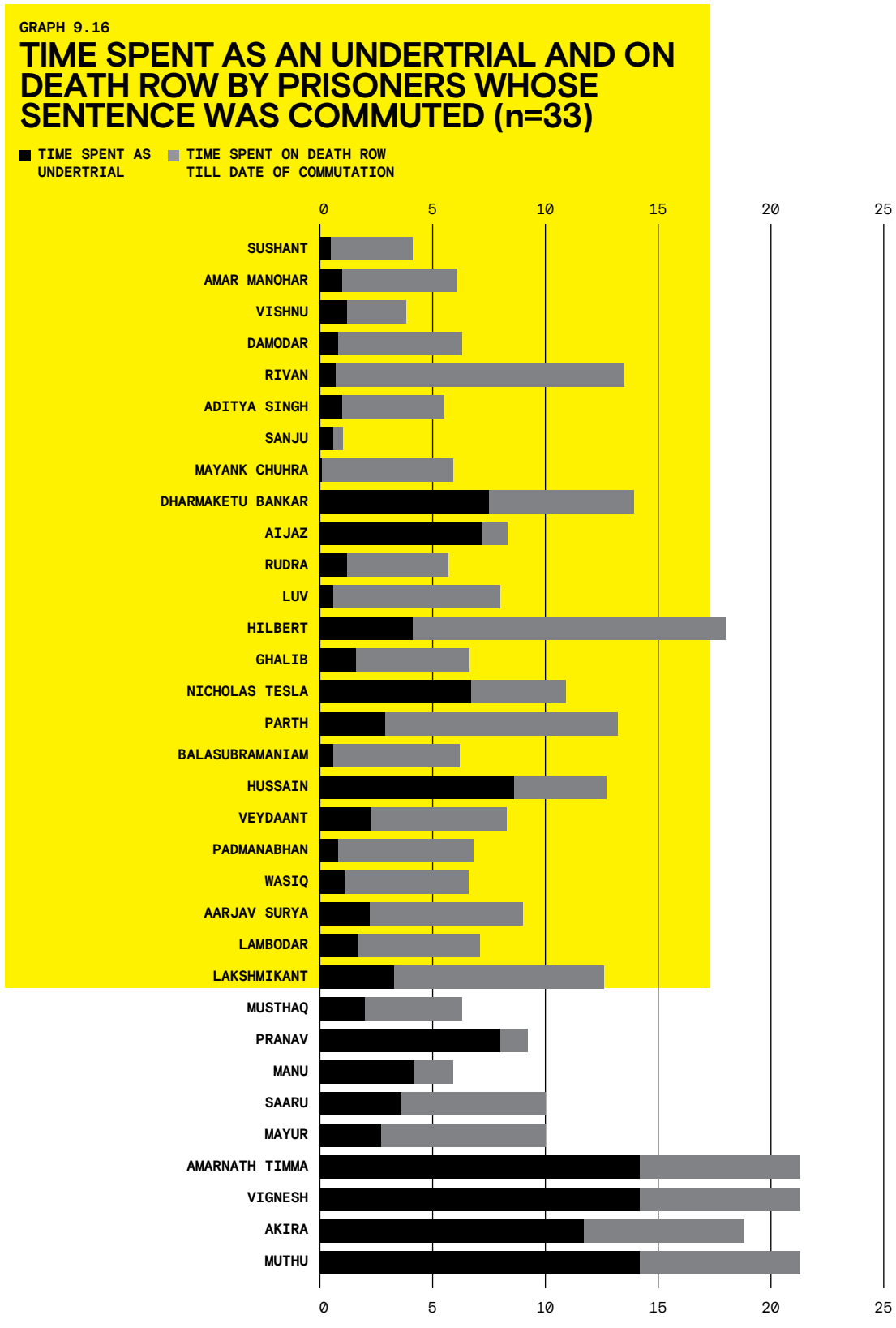
■ TIME SPENT IN PRISON AND ON DEATH ROW

The median time spent in prison, as undertrial prisoners and on death row, by prisoners who were acquitted was 8.7 (1.5-20.2) years while the median time spent on death row was 5.4 (1.1-7.0) years. (Graph 9.15)

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 9.16)

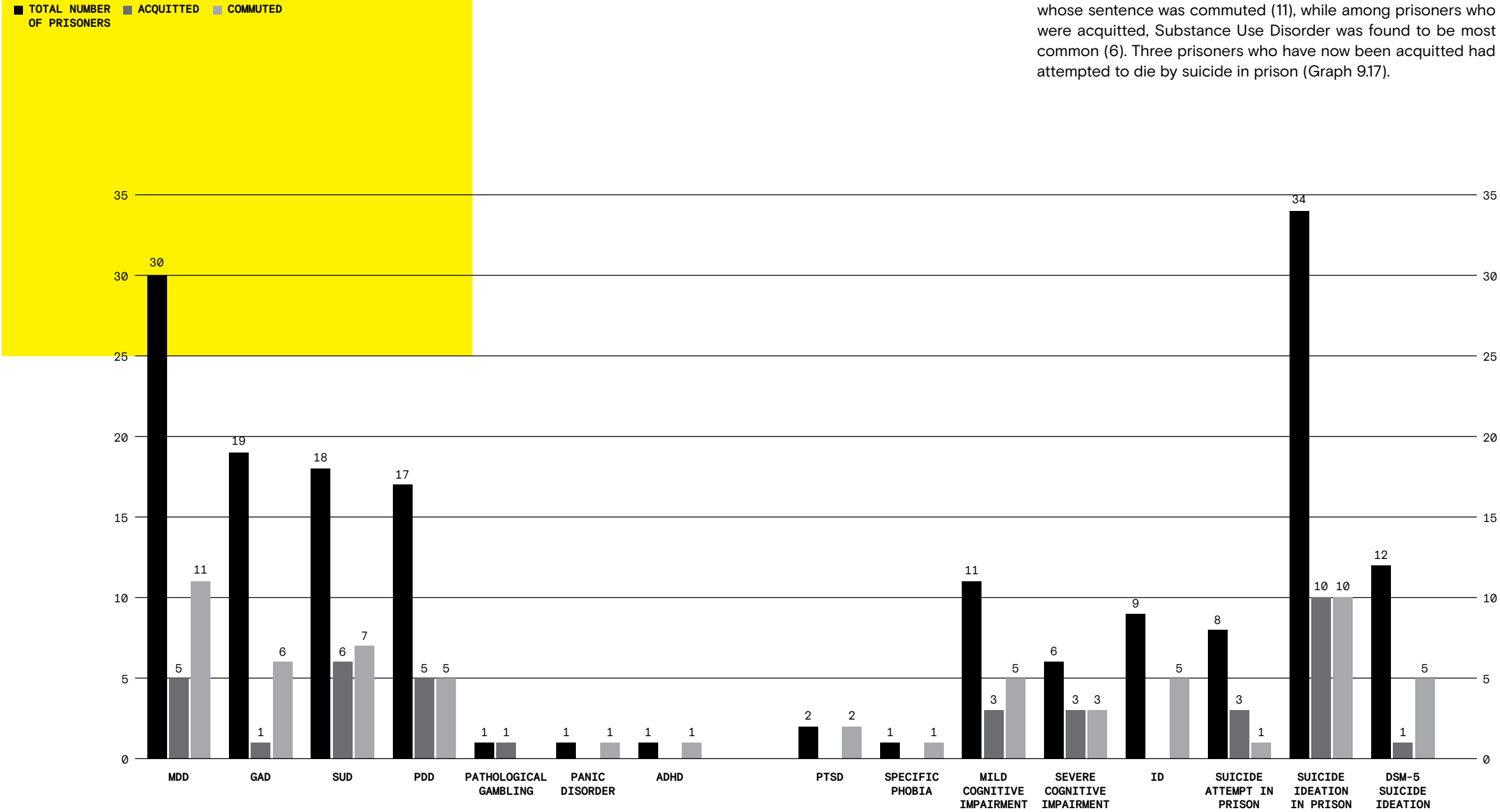
GRAPH 9.16

TIME SPENT AS AN UNDERTRIAL AND ON DEATH ROW BY PRISONERS WHOSE SENTENCE WAS COMMUTED (n=33)



GRAPH 9.17

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



■ CROSS-SECTIONAL MENTAL HEALTH CONCERNS OF PRISONERS WHO WERE ACQUITTED OR WHO 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. Persons with Major Depressive Disorder formed the largest proportion among prisoners whose sentence was commuted (11), while among prisoners who were acquitted, Substance Use Disorder was found to be most common (6). Three prisoners who have now been acquitted had attempted to die by suicide in prison (Graph 9.17).

In a majority of these cases, the concerns remained unidentified and therefore unaddressed—not only in the context of treatment and care, but also in their consideration within the criminal justice system.

Of the prisoners whose sentences were eventually commuted after many years of being on death row, five had intellectual disability. An understanding of the disability indicates the possibility of lesser culpability of persons with intellectual disability, which in turn means that the prisoners should not have ever been sentenced to death. However, the issue was neither raised, identified nor dealt with despite the death penalty framework providing space for it[2]. (*See Chapter VI on Intellectual Disability and Death Penalty*)

13 prisoners had cognitive impairment. Research indicates that lack of stimuli and the isolation from social engagement which are necessary features of solitary confinement result in cognitive decline and other psychiatric concerns[3]. These adverse consequences do not end with an end to the confinement. They persist for long after the person has endured these experiences, becoming near constant features of their lives. If the impairment existed at the time of crime, that would have been relevant for the purposes of sentencing.

20 of the 52 prisoners who are no longer on death row, had thought about ending their lives at least once in prison; four of them had made active attempts to die by suicide. There were only 12 prisoners who were not diagnosed with a current episode of any mental illness. (*See Chapter IV on Psychiatric Concerns on Death Row*)

These mental health concerns need to be looked at in the context of the state's accountability and response towards punishment as well as implications on the right to health of prisoners. That mental illness and mental health 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. Accused persons and death row prisoners with mental health concerns, particularly given their socio-economic backgrounds, are liable to get caught in multiple interconnected systems. These systems should ideally be able to weave a net to protect their rights to access justice and health, but the cracks and chasms in and between the systems are leaving death row prisoners vulnerable to a compromised right to access justice as well as the right to health. (*See Chapter II on Legal Framework*)

The chapter 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. 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.

As shown through excerpts from judgments delivered by various levels of the country's courts, we often believe a person to be brutal and dangerous, only to later be told that the earlier court was not quite correct in their evaluation. When the same case leads to such a diametrically opposite understanding of a person, as it did in MA Antony's case, it leads to a whole host of questions regarding the strength of the legal system—more so, when people are found innocent and acquitted after many years of being on death row. The cases cited from the Karnataka High Court are not anomalies. When 19 prisoners are set at liberty by the judicial system after sentencing them to death, responses need to be crafted to, at minimum, ensure that the ill-effects of death row confinement do not alienate an individual to an extent that they may find it difficult to restart their lives outside.

When they were in the justice system, they were evil doers, and once set at liberty, they drop out of our collective imagination, like they never existed. The cost they pay and bear for finally being found innocent, is in no way compensated. 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.

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TABLE 9.1

List of death row prisoners who were acquitted or who had their sentence commuted

S.No.	Name	Acquitted / Commuted	Age at the time of sentencing	Time spent in prison (years)	Time spent on death row (years)	Solitary Confinement (days)	Psychiatric concern(s)
1	Sushant	Commuted to life imprisonment without remission for 25 years	31	4.0	3.6	0	MDD, GAD
2	Amar Manohar	Commuted to life imprisonment	21	6.2	5.1	7	
3	Vishnu	Commuted to life imprisonment without possibility of release	49	3.6	2.6	Duration of confinement not known	
4	Damodar	Commuted to life imprisonment without remission for 20 years	19	6.3	5.5	0	ID, PTSD, PDD, MDD, GAD, Suicidal ideation in prison
5	Rivan	Commuted to life imprisonment	50	13.5	12.8	0	ID, MDD, GAD, Suicidal ideation in prison
6	Anand	Acquitted	27	1.5	1.1	12	MDD, GAD, Suicidal ideation in prison
7	Aditya Singh	Commuted to life imprisonment	42	5.5	4.5	15	
8	Sanju	Commuted to life imprisonment	22	0.9	0.4	Duration of confinement not known	
9	Datta	Acquitted (case remanded to trial court)	18	6.9	6.8	Duration of confinement not known	MDD
10	Anas	Acquitted	36	1.8	1.1	14	PDD
11	Mayank Chuhra	Commuted to life imprisonment without remission for 25 years	48	5.9	5.9	510	ID, PDD, GAD
12	Parvez	Acquitted	37	1.8	1.1	90	Cognitive impairment (mild), PDD, MDD
13	Naushad	Acquitted	35	1.8	1.1	165	PDD, MDD
14	Dharmaketu Bankar	Commuted to life imprisonment without remission for 25 years	44	13.9	6.4	Duration of confinement not known	ID, MDD, Suicidal ideation and attempt to die by suicide in prison
15	Aijaz	Commuted to life imprisonment	36	6.7	1.1	Duration of confinement not known	MDD
16	Rudra	Commuted to life imprisonment without remission for 18 years	22	5.6	4.5	480	
17	Luv	Commuted to life imprisonment without remission for 30 years	21	8.0	7.4	0	MDD
18	Hilbert	Commuted to life imprisonment	42	17.9	13.9	4	
19	Ghalib	Commuted to life imprisonment without remission for 25 years	34	6.3	5.0	Duration of confinement not known	Cognitive impairment (mild), MDD, SUD

TABLE 9.1 CONTD

List of death row prisoners who were acquitted or who had their sentence commuted

S.No.	Name	Acquitted / Commuted	Age at the time of sentencing	Time spent in prison (years)	Time spent on death row (years)	Solitary Confinement (days)	Psychiatric concern(s)
20	Nicholas Tesla	Commuted to life imprisonment without remission for 25 years	27	4.5	4.2	Duration of confinement not known	
21	Parth	Commuted to life imprisonment without remission for 25 years	31	11.5	10.3	Duration of confinement not known	SUD, Suicidal ideation in prison
22	Balasubramaniam	Commuted to life imprisonment without remission for 25 years	21	6.2	5.6	540	ID, ADHD, PTSD, MDD, SUD
23	Hussain	Commuted to life imprisonment	50	5.6	4.1	Duration of confinement not known	Suicidal ideation in prison
24	Vedyaant	Commuted to life imprisonment	39	8.3	6.0	Duration of confinement not known	
25	Padmanabhan	Commuted to life imprisonment without remission for 25 years	30	6.8	6.0	180	
26	Wasiq	Commuted to life imprisonment	37	6.5	5.5	Duration of confinement not known	Suicidal ideation in prison
27	Rajat	Acquitted	21	6.2	4.8	255	Suicidal ideation and attempt to die by suicide in prison
28	Vasav	Acquitted	28	6.2	4.8	360	PDD, Suicidal ideation in prison
29	Aarjav Surya	Commuted to life imprisonment without remission for 25 years	35	9.1	6.8	360	PDD, MDD, Suicidal ideation in prison
30	Lambodar	Commuted to life imprisonment	46	6.3	5.4	540	MDD, GAD
31	Lakshmikant	Commuted to life imprisonment	21	12.5	9.3	1132	PDD, MDD, GAD
32	Musthaq	Commuted to life imprisonment without remission for whole life	77	6.3	4.3	0	Cognitive impairment (severe)
33	Omkar Hannumma	Acquitted (case remanded to trial court)	48	20.2	7.0	730	Cognitive impairment (severe), SUD, Suicidal ideation in prison
34	Pranav	Commuted to life imprisonment	27	4.1	1.2	Duration of confinement not known	SUD
35	Sachchidananda	Acquitted	38	9.4	5.4	365	MDD, Suicidal ideation in prison
36	Mahadev	Acquitted	22	9.0	6.8	Duration of confinement not known	SUD

TABLE 9.1 CONTD

List of death row prisoners who were acquitted or who had their sentence commuted

S.No.	Name	Acquitted / Commuted	Age at the time of sentencing	Time spent in prison (years)	Time spent on death row (years)	Solitary Confinement (days)	Psychiatric concern(s)
37	Divyesh	Acquitted	20	9.0	6.8	1095	PDD, SUD, Suicidal ideation in prison
38	Sundaram	Acquitted	51	9.9	6.3	730	Cognitive impairment (mild)
39	Manu	Commuted to life imprisonment	32	5.9	1.7	0	PDD, Suicidal ideation in prison
40	Saaru	Commuted to life imprisonment	22	9.9	6.3	180	Suicidal ideation in prison
41	Ramdhari	Acquitted	26	8.7	3.2	Duration of confinement not known	Suicidal ideation and attempt to die by suicide in prison
42	Mayur	Commuted to life imprisonment	32	9.7	7.0	730	
43	Madhukar	Acquitted	28	14.2	6.9	0	Cognitive impairment (mild), SUD, Suicidal ideation and attempt to die by suicide in prison
44	Pallav	Acquitted (case remanded to trial court)	41	20.2	7.0	1465	Cognitive impairment (severe)
45	Arjun Pandit	Acquitted	40	1.7	1.5	Duration of confinement not known	
46	Javed Sultan	Acquitted	33	6.8	4.6	90	SUD
47	Amarnath Timma	Commuted to life imprisonment	40	17.8	7.1	Duration of confinement not known	Cognitive impairment (mild), SUD
48	Vignesh	Commuted to life imprisonment	41	15.9	7.1	1095	SUD, Suicidal ideation in prison
49	Sanath	Acquitted	67	9.9	6.3	210	Cognitive impairment (severe), SUD, Suicidal ideation in prison
50	Suryakant	Acquitted	19	9.9	6.3	180	Suicidal ideation in prison
51	Akira	Commuted to life imprisonment	39	16.8	7.1	Duration of confinement not known	Cognitive impairment (severe)
52	Muthu	Commuted to life imprisonment	36	17.8	7.1	1095	SUD

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 ex cuses the crime. But knowing their lives, as the law requires, however, does explain to an extent the person who is going to be sentenced to death.

This Report is a medium to present stories—real stories of individuals who have lived harsh realities and who have had to face life and overcome hurdles often hidden from our contexts.

As the Report shows, the prisoners lived difficult lives and it is clear that their vulnerabilities are far more than what the courts consider. In detailing the experience of prisoners before incarceration, more content is meant to be provided to broad brush factors that are currently considered as mitigating factors. 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, 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. It is a potent mix of negative experiences that, for many, explodes. It is true that not all who have had these experiences engage in violent crimes, but in contrasting outcomes of lives, we again negate the experiences of those who may not have been so lucky. It is also near impossible to contrast outcomes without looking at more granular level experiences, exposure and environment that have led to the outcome.

This Report captures a microcosm of the lives that death row prisoners lived and live. There are many layers that need investigating. For instance, the Report was able to capture, under very restrictive conditions, and with its limited scope, a current episode of mental illness. However, a longitudinal study to understand the lifetime risk to and history of mental illness would have provided a much richer understanding of the lives of death row prisoners and their needs. It would have been able to comment further on the vulnerability of death row prisoners to social, psychological and emotional adversities, and uncover intergenerational factors contributing to this domino effect.

Even so, the findings present an unfortunate state of the (in) ability of our legal system to identify who is blameworthy enough to deserve the death penalty. We seem to be sentencing people to death without knowing crucial details of their lives – details which go to the heart of death penalty sentencing.

Questions of brain injury, cognitive impairment or intellectual disability have not even entered the lexicon of Indian death penalty jurisprudence. Yet, they have direct consequences on responsibility attribution. In addition, they also put a person at higher risk of being vulnerable to the harshness of the criminal justice system. Intellectual disability in particular creates a “special risk”, given the nature of the disability which affords itself to gullibility and suggestibility and, when unsupported, creates barriers in engaging with the complicated legal process. Almost 20% of the prisoners were found to have mild or severe cognitive impairment. Impairment in cognition compromises day to day functioning, behaviour and independent decision making, an impairment which must necessarily be factored in when deciding who and how much to punish, especially if the impairment was present at the time of the incident. There are prisoners who have a real risk of having suffered a traumatic brain injury, which entails changes in behavioural, emotional and psychological responses to stimuli, and again has implications on the blameworthiness of the person. Of the 25 prisoners who reported a head injury, 12 persons sustained the injury before they reached adulthood, i.e., during the developmental period.

Our current death penalty sentencing practice is simply not well equipped to gather, present and consider crucial details of a person whose very life is at stake. Judgments condoning the practice of same-day sentencing[1] 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.

These are invisible experiences and life events which have serious implications on the very question that death penalty sentencing is meant to answer. The concerns highlighted above and the multiple harms and adversities that death row prisoners have lived through require time and effort to unearth. Belonging to families which are extremely vulnerable to economic and financial instability also means that these concerns go unnoticed and uncared for, often snowballing into poorer health and social outcomes. Given the findings, it is impossible to limit these concerns as academic in nature. They have real life and death consequences, and the legal system needs to respond to and accommodate these concerns. The life of an accused needs to be appreciated at an extremely granular level to truly understand who they are, to understand the “subconscious reactions” of the accused[2], or even whether the offence was committed under “extreme mental or emotional disturbance”[3].

The lack of a nurturing and healthy environment, the multiple unhealthy and negative experiences during formative years through adulthood create conditions rife with trauma, ill-health, exclusion and violence. For an overwhelming majority, it is a punishing life. To take it a bit further, it is a punishing life they did not choose. To take it even further, it is a punishing life to which the state turned a

blind eye. Already forsaken by state and society, an overwhelming majority of death row prisoners are a population which was not given a chance at life earlier and when sentenced to death are told they deserve no chance at life either. It is a double whammy, and we seem to have few solutions.

The death penalty sentencing framework provides that opportunity. It empowers the judge to undertake a searching inquiry into an individual's life to look at them as an individual in their own right, without comparing them to the multitude others about whom there is no real information. 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?

Many would argue that the Indian law on the death penalty in fact allows for that chance to be given and is relatively humane in its inclusion of reformation as an aspect to be considered by courts. However, opportunities for reformation are few, not only because prison rules prevent death row prisoners from engaging in many activities that may indicate reform, but also because the prisoner's will to reform or engage in prison activities is in constant tension with their slowly ebbing will to live. That is of course not the only narrative. We know that some have grabbed the opportunities that they may have access to in prison. This is significant, not merely because it shows that the person has the capacity to reform, but also because this is an indication of the eagerness to make the best of avenues that they were denied pre-incarceration. Datta's narrative is a prime example of that. Prisoners also want to work so that they can continue to support their families in any small way that they can, but it is an opportunity denied to them in most states. What makes these acts of engagement remarkable is that the person is at a psychological backfoot. They must first emerge from a dark place of their lives being dismissed to take the first step towards engagement – to battle the constant thought that nothing matters. It is not a misplaced thought.

There is no clear understanding of what the law means by reformation, much less the metric for reformation and what must be shown for the legal system to appreciate it. We also do not know what reformation will be measured or contextualised against – their lives pre-incarceration or against the crime. The humaneness of reformation entails a belief that people can change or when given enough opportunities, they will take it. It is congruent with the idea of dignity of an individual – that individuals need not be discarded as unwanted. But when judged against the static incident, however gruesome, the humaneness slips away.

The pre-incarceration adverse experiences continue in prison, though in a different form. Incarceration in itself is difficult; it 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. Along with that is the lack of credibility that is accorded to their experience. As many narratives illustrate, there are limited avenues for death row prisoners not just to be heard but where they are heard as people with legitimate experiences. Whether it be the courts, the prison or the public, the realities of a life on death row are often not considered; they are perhaps even seen as deserved. The law's promise of dignity in prison is, for many, aspirational and distant. Living with the death sentence means living with the knowledge that one has been adjudged better dead than alive, and that they are considered, by the legal system, as unworthy of another chance at life, even if within prison. This extremely traumatic experience is further compounded by the constant narratives of evil and villainy that death row prisoners are very often subject to in courtrooms, in prison and much more obviously in the public. They are not humans with families who depend on them and love them, they are not people with stories and hopes and despair. The discourse takes away their humanity and dignity.

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 consequences, requires us to face and revisit fundamental ideas that we hold about justice and punishment.

An additional human cost of the death penalty are families of death row prisoners. That families of prisoners are considered guilty by association and pushed to the margins of society, and are left with little or no recourse to bear the emotional and financial implications of the penalty indicates larger social justice issues that need to be tackled. There also 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 punishment. Of particular importance is the impact of the death sentence on children. While older children may yet be able to make sense of the situation, children of younger ages live in a reality constructed to protect them, even though there is no guarantee for how long they will stay protected. 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.

The Report is not an argument in favour of exemption from accountability. But it is to suggest that seeing a person in a vacuum or without the proper context of their experience when deciding punishment is to, at the same time, exempt social conditions, society and state from responsibility. Increasing accountability, for both the justice system and the individual, means all factors should be taken into consideration to reduce chances of wrongful sentences, which we know are many.

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 which 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 or go scot free, these are people who continue bearing the scars of death row much after they are free.

The Report focuses on the structural and social disadvantages and vulnerabilities that death row prisoners live with and which find little place in our construction of the criminal. In this construction, the crime becomes the sole determinant of our understanding of the person rather than the multiplicity of harms, often from childhood, that in fact are the actual determinants. The 'evil criminal' makes for an easier narrative and tugs at our want for quick solutions and vengeance. Information about social contexts and adversities of the accused takes away from that easy construction and complicates the narrative even as it may build towards a more accurate picture of the accused. Focusing on vulnerabilities, and the lack of support structures (emotional, social and structural) presents individuals who are not evil or a caricature of evil, but whose lives have been marked with neglect, abuse, trauma and many such adversities. Such information is often lacking in the public discourse on the death penalty, and, more worryingly, rarely finds its way into the court room. Of course, these concerns are not limited to the death penalty or those who get sentenced to death, but they do indicate the necessity of taking into consideration the larger social canvas when thinking of crime and criminality.

We know that all 88 prisoners interviewed for this Report were held guilty and sentenced to death (accurately or inaccurately). We know the different offences that people in this group have been accused of. We also know that a large number of prisoners have been exposed to difficult circumstances both before incarceration and on death row. However, and quite intentionally, the Report does not mention the crime in individual contexts, even while it narrates individual stories and experiences. The reason is to urge the reader to know death row prisoners, if only for a fleeting moment, as humans who live and have lived a life full of social, psychological, physical and emotional difficulties. This is what is required of the law. To not judge them only in the context of the crime.

METHODOLOGY

This Report is a culmination of close to five years of work when Project 39A was called the Centre on the Death Penalty, and the efforts of many individuals, including legal researchers, mental health professionals and students of law, psychology, psychiatry and social work. These five years have comprised conceptualis

ing and designing the Mental Health Research Project, obtaining and collating information from prisons and courts, the emotionally and psychologically taxing interviews with death row prisoners and their families, dealing with bureaucracy, the arduous protocols of information storage, coding, multiple times, close to 90 transcripts, and the extremely challenging task of thematising and analysing quantitative and qualitative data from close to 200 transcripts and finally writing and rewriting the Report. In the background was continuous research in areas unfamiliar to both those trained in the law and mental health, the constant cross-pollination of knowledge and learning concepts, ideas and principles that were relatively new and incredibly important.

This chapter broadly and briefly presents the work undertaken for this Project in three phases—(a) conceptualisation and protocol design, (b) field work and data collection, and (c) analysis.

The conceptualisation of the Project began in 2016 and simultaneously began the process for obtaining permission to interview death row prisoners, data collection with the aid of the Right to Information Act, 2005 and field tracking of families of death row prisoners. The field work, including tracking the families of death row prisoners and interviews with the prisoners and the families, was carried out over approximately one and a half years, from October 2016 to April 2018.

The sample size for a particular prison was frozen on the date of entry of research investigators into the prison. We interviewed 88 death row prisoners across five states, and 110 families across seven states.

Conceptualisation and Design

Under the guidance of Professor Pratima Murthy, Professor Sanjeev Jain, and Dr. Gitanjali Narayanan, our research team, comprising mental health professionals and legal researchers, designed the consent forms and interview protocols for the prisoners as well as their families.

The clinical assessment tools for the prisoners were chosen with the aim of capturing a wide range of mental health concerns, including cognitive impairment, substance use and intellectual disability.

■ OBTAINING CONSENT

Questions of consent are complicated in a prison population, more so with death row prisoners, given the compromised autonomy inherent in prison life. Similarly, given the context of families of prisoners on death row, gaining their trust is a process rife with legitimate suspicion from their side due to their past experiences with people obtaining and misusing information about their family member on death row. This placed a greater responsibility on us to ensure that the autonomy of the prisoner and their family was respected throughout the interview process.

Recognizing this, consent forms were made available in a language understood by the prisoner as well as the family, and were explained orally as well. They explicitly stated that no monetary or legal aid would be given to them as a consequence of their participation, and that no benefit would accrue to the prisoner or the family by reason of their participation. It was explained that the purpose of the interview was not to provide treatment and care but if, in the case of prisoners, any imminent mental health treatment needs came to our notice, recommendations for the same would be made to the prison authority.

Prisoners and their families also had the right to refuse participation in the interview or withdraw consent at any point during the interview. Refusal or withdrawal of consent resulted in exclusion of any information obtained during the interview. Health records of each prisoner, if made available by the prison, were also treated as confidential and were made accessible to only those persons who were authorised by the prisoner. It was clearly conveyed to the prisoners and their families that the information gathered through the Project would be anonymised and that no identifying information would be made publicly available. Importantly, the consent form also alerted the prisoners and their families to the risk of psychological distress because of recalling their past lives and the traumatising experiences they have been through.

■ THE INTERVIEW PROTOCOL

The tools used during the course of the interview were:

1. **Semi-structured Qualitative Interview Schedule:** Separate questionnaires were designed for prisoners and families. The questionnaire for the prisoners focused on their experiences of the criminal justice system with a specific focus on their experience of living under the sentence of death. The questionnaire aimed to capture the emotional and psychological responses of the prisoners and also the meaning they accorded to their present circumstances. In addition, the questionnaire inquired into the socio-economic demography of the prisoners, their as well as their family's past and current mental and physical health, their lives before incarceration, including childhood and adolescence, and traumatic experiences that they may have experienced or witnessed, including within their homes.

   Information obtained from the prisoners was supplemented with the help of family interviews. Families were a crucial source of information for the developmental and life history of the prisoner. To gather information on the developmental history of the prisoner, the questionnaire borrowed elements from the Vineland Social Maturity Scale. The family questionnaire also inquired into the background of the prisoner prior to the sentence and post incarceration, social and familial environment, their emotional and mental health, exposure to poverty, family history of mental illness, and traumatic life events experienced by the prisoner. The questionnaire also inquired into the interaction between the family and the criminal justice system, especially with respect to incarceration and impact of the death sentence.
2. **DSM-5 Self-Rated Level 1 Cross-Cutting Symptom Measure-Adult:** It is a self or informant-rated measure that assesses mental health concerns across psychiatric diagnoses. It screens individuals for a current psychiatric episode and inquires into the presence of symptoms over the two weeks preceding the interview.
3. **WHO—ASSIST V3.0:** The Alcohol, Smoking and Substance Involvement Screening Test (ASSIST) is a screener developed by the World Health Organization to detect and manage substance use and related problems. The screener also allowed us to obtain information on lifetime use of substances.
4. **Hindi-Mental State Examination:** This is a 30-item questionnaire used extensively in clinical and research settings to measure cognitive impairment.
5. **Life Events Checklist:** The Checklist is a self-report screener developed at the National Centre for Posttraumatic Stress Disorder to screen for potentially traumatic events in a respondent's lifetime for facilitating the diagnosis of Post-Traumatic Stress Disorder (PTSD).
6. **Wechsler Adult Intelligence Scale 4th Edition (India norms):** The WAIS-IV is a tool designed to assess the cognitive ability of adolescents and adults, and provides scores reflecting intellectual functioning in specific cognitive domains as well as general intellectual ability. The version of the test used for our purposes has been adapted and standardised for use in India.
7. **Clinical Interviews:** These were conducted where a further psychiatric assessment was warranted.

The consent forms, assessment tools and questionnaires were administered in a language understood by the prisoner and their families, and were translated into Hindi, Kannada, and Malayalam. Back-translations were also carried out to ensure accuracy.

Internal Ethics Committee

Considering the nature of the population that was to be interviewed and the sensitive information that was to be collected during the course of the interviews, we put in place a robust framework to navigate the complex ethical terrain involved in death row research. An internal committee was formed to review ethical aspects of the Project and related documents. The committee comprised eight members from varied fields: Hon'ble Mr. Justice K.S. Panicker Radhakrishnan (Former Judge, Supreme Court of India), Mr. Keshav Desiraju (Former Health Secretary, Government of India), Ms. Vandana Gopikumar (Founder, The Banyan), Dr. Alok Sarin (Senior Psychiatrist, Sitaram Bhartiya Hospital, Delhi), Ms. Monica Sakhrani (Academic and Lawyer), Professor Anup Dhar (School of Liberal Studies, Ambedkar University Delhi), Professor K.P.S. Mahalwar (Chair Professor, Professional Ethics, National Law University Delhi), and Mr. Anand Grover (Senior Advocate, Supreme Court of India). Suggestions and approvals were sought from members of the Committee either in person or through electronic communication. Their suggestions, which largely pertained to consent and confidentiality of information, were incorporated into the final design of the protocol.

Permissions for Interviews

We initially approached the National Human Rights Commission (NHRC) for support for the Project. However, since no positive response was forthcoming, a multi-level approach was necessary to secure permission to interview death row prisoners. We wrote to the Chief Justices of various High Courts, requesting them to recommend the State Prison Departments to allow interviews with prisoners sentenced to death. It took us four months on average to obtain the permission for each state and almost a year for all permissions. While the prison departments in Chhattisgarh and Kerala were extremely cooperative, obtaining permissions from Delhi and Karnataka required additional follow ups. After a waiting period of close to a year, we were eventually unable to obtain permission to interview death row prisoners in UP, Bihar, West Bengal, Maharashtra, Gujarat and Tamil Nadu.

Data Collection

The work done for the Death Penalty India Report in collecting information on prisoners sentenced to death and their families formed the blueprint for the data collection processes adopted for this Project.

In the absence of a publicly available and updated database on prisoners sentenced to death in India, we had to make use of multiple sources to compile information on death row prisoners in each state. We mined data from court websites and sent applications under the Right to Information Act, 2005 to at least 33 Central Prisons and 128 District Jails across the country and each State Prison Department. Information regarding the location of prisoners and families was inferred from news reports and judgments as well. We also undertook field work to ensure that we had the right addresses for the families. We tracked almost all the families in advance, and their contact details were precisely documented. Family tracking allowed us to convey the purpose of the Project beforehand, clear any initial doubts that they might have and set the date and time for the interview at their convenience. In some cases, we were unable to track the families because of the lack of publicly available information and because the prisoner had no information about their family. A similar process was undertaken for death row prisoners as well. At least one round of visits was made to each prison before the interviews began so that we had an updated list of death row prisoners incarcerated in that prison.

Prisoner and Family Interviews

Each interview team consisted of a lead interviewer who was a mental health professional (in most cases a clinical psychologist), a legal researcher, and students from the field of law or mental health, to record the information. Orientation and training sessions were conducted for all researchers before the fieldwork began. Members of the team included those who were conversant in the language of the interviewees to help accurately interpret and record responses. Due to conditions attached to conducting research in prisons, we were unable to electronically record any of the interviews with the prisoners. As a result, they were transcribed in real time. With respect to the families, all the members present were asked if they were comfortable with the interviews being audio recorded. If not, we relied exclusively on pre-designated team members to record the interview as accurately as possible. The interviews commenced only after the details of the consent form had been explained to the prisoners and their families, and explicit consent (either through a signature or thumb impression) was given by them. A copy of the consent form was given to the prisoner and the family, respectively, and we retained a second copy.

Preparations for interviews with prisoners required multiple prison visits in order to build rapport with jailors or superintendents, request for health records, negotiate interview conditions for relatively less interference and to request extended times for interviews with the prisoner. A full interview with the prisoner, comprising a semi-structured interview schedule, clinical tools, and the WAIS-IV typically lasted for 4-5 hours. The history proforma and the open-ended, semi-structured questionnaire guided the conversations in the first part of the interview, while the second part of the interview focused on the clinical tools. Given the potential length and the emotional and mental cost associated with the interviews, they were usually conducted over two days. In some cases, however, where the prisoner preferred the interview to be conducted on the same day or prison authorities were not agreeable for a two-day stretch, the interview was conducted on the same day. The longest interview spanned nine hours over the course of two days.

Family interviews were conducted at a time and venue comfortable for them and took a minimum of 2-3 hours. Most of these interviews were conducted before the ones with the prisoners. This was done in order to critically study the transcripts and prioritise domains for in-depth enquiries during the prisoner interviews, which were conducted under more restrictive conditions. All family interviews were conducted in one sitting, in some cases multiple family members were interviewed during the interview. The audio recordings and transcription of family and prisoner interviews were compiled, translated and physically and electronically archived.

Analysis

The aims of the Project afford themselves to quantitative as well as qualitative methods of analysing the data. Given the nature of information collected, which is largely centred on the subjective experience of prisoners and families, a mixed methods approach was adopted. For the purposes of continuity, names of death row prisoners who were part of this Project as well as the Death Penalty India Report were kept constant.

■ QUANTITATIVE

StataSE 12 (64-bit) was used for quantitative analysis and the choice of statistical test was dependent on the characteristics of the dependent and independent variables (categorical versus continuous) being examined and the type of distribution it followed (normal versus non-normal). Descriptive statistics such as percentages, means and standard deviations were carried out. The data has been presented as percentage (number), mean±SD or median (minimum-maximum) as deemed appropriate given the nature of data distribution. Associations between two variables of interest were calculated using either parametric or non-parametric tests, per Altman's rule. Parametric tests were conducted when the standard deviation was less than half of the mean, that is, when the distribution was normal and of uniform variance. The independent t-test was used where the dependent variable was continuous while the independent variable was categorical or nominal. Similarly, t-test was used where both the variables were continuous, for both paired and unpaired variables. Non-parametric tests were chosen when the distribution of the population was non-normal and of non-uniform variance. Non-parametric tests included the Wilcoxon rank-sum (Mann-Whitney) test which was used between continuous and categorical variables, for both paired and unpaired variables. Fisher's exact test was used to assess the relationship between two categorical or nominal variables (tables with 2x2 columns and rows or more). Where continuous normally distributed variables were in a linear relationship, the correlation was calculated using Pearson correlation. Correlations between two non-normally distributed, continuous or ordinal variables in a monotonic relationship were calculated using Spearman correlation. For calculating the correlation between two categorical or nominal variables, Cramér's V was used. The Kruskal-Wallis test was used in case of comparison of three or more unmatched groups, and Bonferroni correction was carried out on them for accuracy. The p-values have been mentioned wherever significant.

■ QUALITATIVE

All transcripts of interviews with the prisoners were uploaded onto Atlas Ti (version 8) and coded by a team of four coders. A uniform source code book was created after the first round of coding to ensure inter-coder reliability. It contained an exhaustive list of all codes to be used, their definitions, and illustrations of when they should be used. The code book was based on commonly recognised risk factors for poor mental health, including in prison, the largely common experiences that prisoners had with the criminal justice system, any distress caused due to their interaction with the criminal justice system, particularly the death sentence, and positive and negative experiences of prisoners before and during incarceration. Some of the broad themes covered by the source code book were psychological distress due to the death sentence, social isolation, violence in prison, lack of mental stimulation in prison, disturbed family environment, loss and childhood neglect and abuse. After an initial round of coding, the code book was modified and the codes and their definitions were frozen. The translation and coding process of the 88 transcripts was done over a period of one year. Finally, thematic analysis was conducted to understand the relationships between codes, identify patterns across the data, and ultimately draw out common themes that emerged from the prisoner and family interviews.

Challenges

Given its central theme, the Project explored intimate details of the prisoner's life as well as their families. Themes such as suicide attempts, substance use and sexual assault within prison are details that prisoners did not find easy to provide, particularly when any individual, including convict overseers, seen to be part of the prison administration was present. The maximum privacy possible in prison was only by ensuring least interference by the prison administration since their presence was non-negotiable. The interviews often required prisoners and their families to relive unpleasant aspects of their past in terms of their socio-economic disadvantages, emotionally tumultuous relationships with parents or other relatives or intimate experiences in front of near complete strangers.

In some cases, it was difficult to get families to talk because of deep seated suspicions about the interviewing team's affiliation with either the media or investigative agencies. Families were also reticent in providing information, such as early onset of substance use or prisoners running away from home, if they perceived such information to be unfavourable to the prisoner. In cases where the prisoner was relatively older, family members also struggled with recollecting information, particularly about the developmental history and other aspects of the prisoner's childhood. In many cases, prisoners as well as families found it odd and expressed disinterest in talking to us because it was not their legal journey that was of primary interest to us. In this sense, communicating to them and convincing them of the importance of the Project was one of the most persistent challenges we had. As a result of these barriers, suspicions, and disinterest, there are families and prisoners who refused or did not participate in the full interview.

While some of these problems could be solved to an extent by building rapport with the family members or asking sensitive questions when the representative of the prison administration was not present, certain other cultural barriers remained. For instance, gender barriers certainly played their part in the amount of information male prisoners would provide on their sexual health, particularly sexual assault, if the interviewing team comprised women.

The culturally diverse population that we interviewed, though an advantage, came with its own cultural challenges in terms of how mental illness or other mental health concerns were being explained, understood and communicated. However, we were able to offset the challenge to a large extent by ensuring that the primary interviewers spoke the same language as the prisoner and the family and were from a cultural background not entirely dissimilar from the interviewees.

The interviews were conducted by those who were largely unfamiliar with prison settings and the realities of the criminal justice system. Being a witness to the conditions in which families find themselves, the violence in prison and the experiences of prisoners was emotionally and psychologically demanding, and made us face and interrogate the positions of privilege we come from. We went in as researchers with research ethics preventing us from offering help and yet being completely aware that our interviews were dependent on the help and kindness that prisoners and families were willing to offer.

ENDNOTES

INTRODUCTION

1. Project 39A, 'Death Penalty Sentencing In Trial Courts: Delhi, Madhya Pradesh, Maharashtra [2000-2015]' (National Law University Delhi 2020); Project 39A, 'Matters of Judgment' (National Law University Delhi 2018); Project 39A, 'Death Penalty India Report' (National Law University Delhi 2016); Law Commission of India, *The Death Penalty* (Law Com No 262, 2015); Reena Mary George, *Prisoner Voices from Death Row: Indian Experiences* (Ashgate, 2015); Amnesty International India and PUCL Tamil Nadu, 'Lethal Lottery: The Death Penalty in India—A Study of Supreme Court Judgments in Death Penalty Cases 1950-2006' (Amnesty International 2008).

2. *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1.

3. *Bachan Singh v State of Punjab* (1980) 2 SCC 684.

4. Martha C. Nussbaum, 'Equity and Mercy' (1993) 22 (2) Philosophy & Public Affairs 83.

5. *Bachan Singh* (n 3).

6. Over a 15-year period, the Death Penalty India Report found that, from 2000-2015, in only 4.9% of cases was the death penalty confirmed by the Supreme Court.

7. Thomas Nagel, 'What is it Like to Be a Bat?' (1974) 83 (4) The Philosophical Review 435.

CHAPTER I

1. *Sunil Batra v Delhi Administration* (1978) 4 SCC 494.

2. The null hypothesis for each parameter was that there is no difference between the population considered under Death Penalty India Report and the population considered under the current Project. A p-value greater than or equal to 0.05 is not statistically significant and indicates strong evidence for the null hypothesis.

3. Segregation in prisons is done on the basis of sex and not gender. An inquiry whether the person identified with the sex assigned at birth or not was not conducted.

4. *Bachan Singh v State of Punjab* (1980) 2 SCC 684.

5. Mariam Arain and others 'Maturation of the Adolescent Brain' (2013) 9 Neuropsychiatric Disease and Treatment 449; Sara B Johnson, Robert W Blum and Jay N Giedd, 'Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent in Health Policy' (2009) 45(3) Journal of Adolescent Health 216-221; Jennifer Lynn Tanner and Jeffrey Jensen Arnett, 'The Emergence of 'Emerging Adulthood': The New Life Stage Between Adolescence and Young Adulthood' in Andy Furlong (ed), *Handbook of Youth and Young Adulthood: New Perspectives and Agenda* (Routledge 2009); Elizabeth R Sowell and others, 'Mapping Cortical Change Across the Human Life Span' (2003) 6 (3) Nature Neuroscience 309.

6. MK Johnson and S Mollborn, 'Growing up Faster, Feeling Older: Hardship in Childhood and Adolescence' (2009) 72 (1) Social Psychology Quarterly 39; Linda Burton, 'Childhood Adultification in Economically Disadvantaged Families: A Conceptual Model' (2007) 56 (4) Family Relations 329.

7. Criminal Procedure Code 1973 (CrPC), s 366.
"Sentence of death to be submitted by Court of session for confirmation
(1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court."

8. *Babasaheb Maruti Kamble v State of Maharashtra* (2019) 13 SCC 640.

9. *Union of India v V. Sriharan@Murugan* (2016) 7 SCC 191.

10. Constitution of India 1949 (Constitution), art. 161.
"Power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases: The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends."

11. Constitution, art. 72.
"Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases:
(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence -
(a) in all cases where the punishment or sentence is by a court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
(c) in all cases where the sentence is a sentence of death
(2) Noting in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force."

12. CrPC, s 413.

13. *Shabnam v Union of India* (2015) 6 SCC 702.

14. World Health Organization and ICRC, 'Information Sheet: Mental Health and Prisons' (World Health Organisation 2005).

15. *Accused X v State of Maharashtra* (2019) 7 SCC 1.

16. *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1.

17. *Sher Singh v State of Punjab* (1983) 2 SCC 344; *Triveniben v State of Gujarat* (1989) 1 SCC 678.

CHAPTER II

1. *Bachan Singh v State of Punjab* (1980) 2 SCC 684.

2. *Ediga Anamma v State of Andhra Pradesh* (1974) 4 SCC 443 [15]; *Gopalan Nair v State of Kerala* (1973) 1 SCC 469 [3].

3. Phyllis L Crocker, 'Concepts of Culpability and Deathworthiness: Differentiating Between Guilt and Punishment in Death Penalty Cases' (1997) 66 Fordham Law Review 21.

4. A psychosocial lens views an individual as being in constant interaction with the social environment around them and their psychological state and well-being.

5. A symptom-diagnosis approach focuses on symptoms of an illness and corresponding them to different diagnoses, based on how they manifest. This approach is used in preparing treatment plans as well.

6. *Accused X v State of Maharashtra* (2019) 7 SCC 1; *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1.

7. Criminal Procedure Code 1973 (CrPC), ss 328, 329.

8. Indian Penal Code 1860 (IPC), s 84.

9. Idiots refer to the modern understanding of persons with intellectual disability and lunacy, madness, insanity, are archaic notions of mental illness. (George Dale Collinson, *A Treatise on the Law concerning Idiots, Lunatics, and other persons non compos mentis… With an appendix, containing the statutes relating to lunatics, the practice on proceedings in lunacy, and a collection of lunatic petitions, etc,* vol 2 (W. Reed, 1812); Law Review Editors, 'Lunacy and Idiocy: The Old Law and Its Incubus' (1951) 18(2) The University of Chicago Law Review 361.

10. Sir James Fitzjames Stephen, *A History of the Criminal Law of England,* vol III (Macmillan and Company, 1883); William Hawkins, *A Treatise of the Pleas of the Crown* (Sweet, 1824); Mathew Hale, *The History of the Pleas of the Crown,* vol I (Payne, 1800); Edward Coke, *Institutes of the Laws of England,* vol 2 (E & R Brooke, 1797); William Blackstone, *Commentaries on the Law of England* (First Edition, 1765-1769) vol 4, ch 2.

11. Blackstone (n 10).

12. CrPC, s 279; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 14 (3) (f).

13. CrPC 1973, ss 328, 329.

14. CrPC 1973, s 329 (3).

15. Law Commission of India, The Code of Criminal Procedure, 1973 (Law Com No 154, 1996).

16. *Dimple@Dimpu@Gurucharan v State of Punjab* (2009) 1 RCR (Cri) 602 [8] [9] [19] (behavioural observations); *Bibhuti Mahato v State of West Bengal* (2000) 2 Cal LJ 125 [2] [4] (documentary evidence); *Kuldeep Singh v State of Haryana* ILR (2014) 1 P&H 449.

17. *Salim Abhu Juneja v State of Gujarat* (2013) SCC Guj 4913 [8] [9] [18]; *State of Karnataka v Doragal Kanakappa* (1996) Cri LJ 599 [7].

18. *State of Maharashtra v Sindhi alias Raman* (1975) 1 SCC 647 [7].

19. *Doragal Kanakappa* (n 17).

20. *Veena Sethi v State of Bihar* (1982) 2 SCC 583.

21. IPC, s 84.

22. *Devidas Loka Rathod v State of Maharashtra* (2018) 7 SCC 718 [10], [11]; Indian Evidence Act 1872, s 105.

23. *Queen v M'Naghten* [1843] 8 Eng. Rep. 718.

24. Early SC cases where courts have rejected illnesses like epilepsy but have looked at those on the psychotic spectrum like schizophrenia. (*Shrikant Anandrao Bhosale v State of Maharashtra* (2002) 7 SCC 748 [20], [Schizophrenia]; *Bapu @Gujraj v State of Rajasthan* (2007) 8 SCC 66 [13] [Rejected illnesses like epileptic fits and recurring fits of insanity]; *State of MP v Ahmadullah* (1961) 3 SCR 583 [8] [Rejected epilepsy].)

25. *Bapu @Gujraj* (n 24) [13].

26. *State of Rajasthan v Shera Ram* (2012) 1 SCC 602 [26] [27].

27. *Bhura Karia v State of A.P and Another* (2007) 1 AP LJ 228 [18] [19].

28. *Kumari Chandra v State of Rajasthan* (2018) 3 RLW 2382 [18] [19].

29. *Gopalan Nair* (n 2) [3] [4]; *Srirangan v State of Tamil Nadu* (1978) 1 SCC 17 [3]; *Nemu Ram Bora v The State of Assam & Nagaland* (1975) 1 SCC 318 [2].

30. *Bachan Singh* (n 1).

31. ibid [209].

32. "… Mitigating circumstances:- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances: … (6) That the accused acted under the duress or domination of another person. (7) That the condition of the accused showed that he was mentally defective and that the said defect unpaired his capacity to appreciate the criminality of his conduct.", ibid [206].

33. Mental Healthcare Act 2017, s 2 (s).

34. Project 39A, 'Death Penalty Sentencing in Trial Courts: Delhi, Madhya Pradesh, Maharashtra [2000-2015]' (National Law University Delhi 2020).

35. *Accused X* (n 4) [33] [34].

36. *Inhuman Conditions in 1382 Prisons, In Re* (2019) 2 SCC 435 [10].

37. *Mohd. Mannan v State of Bihar* (2019) 16 SCC 584 [38] [39] [40].

38. *Shatrughan Chauhan* (n 6) [220] [241.9] [241.10].

39. *Accused X* (n 6).

40. Maitreyi Misra and Neetika Vishwanath, 'In Search of Doctrinal Clarity: Mental Illness, Sentencing and the Death Penalty' (2019) 54 (22) Economic and Political Weekly 17.

41. *Shatrughan Chauhan* (n 6).

42. *Accused X* (n 6) [68] [69].

43. ibid.

44. *Ford v Wainwright* 477 U.S. 399 (1986).

45. Misra and Vishwanath (n 40) 17.

46. *Shatrughan Chauhan* (n 6) [84].

47. ibid [87].

48. ibid [26].

49. *Triveniben v State of Gujarat* (1989) 1 SCC 678 [13] [16].

50. ibid [13] [16].

51. *TV Vatheeswaran v State of Tamil Nadu* (1983) 2 SCC 68 [21].

52. *Triveniben* (n 49) [72] [73].

53. *Shatrughan Chauhan* (n 6) [45]; *Ediga Anamma* (n 2) [15]; *TV Vatheeswaran* (n 51) [11] [12] [20].

54. *TV Vatheeswaran* (n 51) [12] [13].

55. *Shatrughan Chauhan* (n 6) [61]; *V Sriharan v Union of India* (2014) 4 SCC 242 [2] [3].

56. *V Sriharan* (n 55) [21].

57. *Sher Singh v State of Punjab* (1983) 2 SCC 344 [18].

58. *Soering v The United Kingdom* [1989] 11 EHRR 439.

59. ibid [105]; *Earl Pratt and Ivan Morgan v The Attorney General for Jamaica and Another* (1994) 33 ILM 365.

60. *Sonu Sardar v Union of India* (2017) 3 DLT (Cri) 666 [145]; *Sunil Batra and Another v Delhi Administration and Others* (1978) 4 SCC 494.

61. *TV Vatheeswaran* (n 51) [12] [13]; *Shatrughan Chauhan* (n 6) [61].

62. *Accused X* (n 6) [47].

63. *Shatrughan Chauhan* (n 6) [87].

64. *Amrit Bhushan Gupta v Union of India* (1977) 1 SCC 180 [14].

65. *Shatrughan Chauhan* (n 6); See also *Navneet Kaur v State (NCT of Delhi) and Others* (2014) 7 SCC 264.

66. *Shatrughan Chauhan* (n 6) [81] - [85].

67. *Ford* (n 44); *Vernon Madison v State of Alabama* 586 US___ (2019) 3-9; *Panetti v Quarterman* 551 US 930 (2007).

68. *Shatrughan Chauhan* (n 6) [87].

69. *Accused X* (n 6) [59].

70. ibid [47].

71. *Consumer Education and Research Centre and Others v Union of India and Others* (1995) SCC (3) 42 [26].

72. *Sunil Batra* (n 60); *Inhuman Conditions* (n 36) [58.8].

73. Committee on Economic, Social and Cultural Rights (CESCR) 'General Comment 14: The Right to the Highest Attainable Standard of Health' in Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' (11 August 2000) UN Doc E/C.12/2000/4.

74. *Shatrughan Chauhan* (n 6) [249.1].

75. CESCR (n 73).

CHAPTER III

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2. Project 39A, 'Death Penalty Sentencing in Trial Courts: Delhi, Madhya Pradesh, Maharashtra [2000-2015]' (National Law University Delhi 2020).

3. *Bachan Singh* (n 1) [206]; *Shankar Kisanrao Khade v State of Maharashtra* (2013) 5 SCC 546 [57].

4. *Santa Singh v State of Punjab* (1976) 4 SCC 190 [11].

5. *Shyam Singh v State of MP* (2017) 11 SCC 265 [8]; *Sunil Damodar Gaikwad v State of Maharashtra* (2014) 1 SCC 129 [26]; *Mulla v State of UP* (2010) 3 SCC 508 [80]."

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9. Caruso (n7).

10. Joseph Zubin and Bonnie Spring, 'Vulnerability: A New View of Schizophrenia' (1977) 86 Journal of Abnormal Psychology 103.

11. ibid 103; David S Fink and Sandro Galea, 'Life Course Epidemiology of Trauma and Related Psychopathology in Civilian Populations' (2015) 17 Current Psychiatry Reports 31.

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    1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
    2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

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CHAPTER VII

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CONCLUSION

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ANNEXURE

History Proforma

INFORMANTS

1. **Prisoner**
2. **Family members/ Any other person**
   i. Name of the informant –
   ii. Relationship with the prisoner –
   iii. Duration of acquaintance –
3. **Other sources of information – if any, specify. For example – Medical records from jail, reports of medical investigation/s-**

SOCIO-DEMOGRAPHIC DATA

1. **Name –**
2. **Age (years) –**
3. **Sex –**
4. **Son/Daughter/Wife of –**
5. **Address –**
   i. Permanent
   ii. Present (At the time of imprisonment) –
6. **If migrated**
   i. Addresses of the places of migration
   ii. Number of migrations –
   iii. Nature of migration (Rural-Urban, inter-city, inter-state, one country to another, any other)
7. **Nationality –**
8. **Religion –**
9. **Caste –**
10. **Education (prior to imprisonment) –**
11. **Occupation (prior to imprisonment) –**
12. **Individual income (prior to imprisonment) –**
13. **Mother tongue –**

14. **Marital status – Unmarried / Married / Separated / Divorced / Widowed**
15. **Number of Children -**
16. **Household condition – Urban / Rural, Rented / Owned, Kucha / Pakka**
17. **Movable properties -**
18. **Immovable properties -**
19. **Existing debt, if any -**

DETAILS OF IMPRISONMENT FOR THE ALLEGED CRIME

1. **Current Prison-**
2. **Transferred from (name of the prison/s, duration of imprisonment)–**
3. **Any additional information-**

FAMILY HISTORY

Details of family history to be obtained from family members and near and dear ones, wherever applicable. Any relevant history, if obtained from the prisoner in this regard, is to be incorporated accordingly.

1. **Family means – parents, siblings, spouse, children, grandparents. Any other -?**
2. **Family tree –**
   i. Details of Family members (Current status) –

Name	Relationship	Age	Sex	Education	Occupation	Income	Primary Earning Member

ii. Family configuration – Nuclear / Joint / Extended –
iii. Number of family members staying with the prisoner (before arrest) –
iv. Prisoner was the primary earning member before arrest – yes/no
v. Relationship with caregivers and family members –Good / Bad / Ambiguous
vi. Person/s who reared the subject –
vii. Parental relationship –
viii. Broken marriage of parents – yes/no
ix. History of Illness in family (Especially first-degree relatives; Information about more than one family member is to be noted where available)
- History of Physical Illness - If yes, details about the illness –
  - » Name and relationship with prisoner
  - » Name of the illness (If known) –
  - » Symptoms of the illness –
  - » Whether treated (through, for instance, allopathy / homeopathy / local / traditional /faith healing) or hospitalised–
  - » Loans taken for treatment -
- History of Mental Illness – If yes, details about the illness –
  - » Name and relationship with prisoner
  - » Name of the illness (If known) –
  - » Symptoms of the illness –
  - » Whether treated (through allopathy / homeopathy / local / traditional / faith healing) or hospitalised –
  - » Loans taken for treatment -
- History of Substance Intake - If yes, details about the nature of intake –
  - » Name and relationship with prisoner
  - » Name of the substance/s –
  - » Duration and pattern of intake –
  - » Whether treated (through allopathy / homeopathy / local / traditional / faith healing) or hospitalised –
  - » Loans taken for treatment -

x. History of any unhelpful/harmful behaviour and emotional dysregulation in family member/s (For example – anger, short temperedness, aggression, abusing others, frequently engaging in fights with others, stealing, telling lies, gambling, running away from home, threatening others, tendency to harm

self and others, deliberate self harm, suicidal threat and attempt, social withdrawal / aloofness, rigidity, tendency to worry excessively, tendency to unnecessarily repeat same act or speech, any other behaviour) – if yes, name of the person, relationship with the prisoner and description of events and behaviours as described by the informant.

PERSONAL HISTORY OF PRISONER

1. Birth and developmental history

i. Prenatal, natal, post-natal history –
ii. Consanguineous marriage of parents – yes/no
iii. Age of mother during pregnancy –
iv. Health of mother during pregnancy – (H/o Diabetes mellitus, Hypertension, heart disease, respiratory distress, Thyroid disorder, anaemia, any infection, epilepsy, any medication, especially psychiatric medication, any other illness)
v. Place of delivery - hospital or home
vi. Nature of delivery - normal/caesarean
vii. Complications around birth (cried at birth, birth asphyxia, jaundice, seizure, hospitalization for any reason, premature birth / low birth weight)
viii. Breast feeding – yes/no. If yes – exclusive breast feeding –yes/no
ix. Immunization – done/not done. If done – complete (As per immunization card) /incomplete.
x. Developmental milestones (sitting, walking, speech, self-care
xi. (Ref. to pro-forma for case history for children –NIMHANS)
xii. Motor –
xiii. Speech and language –
xiv. Social and emotional –
xv. Cognitive –

2. Educational History

i. Age of starting school –
ii. Educational attainment –
iii. Any difficulties with academic understanding such as reading / writing / language / arithmetic –
iv. Frequent change in school – if yes – reasons for the same
v. Experience in school, such as good education environment, bullying by or against the prisoner, corporal punishment, running away or frequently bunking school

3. **Occupational History**
   i. Age of starting work –
   ii. Nature of last job (before arrest) –
   iii. Whether frequent change of jobs – if yes, reasons for the same.
   iv. Stressful events at work, such as complaints by or against employer and other employees

4. **Marital and Reproductive history**
   i. Marital status - Unmarried / Married / Separated / Divorced / Widowed. If divorced – Remarried or not -
   ii. Age at the time of marriage -
   iii. Relationship with spouse/s –

For female prisoners –

   i. Menstrual history – Within normal limit/not
   ii. Menarche – Regularity of cycle -
   iii. Duration of menstruation- Amount of flow-
   iv. Any abnormality – Polymenorrhoea / Oligomenorrhoea / Dysmenorrhoea
   v. Any treatment/surgery -
   vi. History of pregnancy – yes/no. Number of pregnancy(ies) –History of abortion, if any – History of infertility –

5. **History of Mental and Physical Health**
   i. History of Physical illness
      » Diabetes mellitus/ Asthma or any respiratory difficulty / TB / Malaria / Dengue / Hypertension / heart disease / disease of Thyroid / epilepsy / stroke / unconsciousness / head trauma / aches or pain at any part of body / problem in urination or bowel / Jaundice / acidity or heart burn / weakness / dizziness / problem with vision or hearing /A ny other history -
      » Treatment history (through, for instance, allopathy / homeopathy / local / traditional / faith healing) or hospitalisation –
      » Reasons and duration of hospitalisation –
   ii. Psychiatric History
      » Symptoms suggestive of mental illness, If any –
      » Diagnosed mental illness-
      » Treatment history (through, for instance, allopathy / homeopathy / local / traditional / faith healing) or hospitalisation
      » History of hospitalisation –
      » Reasons and duration of hospitalisation –
   iii. Any loan or debt incurred due to treatment -

6. **Mental and Physical Health in Prison**
   i. History of Physical illness
      » Diabetes mellitus / Asthma or any respiratory difficulty / TB / Malaria / Dengue / Hypertension / heart disease / Thyroid disease / epilepsy / stroke / unconsciousness / head trauma / aches or pain at any part of body / problem in urination or bowel / Jaundice / acidity or heart burn / weakness / dizziness / problem with vision or hearing / Any other history –
      » Treatment history or hospitalisation –
      » Reasons and duration of hospitalisation –
   ii. Psychiatric History
      » Symptoms suggestive of mental illness, If any –
      » Diagnosed mental illness-
      » Treatment history or hospitalisation –
      » History of hospitalisation –
      » Reasons and duration of hospitalisation–

Temperament/ Personality (before and after incarceration) –
Detailed assessment of temperament or personality is not possible due to limitation of time. An attempt shall be made to have an overall view about the prisoner's personality, whether he/she was adaptive or maladaptive. If a history suggestive of maladaptive personality is found, then a description of the personality is to be noted down. Attempt will be made to know whether there was history of unhelpful/harmful behaviour and emotional dysregulation like anger, short temperedness, aggression, abusing others, frequently engaging in fights with others, stealing, lying, gambling, running away from home, threatening others, tendency to harm self and others, deliberate self harm, suicidal threat and attempt, social withdrawal/aloofness, mistrusting without basis, rigidity, tendency to worry excessively, tendency to unnecessarily repeat same act or speech, any other behaviour.

Please administer the following tools during the interview

i. DSM-5 Self-Rated Level 1 Cross-Cutting Symptom Measure
ii. Hindi-Mental State Examination
iii. Life Events Checklist for DSM-5 (LEC-5)
iv. WHO - The Alcohol, Smoking and Substance Involvement Screening Test (ASSIST), V.3
v. Wechsler Adult Intelligence Scale- 4th Edition (India norms)
vi. Please conduct a clinical interview with the prisoner where required

Mental Status Examination

GENERAL APPEARANCE AND BEHAVIOUR

1. **Nutritional status by observing the person's current body weight and appearance**
2. **Dress, grooming and hygiene**
3. **Eye to eye contact Rapport**
4. **Tics/ Mannerism/Catatonia /Any abnormal movement**
5. **Attitude - Interested / bored / hostile / defensive / friendly/ cooperative / guarded / relaxed with the interview process or seems uncomfortable.**
6. **PMA (Psychomotor activity) –**

MOOD (SUBJECTIVE STATEMENT OF EMOTIONS)

1. **Appropriate: yes/no Congruent: yes/no Range –**
2. **Reactivity –**
3. **Labile: Yes/No**

Affect (Interviewer's Observation of the Person's Emotions)

[A person's affect is determined by the observations made by the interviewer during the course of the interview. The person's affect is noted to be inappropriate no connection is clear between what the person is saying and the emotion being expressed.]

1. Euthymic (normal) / constricted (limited variation) / blunted (minimal variation) / and flat (no variation) etc.

SPEECH

1. Volume, rate, rhythm, quantity and pitch, spontaneity, latency

THOUGHT

1. Thought process –
2. Formal thought disorder –
3. Thought content –
4. Delusion –
5. Possession – obsession/thought alienation

PERCEPTION – HALLUCINATION – PRESENT/ABSENT

COGNITIVE FUNCTIONS

JUDGMENT–

1. Personal, Social, test – impaired/intact

INSIGHT

Qualitative Questionnaire for Prisoners Sentenced to Death and their Experience with the Criminal Justice System

OBJECTIVES FOR QUALITATIVE INTERVIEWING OF THE PRISONER:

1. **To obtain history of the prisoner for a detailed understanding of his/her mental health (Please see history proforma).**
2. **To understand the lived experiences of the prisoner under the sentence of death.**
3. **To understand how the prisoner deals with his/her family's response to his/her arrest and death sentence.**
4. **To understand the psychological responses and coping mechanisms of the prisoner in dealing with his/her arrest and death sentence.**

RESEARCH QUESTIONS AND GUIDELINES FOR INTERVIEWER

1. **What are ways in which the prisoner understands his/her subjective experiences since the time of arrest?**

Guidelines for the interviewer:

i. The interviewer will look for the prisoner's subjective understanding of his/her experiences. The interviewer will also look for the ways in which the prisoner emphasizes certain aspects of his/her prison life over other aspects. Allow the prisoner to go on speaking if he/she moves on his/her own accord to components covered by Q2, Q3 and Q4.

ii. The interviewer may ask questions such as...
- Tell us about the experiences you have gone through since you were arrested.

2. **What are the kinds of interactions the prisoner has gone through with relevant institutions such as the prison, legal system, media etc.?**

Guidelines for the interviewer:

i. The interviewer would try to understand...
- Interactions with the prison authorities (abuse, fear, exploitation, inspiration, mentorship).
- Interactions with the other inmates (relationships, hierarchies, friendships, role-models, cooperation, animosity, exploitation, abuse; physical, sexual, emotional, verbal, financial and any other).
- Mental health facilities available to the prisoner (awareness, accessibility and availability of mental health facilities, knowledge about the medicines they are prescribed if any).
- Interactions with the lawyer/s and their perception of the legal system.
- Experiences in the courtroom (feelings of alienation, sense of powerlessness, reaction when death sentence was proclaimed, experience of being handcuffed etc.).
- Interactions with the media (experience of giving media interviews, perception of their portrayal by the media, attitude towards media, how would they want to be represented in the media, concerns about impact of media portrayal on family).

ii. The interviewer may ask questions such as...
- Can you share with us some of the experiences you've had with the prison authorities? How do these experiences make you feel?
- Can you share with us some of your experiences with the other inmates?
- What are the health services available to you in prison?
- Tell us about your experience with your lawyer.
- Can you share with us how you felt when you are taken to the courtroom?
- Can you share with us some of the experiences you've had with the media?

3. What are the ways in which the availability/lack of family and/or fraternal support has impacted the mental health of the prisoner?

Guidelines for the interviewer:

i. The interviewer would try to understand...
- Interactions with family and friends.
- Detailed experiences of interaction with family members after arrest / conviction / being put on death row (mulaqat, writing or receiving letters from family, phone calls, meetings during trials etc.).
- Impact of these interactions on the prisoner's mental health (guilt, hope, happiness, detachment, sense of abandonment, rejection etc.).

ii. The interviewer may ask questions such as...
- Please tell us about your experience of meeting your family members.
- How much do you share with them about your experiences?
- Who has given you support since your arrest? Please share instances.
- Who has not given you support since your arrest? Please share instances.
- Do they share with you about their lives? How much do they share?
- In what ways do you think these interactions are impacting you mentally?

4. What are the psychological responses of the prisoners to the death sentence? What are the coping mechanisms used by the prisoners while under the death sentence?

Guidelines for the interviewer:

i. The interviewer will try to understand the various ways in which the prisoner has been affected psychologically since being sentenced to death. Attempts will be made to record the psychological responses, change in thoughts, feelings, attitude, behaviours, perceived stress and various coping mechanisms. Coping mechanisms may include denial, acting out, harm to self and others, strategization, help seeking behaviour, guilt and remorse, hopelessness, acceptance of reality, distraction, aggression, uplifting mind, spirituality, humour, generating hope, fantasy and any other mechanism.

ii. The interviewer may ask questions such as...
- What were your thoughts and feelings when you learnt about your death sentence?
- Have these thoughts and feelings taken some other form now, given the amount of time that has elapsed?
- Can you share some of the most painful/difficult/stressful experiences you have gone through since you have been sentenced to death?
- How do you deal with these painful/difficult/stressful experiences? Can you give us examples of the kind of things you do or think about in these situations?
- Who are the people, if any, that you turn to for support during painful/difficult/stressful experiences?

Qualitative Questionnaire for Families of Prisoners Sentenced to Death and their Experience with the Criminal Justice System

OBJECTIVES FOR QUALITATIVE INTERVIEWING OF THE FAMILY MEMBERS

1. **To supplement the longitudinal history of the prisoner's mental health from birth to present. (Please see history proforma).**
2. **To explore the socio-economic consequences of the arrest and death sentence of the prisoner on family members and to search for any change in their relationship with the prisoner due to that.**
3. **To understand the psychological responses of the family members to the arrest and death sentence of the prisoner and their coping mechanisms.**

RESEARCH QUESTIONS AND GUIDELINES FOR INTERVIEWER

1. **What are the socio-economic consequences of arrest and death penalty on the family of prisoner under the sentence of death?**

Guidelines for the interviewer:

i. The interviewer will look for the consequences of the arrest and death sentence on each family member (father, mother, siblings, wife/husband and children). The interviewer would try to understand the impact of these consequences on each member and their relationships with each other.

ii. The interviewer would try to understand the economic consequences of the arrest on the lives of the family members. In case the prisoner was the sole earner of the family before his/her arrest, then how is the family managing now.

iii. The stigma attached to imprisonment in general and the death penalty in particular is such that often the families of the accused also bear the brunt. So, the interviewer would also try to understand the social consequences of the arrest on the family members.

iv. The interviewer will try to understand the ways in which the arrest has affected marital, educational and career prospects of the children and other family members of the prisoners.

v. The interviewer may start with questions such as...

- Can you please tell us about your experience since your relative's arrest? How has your life changed after his/her arrest?
- In what way has your interaction with your neighbours/near and dear ones changed since the arrest?
- What was the perception of the neighbours about the prisoner before and after the alleged crime? How has it changed over the years?
- Can you please tell us about the economic consequences faced by the family? If the prisoner was the only earner in the family, then how is the family managing now?
- How has the arrest impacted the educational and career prospects of the other family members including the children?
- How has the arrest impacted any marital prospects of the other family members including the children?
- Whom do you turn to for support?

2. **What are the changes if any in the relationship of the family members with the prisoner as a result of the aforementioned consequences?**

Guidelines for the interviewer:

i. The interviewer would try to understand the relationship the family members had with the prisoner before the arrest and if it has changed after that. This would include the experiences of the family members of mulaqat with the prisoner, writing or receiving letters from the prisoner, phone calls, and meetings during the trial etc.

ii. The interviewer may start with questions such as...

- How often do you get in touch with your relative (prisoner)? What kind of things do you talk about when you speak to him/her?
- Do you speak to your relative (prisoner) about the consequences you have faced since his/her arrest and death sentence?
- What are your relative's (prisoner) reactions when you tell him/her about these consequences being faced by the family (guilt, detachment, remorse, any other)?
- Is there any change in your relationship with the prisoner because of the consequences you have faced?
- How does the prisoner describe his/her prison life to you during mulaqat/or through phone calls/letters?

3. **What are the psychological responses of the family to the death sentence?**

Guidelines for the interviewer:

i. The interviewer will try to understand the various ways in which the family members are affected emotionally because of the prisoner's death sentence. An attempt will be made to record the psychological responses, change in thoughts, feelings, attitude, behaviours, perceived stress and various coping mechanisms. The coping mechanisms may include denial, avoidance , acting out, harm to self and others, strategization, help seeking behaviour, guilt and remorse, hopelessness, acceptance of reality, distraction, aggression, uplifting mind, spirituality, humour, generating hope, fantasy, self blaming and any other mechanism.)

ii. The interviewer may start with questions such as...

- What were your thoughts and feelings when you learnt about the death sentence?
- Have these thoughts and feelings taken some other form now, given the amount of time that has elapsed?
- Can you share some of the most painful/difficult/stressful experiences/moments since the death sentence was imposed?
- How do you deal with these painful/difficult/stressful experiences? Can you give us examples of the kind of things you do or think about in these situations?
- Who are the people, if any, that you turn to for support during painful/difficult/stressful experiences?

4. What is your perception of the death penalty and its consequences on mental health? Should this kind of punishment be given to anyone?

Mental Health Research Project
Consent Form (Prisoner)

This consent form describes a research project on the mental health of prisoners sentenced to death in India, what you may expect if you decide to take part in the project, and important information to help you make your decision. Please read this form carefully. The interviewers will explain the consent form and this project to you. This consent form is not a contract and by signing or by not signing the form your legal rights will in no way be affected. Please ask questions about anything that is not clear to you before you agree to participate or at any time during the interview.

INTRODUCTION

1. This project is being conducted by the Centre on the Death Penalty at the National Law University, Delhi. The purpose of the project is to understand and analyse the mental health, including mental illness and intellectual disability, of prisoners sentenced to death in India.
2. The project aims to interview prisoners who are currently under the sentence of death in India. Families of the prisoners will also be interviewed to further our understanding of the mental health issues of prisoners on death row.
3. An analysis of interviews with prisoners sentenced to death and their families will be published in a report after the prisoners and their families have been interviewed.

CONDITIONS OF THE INTERVIEW

1. We are inviting you to take part in this project because you have been given the death sentence by _____ or your death sentence has been confirmed by _____.
2. The interview is being conducted by researchers from the Centre on the Death Penalty, National Law University, Delhi.

CONDITIONS FOR PARTICIPATING IN THE PROJECT

1. Participating in this project is voluntary.
2. You can refuse to participate in the project.
3. If you agree to participate in this project, you can choose to withdraw at any point.
4. If you withdraw your consent, no information about you will be used.
5. The interview will be conducted in the language you speak and understand
6. If you decide not to participate in the project, or if you stop participating at any time, you will not be penalised or lose any benefits for which you otherwise qualify.
7. Your family will be interviewed for this project, with their consent.
8. Your name and the prison you are imprisoned in will not be published, either during or after the project.

9. Your family's name and address will not be published, either during or after the project.
10. Information obtained from you and your family may be used for and may be published in the report.
11. The purpose of the interview is NOT to provide treatment and care. The interview is conducted only for research purposes.
12. Recommendations for treatment and care to address your mental health will be made if the interviewers identify that there is an imminent need to do so.
13. The interview is NOT being conducted in relation to your legal case.
14. Your participation in the project may not affect or influence your sentence, your parole, or any other aspect of your imprisonment.

DESCRIPTION OF THE PROCEDURES INVOLVED IN THE PROJECT

1. The interview will be conducted in prison. If you agree to participate in the project, you will be asked about your physical and mental health during and before your imprisonment.
2. You will be asked questions related to your life in prison and before you were imprisoned.
3. You may be asked questions about incidents in your life which may have caused or may cause you some emotional or psychological distress.
4. You will NOT be asked about the crime of which you have been accused, unless you choose to talk about it.
5. The interview may be for approximately 4-5 hours and may be conducted over multiple meetings.
6. If you refuse to participate in the project, reasons for such refusal may be recorded, with your consent.

CONFIDENTIALITY

1. Information obtained from you and your medical records will be known only to people working on the project and people working with the Centre.
2. Information regarding the crime you have been accused of will be known only to people working on the project and people working with the Centre.
3. The project will not publish your name and your family's name and address.

PAYMENT

You and your family will NOT be paid for your participation in the project.

CONSENT

1. I fully understand that the interviews are being conducted by the Centre on the Death Penalty, National Law University, Delhi as part of a research project on mental health of prisoners sentenced to death in India.
2. I fully understand that the findings of the project will be published in a report.
3. I fully understand that my family may be interviewed.
4. I fully understand that no information identifying me or my family will be published during or after the project.
5. I fully understand the nature and purpose of the information required from me.
6. I fully understand that the interview is not being conducted as part of treatment and care.
7. I fully understand that if there is an imminent need, recommendations for further steps to address my mental health will be made.
8. I fully understand that participating in the project may not affect or influence my sentence, parole or any other aspect of my imprisonment.
9. I fully understand that the interview is not being conducted in relation to my legal case.
10. I fully understand that information obtained from me will be known to people working on the project as well as people working with the Centre.
11. I fully understand that information related to the crime I have been accused of will be known to people working on the project as well as people working with the Centre.

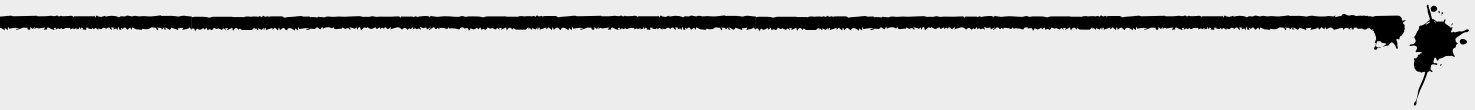
I have read the foregoing information/it has been read to me. I have had the opportunity to ask questions about it and my questions have been answered to my satisfaction.

I, _____, CONSENT/REFUSE to be part of the project.

Date:

Place: Signature/Thumb Impression

Signature of Interviewer Signature of Interviewer Signature of Interviewer



PROJECT 39A
EQUAL JUSTICE
EQUAL OPPORTUNITY