

# **Interrogating Violence against Women From the other Side: An Exploratory Study into the World of Perpetrators**

Supported by:  
**National Human Rights Commission**  
New Delhi

Project Coordinator:  
**Renu Addlakha**

Team Members:  
Anshu Singh, Vijay Kumar Jha,  
Santana Khanikar, Pratha Garkoti, Sandeep Mishra and Barathi Nakkeeran



**CENTRE FOR WOMEN'S DEVELOPMENT STUDIES**

An autonomous research institute supported by the  
Indian Council of Social Science Research (ICSSR)

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**25, Bhai Vir Singh Marg (Gole Market), New Delhi - 110 001.**

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## **Abbreviations**

IPC	Indian Penal Code, 1860.
CAW	Crimes against Women
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CrPC	Code of Criminal Procedure, 1973
CWDS	Centre for Women's Development Studies
FIR	First Information Report
POCSO	Protection of Children from Sexual Offences Act, 2012
NHRC	National Human Rights Commission
NCRB	National Crime Records Bureau
VAW	Violence against Women

### Catalogue of Legal Provisions Cited in the Text

S.No	Legal Provision	Description of the Provision
<b>Indian Penal Code, 1860</b>		
1.	34	When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
2.	166	Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Illustration A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.
3.	302	Prescribes punishment for murder with death, or imprisonment for life, and shall also be liable to fine.
4.	307	Prescribes punishment for attempt to murder According to this section Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1 imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life-convicts.2 [When any person offending under this section is under sentence of 2 [imprisonment for life], he may, if hurt is caused, be punished with death.]
5.	323	Prescribes punishment for voluntarily causing hurt with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.
6.	328	Prescribes punishment for administering or causing to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
7.	341	Prescribes punishment for wrongful restraint with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both

8.	354	Prescribes punishment for assault or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
9.	354B	Provides that any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.
10.	354D	Defines and prescribes punishment for stalking by any man of a woman. The punishment provided is as follows: on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.
11.	363	Prescribes punishment for kidnapping with of any person from India or from lawful guardianship with imprisonment of either description for a term which may extend to seven years and fine.
12.	365	Prescribes punishment for anyone who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
13.	376	Prescribes punishment for rape. According to the section, whoever commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. However, in cases where in the offender, for instance, is a police officer, or a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, in such cases the offender shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall be also be liable for fine. Further, if the rape is committed on a woman under sixteen years of age then the offender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:
14.	377 <sup>1</sup>	Prescribes that whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. To constitute the offence described in this section, penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.
15.	392	Prescribes that whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be



		liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.
16.	397	Prescribes that if, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.
17.	411	Prescribes that whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
18.	420	Prescribes that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
19.	506	Prescribes punishment for criminal intimidation. According to the Section whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc. and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.
20.	509	Prescribes that whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.
<b>The Protection of Children from Sexual Offences Act, 2012</b>		
21.	6	Prescribes punishment for aggravated penetrative sexual assault with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.
<b>The Indian Evidence Act, 1872</b>		
22.	114A	Provides that there is a presumption as to absence of consent in certain prosecution for rape. —In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual

		<p>intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.</p> <p>Explanation. In this section, sexual intercourse shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).</p>
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Note:

[1] Note that this Section has been struck down by the Supreme Court of India vide *Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice*, W. P. (Crl.) No. 76 of 2016 D. No. 14961/2016 at the Supreme Court of India (decided on 6 September 2018).

## **Acknowledgements**

This project would not have come to fruition without the ongoing support, both financial and logistical, of the National Human Rights Commission (NHRC), New Delhi. I am especially grateful to Mr. Jaideep Singh Kochher Joint Secretary (Training and Research) and Dr. Savita Bhakhry Joint Director (Research) at NHRC. Also the suggestions of Mr. Muni Dev Singh Tyagi (Joint Director Policy Research Projects and Programmes) and other members of the NHRC.

I owe a debt of gratitude to the superintendent and staff of the Observation Home for Boys, Sewa Kutir, and the Special Home for Boys, Majnu Ka Tilla, as also Jail Number 3, Tihar Jail Complex, New Delhi. While institutional authorities provided entry and assistance in accessing inmates, no amount of institutional support would have been of any avail had the inmates been unwilling to share very personal and traumatic experiences with the Project Team in the course of fieldwork. Therefore, we have to reiterate our gratitude to the inmates who talked to us and gave us an opportunity to glimpse some very private aspects of their lives.

The preparation for fieldwork in the above institutions was preceded by very detailed discussions with a range of stakeholders from the domains of academia, activism, media, clinical psychology and law enforcement system who helped the Project Team to understand the complexities of the issues that frame criminality, human rights, social justice and gender with particular reference to the Indian reality. We are grateful to them for giving us the time to explain the issues and respond to our queries.

Last but not least, I would like to thank colleagues at the Centre for Women's development Studies (CWDS), particularly members of this Project Team for their encouragement, academic insights and logistical assistance throughout the project. In particular, I would like to mention the support of the Former CWDS Director Professor Indu Agnihotri in this regard.

***Dr. Renu Addlakha***

Professor and Project Director

Place: New Delhi

Date: August 2020

## **Executive Summary**

1. Today, violence against women (VAW) has emerged as a major discursive, administrative and experiential category. It is operative in the civil society programmes and state-level laws, policies and programmes. The rationale of this project derives from this macrosocial reality.
2. This project arose out of the social activism after the Delhi Gang Rape case in 2013 and it seeks to explore the perceptions, motivations and actions of the perpetrators (juveniles and adults, accused and convicted) of sexual crimes against women. The project seeks to fill a critical gap on research and advocacy on this issue in India.
3. The main objectives of the research are: i. Analysis of existing literature on perpetrators of crimes against women from an interdisciplinary perspective with a particular focus on India; ii. Conducting narrative interviews with selected incarcerated offenders (juveniles and adults) under-trials and convicted offenders) in the Observation Home for Boys and the special Home for Boys and Tihar Jail in Delhi; iii. Developing an understanding of the existing and changing contours of crimes against women, perpetrators and victims through interviews in the criminal justice system, child and gender rights activists, media professionals and clinical psychologists; iv. Attempting to arrive at some inferences on the intersections of gender violence, crime and social transformation with particular reference to urban India not only from an academic perspective but in terms of some recommendations to mainstream perpetrators.
4. While the specific research sites are the Observation Home for Boys, The Special Home for Boys Majnu Ka Tilla and Tihar Jail in Delhi, the findings carry pan-Indian relevance and importance particularly for urban India.
5. Quantitative and qualitative data collection techniques were used. 15 open-ended semi-structured interviews with experts focused on gauging their perspectives on crime particularly crimes against women in the context of contemporary India from the specific vantage point of their own areas of expertise, viz law, women's rights, child rights, psychology, psychiatry, media etc.
6. Subsequently, the sample comprising primary data collection from the three institutions mentioned above, namely Observation Home for Boys, Sewa Kutir (43 Interviews), Special Home for Boys Majnu Ka Tilla (7 interviews) and Tihar Jail (20 interviews).
7. Based on project objectives interviewees were pre-selected by institutional functionaries comprising males charged with various offences under the Indian Penal Code, 1860 (IPC) involving sexual violations such as rape, aggravated rape, molestation, kidnapping and abduction, outraging the modesty of women, etc. We were permitted to conduct only one interview with each pre-selected interviewee.
8. A common semi-structured interview open-ended guide was developed to conducted narrative interviews with inmates of the Observation home at Sewa Kutir, the Special Home at Majnu Ka Tilla and Tihar Jail.

9. The Research Team comprised full time employees of the Centre for Women's Development Studies (CWDS). While Professor Renu Addlakha was the project director, Dr. Vijay Kumar Jha and Dr. Anshu Singh were the research associates who conducted the fieldwork in the Observation Home and Tihar Jail. Dr. Sandeep Mishra and Dr. Gayatri Panda also worked briefly on the project at different points of time. Dr. Santana Khanikar did some fieldwork and wrote the draft of the literature review for this Project before leaving the CWDS.
10. It needs to be noted that accessing inmates of penal institutions is a major research challenge as we had to really struggle with various administrative authorities to be allowed to conduct fieldwork in these institutions, notwithstanding the good offices of the NHRC. This has led to much delay in the completion of the Project.
11. There were several ethical dilemmas which we faced while conducting the research, which affected both the research process and the interpretation of the collected data. For instance, confidentiality could not be observed as interviews were conducted in the presence of institutional staff who pre-selected potential interviewees.
12. After the Introduction and an account of the research methodology, process and research ethics, the first substantive section of this report presents a literature review deriving from inter-disciplinary social science research and allied fields (academic, activist and media reportage spanning the interdisciplinary domains of criminal justice, juvenile justice, violence against women, sociology of deviance etc.) with particular reference to India was examined.
13. A particular focus of the literature review is the work of the National Crime Records Bureau (NCRB) which is the only macro-level source of data on reported crime in India.
14. Notwithstanding the enactment of several women-friendly laws and policies particularly after the Nirbhaya Case, the analysis of the NCRB shows a steady increase in reporting of crimes against women, but not a corresponding increase in the rate of convictions.
15. The limited literature on perpetrators in India from a qualitative perspective largely comes from the domains of social defence and correctional administration. On the other hand, there is substantial literature on rape culture, domestic violence, culture of silence and the problematic nature of consent (particularly sexual consent) from a multiplicity of sources including social sciences, social work, criminology, legal and women's studies.
16. The 2018 Nirbhaya Case was a landmark in overhauling the legal regime on sexual violence in India along the lines of the Mathura case which led to equally radical legal reform in the 1980s. The Constitution of the Verma Committee and the incorporation of its recommendations into the Criminal Law (Amendment) Act, 2013 not only materialised in record time but also set new benchmarks for gender justice in the country. Other legal changes in the wake of the above have been treating juveniles accused of 'heinous' crimes as adults and increasing the punishment for sexual offences against children.

17. Inevitably there has been a backlash against more women friendly laws with men's groups citing increasing of misuse of such laws by women and their families to settle scores and more cases of compromise and victims turning hostile coming before the courts. In response gender and child rights activists have pointed to the universal potential of misuse of laws. Furthermore child rights activists have strongly opposed the lowering of age of juvenility and treating juvenile offenders as adults not only because the percentage of juvenile crime is a small subset of total crimes (less than 2 per cent) but also because it violates the basic tenets of child rights as contained in the UN Convention on the rights of the Child to which India is a signatory.
18. The media has played a pivotal role in popular perceptions of sexual crimes and in moulding the legal response. Print and electronic media were at the fore front of in keeping the issue of sexual crimes alive in the public, in pushing for more severe punishment for offenders, in safety audits of different areas of the city and in pushing the administration and politicians to take note and respond to the issue.
19. Women's rights and child-rights activists have played a major role in configuring the media, legal and by extension state response to gender- based violence against women; they have been instrumental in driving public debate and policy discourse particularly after the Nirbhaya incident.
20. Consequently, sixteen (16) experts from the fields of psychiatry, law, police, media, gender, child and women's rights including contacts provided by the NHRC were interviewed using an open-ended interview guide to get a broader understanding of crime within the complex realities of urbanization, masculinity, socio-economic change and cultural transformation. These interviews yielded diverse (bordering on contradictory) perspectives underscoring the complexity of the issue at hand. From the child rights perspective, the arguments advanced were that juvenile offenders are a minuscule number in the larger pool of criminals Child rights activists strongly contested the validity of lowering the age of juvenility for heinous crimes and giving higher penalties, which would lead to retributive justice annulling the possibility of rehabilitation and reform. Adolescence is a developmentally charged phase of the life cycle during which a young person is biologically not mature enough to fully evaluate the outcome of his actions. Physiological and neurological processes make adolescents more prone to experimentation and risk-taking as their adult identities are developing. Consequently, juvenile offenders have to be treated differently from adult offenders. Furthermore, many rape perpetrators, themselves have been raped and exploited by adults, and are made to think that it is a legitimate act. Lastly, in the hierarchy of police work, juvenile justice is on the lower rungs
21. While child rights and gender rights activists presented a line of argument arising from the interests of the particular constituency they are working for, police personnel displayed a more critical stance. Child rights need to be balanced against victim rights; and the issue of individual responsibility cannot be sacrificed at the altar of human

- rights. Law should not be accused-centric but must balance the rights of both victims and the accused.
22. Legal scholars also pointed to changes that have contested deeply embedded gender stereotypes such as the validity of the two-finger test, linking the victim's past sexual history with the present crime, the notion that a woman would never lie about being raped and the evidence of struggle and injury as proof of the absence of consent. Many victims are too petrified to struggle.
  23. Clinical practitioners like psychologists and psychiatrists addressed the issue of gender and violence from the perspective of intrapsychic processes which it is not always easy to understand without the background professional knowledge. All the experts interviewed highlighted the role of macro-level social changes such as poverty, urbanization, migration, increased number of women in the public sphere as significant variables in the increased visibility of gender-based violence. They also highlighted the role of the media in contributing to this state of affairs.
  24. In addition to interviews with experts, fieldwork for this project was conducted in three institutions in Delhi, namely, Observation Home for Boys, Sewa Kutir, and Special Home for Boys, Majnu Ka Tilla and Tihar Jail. As already mentioned, the aim of conducting fieldwork in the above locations was to get an account of the gender-based crime from the person who is accused/convicted of committing the act.
  25. This study comprises two categories of interviewees from three distinct penal institutions in Delhi. Our focus in this the project has been to understand the reasons for rape as provided by the offenders in an institutional setting. The project does not focus on the institution but the influence of prison or correctional home on the mind of the alleged perpetrators. Getting access to the perspective of the alleged or convicted offender on the crime for which he is incarcerated within the four walls of the institution was the main aim of the fieldwork.
  26. A short open ended interview guide was used to initiate a conversation with interviewees. It comprised following questions: i. Describe in your own words the reasons why you are here. ii. Do you think you did something wrong? iii. Do you think you should be punished? iv. Describe how you feel about the whole experience (having done something or being accused of doing something wrong and going through the legal process). / How do you spend your day here? vi. What do you plan to do after you leave this place? vii. Do you have anything else to say or ask?
  27. A socio-demographic analysis of the 61 interviews conducted with juvenile informants in the Observation Home at Sewa Kutir revealed that the majority of them were young men of around 17 years of age who had dropped out of school at the secondary level and were engaged in some low paid occupation in the unorganised sector in Delhi. The majority of them were unmarried Hindu men who had migrated to Delhi either alone or with their natal families in search of better economic opportunities. The main sections of IPC under which they were charged were 376 (rape), 363 (kidnapping) and The Protection of Children from Sexual Offences Act, 2012 (POCSO) which means that the

sexual offense was against a minor. Interestingly there was only one case of repeat offender in the total sample of juveniles interviewed. While contextual variables, cultural perspectives and socio-economic play an important role in crimes against women, ultimately it is issues of power, aggression and control that underlie such acts. The historical prevalence of the phenomenon shows its deep roots not only in patriarchy but in the evolution of human civilisation itself.

28. The focus of the project has been to understand the reasons for rape as provided by the offenders in an institutional setting. The project does not focus on the institution but the influence of prison or correctional home on the mind of the alleged perpetrators.
29. The socio-demographics of the 43 inmates interviewed at Sewa Kutir revealed that a majority of them are around 17 years of age, migrants from other states of North India, secondary school dropouts, unmarried and engaged in work in the informal sector.
30. Maximum number of the juveniles interviewed were charged under the Section 376 of Indian Penal Code. There were seven cases where the boys were charged for raping other boys. Fifteen of the boys were also charged under Sections 363 of IPC that is for kidnapping of the victim, the cases of elopement were clubbed in this section. Sixteen of the respondents were charged for rape under the POCSO for raping a minor. There were two cases of rape in a gang.
31. Of the 43 boys interviewed, only one was a case of a repeat offender.
32. A qualitative analysis of the narratives of the 43 interviews conducted at Sewa Kutir threw up the following themes: 'romantic or consensual relationship', 'peer pressure', 'mistake of the girl or substance abuse', 'elopement', 'conspiracy', and 'acceptance'. These themes played a crucial role in the incident that led to the conviction of the interviewees.
33. Given that the interviews were conducted in a penal institution, most if not all of interviewees denied the charges under which they were arrested. While forty percent (n= 17) denied having any role in the action for which they were charged, claiming that they were falsely accused and framed by either the family of the girl or police. However denial of wrong-doing was at times attenuated by other issues. For instance, 40% percent admitted to be in a consensual sexual relationship with the victim that either turned sour or was disapproved of by their parents. In these cases the boys usually blamed parents of the girl for framing them. Some of the respondents expressed concern for the security of the girl who went back to her family after his arrest.
34. Four of the respondents at Sewa Kutir accepted that they had committed rape. Three of boys noted that they were part of a gang that committed rape; but they denied having committed the act themselves. They said they were either making a video of the act being committed by other gang members or just watching from a distance.
35. Eight interviews with juveniles convicted of crimes against women were done at the Special Home for Boys in Majnu Ka Tilla. The socio-demography of this subset of juvenile convicts mirrors that of the set of boys in the Observation Home. However,



- out of the eight interviewees, 3 denied the charges for which they were convicted, two accepted their role in the crime and the remaining two did not give any information.
36. Out of the eight interviews at the Special Home for Boys in Majnu Ka Tilla Six of the interviewees were migrants and only two were non-migrants. All of them were unmarried and were between the ages of 15-19. All eight were school dropouts at primary level. Prior to being detained, they were employed in the informal sector. They were all charged under Section 376 and one of them was also charged under POCSO.
  37. The eight narratives of the Special Home at Majnu Ka Tilla crimes of crimes against women in most of cases mirrored the issues and themes found in the narratives in the interviews done at the Observation Home at Sewa Kutir such as ‘conspiracy’, ‘romantic or consensual relationship’, ‘mistake of the girl or substance abuse’, ‘peer pressure’, ‘elopement’ and ‘acceptance.’
  38. 20 interviews were conducted in Tihar Jail. A majority of them were between the ages of 19 to 39. Fifty percent of the convicts were upper caste, mostly Brahmins. More than 50% of the men interviewed were not able to finish school due to the financial needs and familial demands. Seventy-five percent (n=15) of the interviewees were working in the unorganized sector, mostly as drivers, cooks, labourers, rickshaw pullers, watchmen , etc. 11 convicts interviewed were currently married while the other nine were not. 16 respondents were Hindu while 3 were Muslim and only one was a Christian. Twelve of the men interviewed had migrated to Delhi mainly in search of employment from small towns of Bihar, Uttar Pradesh, Rajasthan and Uttarakhand.
  39. The same fieldwork constraints and conditions prevailed as in the case of fieldwork conducted in the Observation Home at Sewa Kutir and the Special Home at Majnu Ka Tilla.
  40. Nineteen of the twenty prisoners were charged under section 376 of the IPC for raping a woman. Most of the convicts were charged under multiple sections like 354, 506, 365, 34, 363, 341, 307, 328, 392, 377 and 397 of the IPC.
  41. A majority of the interviewees in Tihar Jail denied the charges; most of them blamed the criminal justice system which was in their view tilted towards the victim. Others claimed that that the charges were levied against them due to reasons like family rivalry or alcoholism. Sime others denied the charges claiming they were co-accused in a gang rape, in which they played little to no part.
  42. Only five of the 20 interviewees admitted to having sexual intercourse with the alleged victim. However even in these cases of admission, the interviewees claimed that the girl in their respective cases had turned hostile due to some reasons and falsely accused them of rape. They denied that the intercourse was without consent.
  43. Only four interviewees took full responsibility for sexually assaulting a woman. In one instance, the interviewee could not deny the charge because his case was well reported in the media.

44. Ten of the 20 prisoners interviewed in Tihar Jail were sentenced to life imprisonment and five were sentenced for 10 years or more. Five of the interviewees were sentenced to five years.
45. There are legal provisions which provide convicts the chance to appeal to a higher court against the punishment given by lower courts. Eleven of the interviewees have accepted their fate in prison and have not applied for reconsideration or appeal. Three appeals are pending in Supreme Court and one in High Court. Appeals of two of the interviewed convicts have already been rejected by the courts.
46. The last section of the Report is a brief summing up of the study along with some key recommendations for future action. This section needs to be read in the context of the limited sample size and scope of an exploratory study.

## **1. INTRODUCTION**

This project arose out of the social activism after the Delhi Gang Rape case in which a 23 year old female was brutalized on 12 December 2012 in a private bus by four men. The horrific injuries she suffered eventually led to her death a few weeks later. The national outrage led to major legislative measures like the Verma Committee Report, the Criminal Law (Amendment) Act, 2013 and amendments to the Juvenile Justice (Care and Protection of Children) Act, 2015 regarding the treatment of juveniles involved in heinous crimes as adult criminals. The period also saw an acceleration of research and advocacy on the issue of women's safety. While the focus on women was perfectly justified, we felt that the discussion was incomplete without bringing in the perceptions, motivations and actions of the perpetrators of such crimes. They were represented as inherently evil beings who should be eliminated. Violence against women, public safety, punishment for offenders and juvenile crime were some topics that have taken center stage in the aftermath of the Nirbhaya Gang Rape. Using primary and secondary data, this project seeks to engage with these issues from a human rights and gender sensitive perspective with particular reference to Delhi: the epicenter of debate and advocacy in the country.

As a sociologist, I was concerned with examining the issue of violence against women in all its dimensions. Erasing the presence of the perpetrator and reducing it to a mere stereotype of evil appeared both intellectually and ethically questionable. Without in any way diminishing the pain caused to victims of such crimes, I felt the problem could not be adequately addressed just by making laws more stringent and dispensing harsher punishment to perpetrators; we needed to objectively understand what drives boys and men to commit such heinous acts; they needed to be given a voice and their perspective(s) had to be contextually understood and even historicized. My doctoral work on schizophrenic patients in a mental hospital has trained me to challenge conventional wisdom and engage with those who no one wants to engage. This is the location from which I visualized this project.

### **1.1 Rationale and Contemporary Relevance of the Study**

Today, violence against women (VAW) has emerged as a major discursive, administrative and experiential category. It is operative in the civil society programmes and state-level laws, policies and other programmes such as the Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Criminal Law (Amendment) Act, 2013, The Draft National Policy for Women, 2016 as also the whole range of executive measures to increase women's decision-making power in the areas of divorce, inheritance, guardianship, employment and political participation.

VAW is a key category in developmental discourses articulated thorough the United Nations as seen in the Convention to Eliminate All Forms of Discrimination against Women

(CEDAW), 1979 and the whole range of funding available from bilateral and multi-lateral institutions and corporation foundations for initiatives for women's upliftment in developing countries, including India. As if mirroring the global scenario, VAW has also emerged as an explanatory variable in women's experiences of violation in the domestic and public spaces as vociferously articulated in local media (particularly electronic media). For instance, the Nirbhaya Campaign cannot be imagined without the active participation of the media in both highlighting the issue and driving the state's response. More recently, safety audits of various sites in cities and regular reporting of sexual crimes against women have become standard features of newspapers and television reports.

When it comes to media representations of perpetrators of such crimes, media accounts offer two apparently opposed configurations of the violator. On the one hand, the figure of the perpetrator of such violations is a dim male figure, who embodies the dregs and driftwood of society. On the other hand, perpetrators emerge as well-placed individuals appertaining to the wealthy and powerful sections of society whose sexual transgressions are a wider manifestation of their clout in the social system. The December 16, 2012 incident exemplifies the former category of perpetrators; delinquent, semi-employed poor alcoholic men who rampage and rape mindlessly. It is averred that society needs to be protected from such nefarious characters and there is a growing clamor for capital punishment in such cases to serve as a deterrent. The second category of perpetrators occupies the other end of the social spectrum who figure in such high profile cases as Biti Mohanty and Santosh Kumar Singh (sons off high ranking police officers), Tarun Tejpal and Nobel laureate R.K. Pachauri. Then, there is the group of cases involving politicians and their sons like Manu Sharma (Jessica Lal case), Amarmani Tripathi (Madhumita Shukla case), Sushil Sharma (Naina Sahni case) among several others. Such cases are depicted in a different light as their transgressions are regarded more as isolated wayward acts for which less arduous forms of punishment are considered adequate. Very often such cases disappear from public memory after an initial outrage. Another set of violations involve functionaries of the state such as custodial rape (the Mathura Case in 1972) and the assault on women functionaries doing their assigned work in the face of caste and community opposition (Bhanwari Devi case in 1994). In all such cases, caste, class, employment status, rural-urban location and other social inequalities intersect with gender to generate violence against women. Indeed, the figure of the 'perpetrator' swings precariously between the twin and often overlapping poles of psychopathology and criminality in these multiple representations.

It is the purpose of this study to gain a more nuanced understanding of a range perpetrators of crimes against women with a particular focus on the psychosocial, cultural and economic-political factors that configure their identities and life worlds. The study straddles a wide interdisciplinary terrain extending from political economy to psychosocial morbidity to throw light on the factors propelling men to engage in gender-based violence. It is the contention of this research that a truly gender just society requires that we extend the lens of understanding and application from experiences of being violated to throw light on the factors that propel men

to engage in violence. While there is an enormous literature (too numerous to be cited here, see shodhganga) on women's experiences of violence in domestic and public spaces which can guide intervention strategies, the world of perpetrators is a largely unexplored domain in the Indian context.

In other parts of the world, particularly in the United States and Europe, there is a growing literature around perpetrators emerging both from the criminal justice system as also from the academy and helping professions (New Zealand Family Violence Clearinghouse, 2016). It is the purpose of this research to open up this area by focusing on the experiences and voices of perpetrators of violence against women in India. At the present there is a need for hard research in order to map the concrete issues at stake with a view to developing advocacy and intervention approaches to help perpetrators to resist engaging in violent behavior. A holistic understanding of why an act of violence is committed, who commits it and against whom it is committed requires juxtaposing the voices of violators with those of their victims. This project seeks to exclusively engage with the former, because the experiences of victims has been for some time and continues to be an ongoing steadily proliferating research and activist domain.

## **1.2. Main Objectives of the Study**

This project began with the objective of gaining insights into the perceptions of male perpetrators and their reasons for committing violence against women and girls in their society. The central objectives of the research as conceptualized at its inception were:

1. Analysis of existing literature on perpetrators of crimes against women from an interdisciplinary perspective with a particular focus on India. Since there is no systematic documentation on studies of perpetrators of crimes against women (apart from limited information in National Crime Research Bureau (NCRB) data), an attempt would be made to combine an analysis of the NCRB data with other available sources of information on the topic;
2. Profiling a sample of perpetrators of crimes against women and developing the sample of informants through institutional records;
3. Conducting Narrative interviews with selected incarcerated offenders (juveniles and adults) under-trials and convicted offenders in the Observation Home for Boys and the Special Home for Boys and Tihar Jail in Delhi (n=50) on their version of the situation;
4. In order to capture the multiple dimensions of particular acts of violence for which perpetrators are being punished, tracking of specific cases would be attempted to gauge the perspectives of specific victims;
5. While it is true that in the terms of reference we had initially thought that we would attempt psychological profiling of some informants through the use of psychological testing protocols in collaboration with psychologists, this was subsequently not undertaken due to ethical and operational reasons. One of the reasons for this was that

the authorities at the Observation Home at Sewa Kutir stopped sharing the psychological profiles of the boys we had interviewed thus depriving us of a valuable source of data. In all the three field sites viz Observation Home at Sewa Kutir, special Home for Boys at Majnu Ka tilla and Tihar Jail, we were given only one session to talk to the inmates which means we had to choose between administering a pre-fabricated profile or an open-ended interview: for obvious reasons we chose the latter approach. Furthermore psychological profiling as a preventive measure is not only violative of the human rights of subjects but also does not find empirical validation as shown by research done on the issue in the West.

5. Through interviews with different stakeholders in the criminal justice system such as prison officials, lawyers and judges, developing an understanding of the existing and changing contours of crimes against women, perpetrators and victims in India;
6. Attempting to arrive at some inferences on the intersections of gender violence, crime and social transformation with particular reference to urban India not only from an academic perspective but in terms of some recommendations to reintegrate perpetrators to a more gender-sensitive understanding with a hope to reducing recidivism in the long run. This objective was framed with reference to the larger conceptual framework within which the study took shape. It is not possible to come up with overarching connections between these concepts from a small empirical data set like the one used in this study.

## **2. RESEARCH METHODOLOGY**

The research site was Delhi. Data was collected using both qualitative and quantitative tools. Fieldwork consisted of engaging with two sets of informants. Firstly, qualitative in-depth interviews were conducted with experts from diverse fields of law, psychology, child and gender rights activism and the media to understand the issue of nature of crimes against women and those engaged in such acts in contemporary India in the context of their work. 16 such interviews were conducted using professional networks of the CWDS. The second category of informants comprised individuals charged with various offences under the IPC involving sexual offences such as rape, aggravated rape, molestation, kidnapping and abduction, outraging the modesty of women, etc. Since informants were incarcerated persons, the research sites were the Observation Home for Boys, Sewa Kutir the special Home for Boys Majnu Ka Tilla and the Tihar Jail under the jurisdiction of the Delhi Government. Narrative interview methods were used to interview 50 juvenile offenders in the former two locations and 20 convicted adults in Tihar Jail (n=70). This sample incorporated both under-trials and convicted offenders.

## **2.1. Research Team**

The Research Team comprised full-time employees of the CWDS. While Professor Renu Addlakha was the project director, Dr. Vijay Kumar Jha and Dr. Anshu Singh were the research associates who conducted the fieldwork in the Observation Home, the Special Home and Tihar Jail. Dr. Sandeep Mishra and Dr. Gayatri Panda also worked on the project at different points of time. Dr. Santana Khanikar did some fieldwork and wrote the first draft of the literature review for this project before leaving the CWDS.

## **2.2. Research Process**

The project began with a general review of literature of the main research issues with a particular focus on the social sciences like criminology, sociology and psychology which have historically dominated thinking on crime and delinquency. Our foray into this domain showed the immense amount of work done in this area in the West over more than a century. Interestingly, there was also considerable literature on the issue for colonial India. Consequently this huge array of literature forced us to be very selective in our literature survey focusing on the intersections between crime, gender and law in a more contemporary context with a focus on the figure of the perpetrator. The first section of this report engages with the issues raised in the literature. A particular focus in this regard is the work of the NCRB which is the only macro-level source of data on reported crime in India.

While the literature review was ongoing, we began looking around for experts to enlighten and elaborate on issues emerging from our own engagement with the project theme. After developing an interview guide tailored to the specific expert interviewed, our fieldwork began with interviews with 16 experts which were conducted by Renu Addlakha and transcribed by other members of the Research Team. The main findings of the interactions with experts are discussed in the subsequent sections of this report.

While the interviews with experts and the literature review were underway, we began correspondence with the Superintendent of the Observation Home at Sewa Kutir. Permission for conducting fieldwork in the Observation Home was readily forthcoming and our fieldwork with 43 boys accused of some kind of sexual crime was completed within two months. It needs to be noted that in all the institutions in which we conducted fieldwork, the interviewees were selected by the staff.

During a presentation at the NHRC in 2015 it was suggested that we conduct fieldwork with some convicted juvenile offenders at the Special home for Boys, Majnu Ka Tilla. But despite the efforts of NHRC we could begin fieldwork there only during February March 2016 almost 20 months into the project. There were only 7 juvenile offenders convicted of crimes against women housed in Majnu Ka Tilla at the time.

The real low point of our Project was the period from April 2016 to February 2017 when we struggled with obtaining permission for conducting fieldwork in Tihar Jail. Our formal requests were shuttled between CWDS, Tihar Jail Director-General's office, NHRC, the Home Department, Delhi Government. Finally when we had more or less given up on being allowed to interview inmates of Tihar Jail, we had a stroke of luck when we contacted the Office of the Delhi Commission for Women. The personal intervention of the latter and the good offices of NHRC finally opened up the jail to us. Our research team was able to conduct interviews with 20 inmates selected by the Jail authorities. Again, the interviews were supervised by Jail staff and we could not audio record them. Most often we had no concrete prior information about the case and most of the one hour of the interview was spent in piecing together the contours of the case from the perspective of the accused. These deficits must be borne in mind when looking at the quality of the data collected and the validity and reliability of the findings. The 20 interviews with inmates of Tihar Jail marked the formal closure of the fieldwork in March 2017.

### **2.3. Operational Definitions**

Being an exploratory study, we did not begin with any preconceived notions encased in limited operational definitions of concepts like gender, violence against women, masculinity etc. the purpose of the study was to understand how core concepts are defined by different stakeholders and institutions like the law, civil society and the state. Furthermore, in order to enrich the study we have moved beyond simple operational definitions to discuss the layered meanings of key concepts in the detailed literature review sections of the report

### **2.4. Research Tools**

In addition to a brief analysis of the NCRB data to get an overview of the prevalence and incidence of crimes against women in India, the research was driven by qualitative methodology. Open-ended semi-structured interviews with experts focused on gauging their perspectives on crime particularly crimes against women in the context of contemporary India from the specific vantage point of their own areas of expertise, viz. law, women's rights, child rights, psychiatry, etc.

A semi-structured interview open-ended guide was developed to conduct in-depth interviews with inmates of the Observation home at Sewa Kutir, the special home at Majnu Ka Tila and Tihar Jail. The guiding questions for this exercise were:

1. Describe in your own words the reasons why you are here.
2. Do you think you did something wrong?
3. Do you think you should be punished?
4. Describe how you feel about the whole experience (having done something or being accused of doing something wrong and going through the legal process)?
5. How do you spend your day here?



6. What do you plan to do after you leave this place?
7. Do you have anything else to say or ask?

In most cases the duration of interviews was 60 to 90 minutes and we were given permission to only conduct one interview with each informant.

## **2.5. Ethical Considerations**

We were confronted with some ethical dilemmas at different stages of the project. For instance, one way of supplementing our understanding of particular cases would have been to interview family members of interviewees. While informants gave their contact details freely, we felt that bringing in the family members would complicate the research because we might end up harming the interests of the informant. Another approach could have been victim-tracking because most informants were again willing to give details about victims and their families. Again, we decided not to follow this pathway because of fear of doing harm to the victim who was not part of our research. When we were still grappling with how to gain access to Tihar Jail, a suggestion was made that we should get lists of released convicts and trace them in the community for interviews. Again, ethical concerns of respecting the human rights of released inmates who had completed their incarceration foreclosed this research pathway.

Fieldwork in the Observation Home, Special Home for Boys and the Tihar Jail came with a variety of constraints that have no doubt affected the quality of our data and subsequent interpretation thereof. Firstly, all the 70 informants were pre-selected by institutional authorities based on the sections of the IPC related to rape, molestation, kidnapping, abduction, murder involving a female under which they were convicted. Identified offenders were explained the research objectives by the institutional authorities and we were informed that their consent was sought orally or in writing. Secondly, the interviews were supervised by one if not more institutional authorities rendering ethical concerns of confidentiality somewhat redundant. Thirdly, we were unable to record the interviews and hence copious notes had to be taken during the interview itself. To facilitate data collection research associates worked in pairs with one undivided interviewing and the other making notes of it. Fourthly, in a majority of cases we had very little if any at all prior information about the interviewee or his offence. In the Observation Home we were initially given access to the psychological profiles of the persons we were interviewing but this was not done for all the interviews. Consequently, most of the interview time went in getting basic information about the actual crime. Lastly, we were given permission to conduct only one interview per inmate making it extremely difficult to piece together a complete and cohesive narrative. Furthermore no other documentary or oral information or observations about the inmates were shared with us by the staff. While cases falling within the Juvenile Justice Board are by law confidential, we could not trace the judgements of adult offenders either because of the non-availability of necessary information

to find the specific cases. Thus, the analysis presented in this report cannot be comprehended without factoring in the above constraints.

## **2.7. Limitations of the Study**

Apart from difficulties in accessing the field sites, this study has to also be looked at against the backdrop of the following limitations:

- Dispersed secondary data sources: There is a lack of national data bases or registries on perpetrators. Further, there is limited access to even the available records such as police records, juvenile justice court records and lower court judgments. There is also no direct access to jail and observation and special home records.
- Barriers to conducting fieldwork with inmates: the penal institutions like Tihar Jail were not readily forthcoming in providing permission to conduct interviews in the institution.
- Difficulties in collecting primary data: the research team was not allowed to attend juvenile justice board proceedings. Further, the research team was provided with limited time for conducting interviews, and these interviews were supervised by institutional authorities. Further other difficulties such as paucity of space, rapid turnover of inmates, and prohibition of audio recording of interviews also inhibited the research process.

Further, there were other difficulties while conducting research such as not being able to follow up observation home inmates after discharge, not being able to interview specific victims, handling expectations of interviewees (e.g. for speedy bail) and the ethics of interviewing family members visiting observation home inmates interviewed by us before or after bail/conviction.

In the context of mental illness and legal culpability, while it is indisputable that psychological process will influence even where there is no diagnosable severe mental illness, it is still difficult to ascertain if there is a mental illness somewhere lurking behind these kind of criminal behaviors or just certain kind of personality and predisposition. Given the substantial research on psychological profiles of perpetrators using psychological testing protocols like the Eysenck Personality Questionnaire (EPQ) (1985), we interviewed some mental health professionals to know if there was any psychopathological element in the mental makeup of those who commit heinous crimes like rape. However, no concrete answers were forthcoming. It needs to be reiterated that this is an exploratory study with a very limited sample size for which fieldwork was conducted under multiple constraints of space, time and context of data collection. Hence the findings/inferences have a limited range of generalisability; they cannot be regarded as universal in scope and validity. Consequently, the interpretations drawn therefrom have to be continually situated in terms of the difficulties of fieldwork in penal settings in Delhi.

Since basic research ethics of informed consent, confidentiality and non-disclosure of identity were observed throughout the research. Nonetheless, the fieldworkers at times experienced apprehension especially female fieldworkers because engaging with male persons in conflict with law in jail settings carries its own emotional costs. While fieldworkers worked in teams of two, the female fieldworkers experienced more stress and many times the interviewees asked them to leave as they only wanted to engage with the male fieldworker. However the fieldworks showed exemplary courage and fortitude while undertaking the research.

Also, it needs to be noted that interviewees were also under great strain given that the interviews were supervised by observation home/jail officials. Fear and anxiety were writ large on the faces of many and they were very careful with their responses, often preferring to respond in monosyllables or remain silent. This was a very challenging context to gather data for the research team.

### **3. LITERATURE REVIEW**

Given the interdisciplinary nature of the research topic, its long historical genealogy in the social sciences and the plethora of activist writings coming out of the human rights perspective, it is not possible to cover this vast expanse of available literature within the space of this review. Consequently, an attempt has been made to highlight key themes with relevance to our study on the interface between violence and gender with a focus on the perspective(s) of the perpetrators. During the first phase of the project an extensive review of literature was undertaken. Relevant literature (academic, activist and media reportage) spanning the interdisciplinary domains of criminal justice, juvenile justice, violence against women, sociology of deviance etc. with particular reference to India was examined. In addition to accessing the rich collection of work on gender and violence in the Library of the CWDS, an extensive online search as also visits to different libraries such as the National Institute of Criminology and Forensic Sciences, Rohini was undertaken.

The issue of crime against women is a widely researched one, in various contexts beginning from domestic, familial violence and workplace violence, to wartime violence on women's bodies, and from the perspectives of social sciences to psychology and clinical sciences. As the focus of this research, however, is that of sexual violence against women perpetrated by male offenders, we would not be going into the vast expanse of available research on women and violence but limit ourselves to key issues largely from the perspective of those who commit crimes against women.

#### **3.1. Sociological and Psychological Theories**

Sociological literature survey highlights four dominant theoretical perspectives on the genesis of crime, namely, biosocial theories which situate the criminal tendencies in biological traits in

interaction with environmental factors predisposing individuals to crime. Sociological theories that focus on how social environment intersects with individual personality factors. In addition to the biological and sociological theories, psychological perspectives account for violence through micro-level intra-individual factors, lastly, Gender Studies explain causes of violence against women in the context of patriarchal social structures, cycle of violence, and hegemonic masculinities.

**Biosocial:** Biosocial theories are a contemporary development of earlier biological theories. The earlier biological theories ascribed certain biological/ physical traits with propensity to crime (Thornhill et al. 1999). The contemporary biosocial theories go beyond the crude biological determinism by talking of an interplay between biological traits and social environment. In contrast to earlier theories, contemporary biosocial theories argue that adolescent thought and behavior have both biological and social bases. Such theories suggest that the interface between a person's inborn characteristics and those found in his/ her social environment is extremely important in determining the likelihood that a deviant mode of conduct will emerge. (Eysenck and Eysenck 1965, Eysenck and Eysenck, 1985; Idemudia 1997). For example, Eysenck's (1965, 1976, 1985) genetic theory of personality proposed that the nature of an individual's biology is a determinant of his her personality make-up, but the actual way in which the crime is carried out is subject to the vicissitudes of everyday life. Despite their apparent move away from strict biological determinism, such theories still seem to hold a strong deterministic implication, as they may imply that conducive social environment for crime only pushes those who are already biologically programmed for it. The biological theories do not necessarily explain the precipitating factors of crime but only the predisposition to it. Although these theories offer the possibility of quick fix solutions to crime through early identification of potential criminal behavior, the exact modalities of this can be accomplished is not validated empirically through rigorous scientific studies, Furthermore, this perspective also contests the dominant human rights perspective in the area of contemporary criminal justice. Their underlying assumptions may in turn lead to regressive policing practices and reform measures, and may have long term discriminatory influence.

**Sociological:** Sociological theories of crime seek to explicate the occurrence of crime and the development of the criminal personality in terms of factors such as urbanization, social disorganization, deviant subcultures, anomie and labelling (Cloward and Ohlin 1960; Cohen 1955; Merton 1957; Shaw and McKay 1942; Sutherland 1949). In the 1940s, the Chicago School pioneered work in urban sociology showing how social environment intersected with individual personality factors in the genesis of social problems. Within sociological theories, factors such as social relations, community conditions and level of violence, poverty and racial disparity are seen as causing major impact. A few of the most prominent strands in such sociological explanations are in the form of social disorganization theory, social reaction theory and strain theory.

The Social disorganization theory, associated with the Chicago School, directly links crime to ecological characteristics of the neighbourhood. It postulates that urban neighbourhoods with high levels of poverty often experience breakdown of social institutions and structures like family and schools, leading to reduced ability of these institutions to control behaviour. This, according to the theory, creates an environment ripe for deviant behaviour (Travis Hirschi 1969). The Social Reaction theory advanced by Howard Becker (1963) notes the role of social identification or labelling in the development of deviant behaviour when impressionable individuals accept definitions of themselves attributed by others and behave accordingly. This theory is an extension of the ecological theories. Every action of the individual is thus a reaction to the demands of the social system. The Strain theory developed by Robert King Merton (1957), Albert K. Cohen (1955), Richard Cloward and Lloyd Ohlin (1960), Neil Smelser (1963), Robert Agnew and Helene White (1992) and Steven Messner and Richard Rosenfeld (1994) explains delinquency by referring to goals projected as desirable by the mainstream society and the individual's attempt at achieving those through alternative, often criminal ways, failing to achieve those in a legitimate/ permissible way.

Sociological theories have gained great traction in civil society discourses and are the epistemic bedrock of human rights perspectives. While they have great explanatory value that finds empirical validation across contexts, they do not offer an operational solution to the problem of crime and delinquency because only radical social transformation i.e. removal all forms of inequalities would change the circumstances that generate crime; which is not feasible at least not in the short run.

**Psychological:** The psychological theories of criminality are closely linked to sociological theories but they argue that societal context alone cannot explain criminal behaviour. As against macro-level sociological perspectives, psychological perspectives account for violence through micro-level intra-individual factors (Straus 1980). Two prominent psychological theories in this regard are Psychodynamic theory and Social Learning theory. The Psychodynamic theory is based largely on ideas of Sigmund Freud, and holds that human behaviour is a product of 'unconscious' forces operating within one's mind. Early childhood experiences impact adolescent and adult behaviour, and people with traumatic experiences in early childhood may fail to control impulses, leading to violent or criminal acts (Englander 2007; Bartol 2002).

The Social Learning theory suggests that criminal behaviour is learnt through close relations with others (Sutherland 1949, Kalmuss 1984, Cappel and Heiner 1990, Malone et al 1989, Kalmuss and Seltzer 1986, Rhodes 2000). As summarized by Ronald A. Akers (1998), a chief proponent of the approach, this theory argues that, "(T)he probability that persons will engage in criminal and deviant behaviour is increased and the probability of their conforming to the norm is decreased when they differentially associate with others who commit criminal behaviour and espouse definitions favourable to it..." (p.50). The underlying idea of the social

learning theory of Bandura (1973, 1979) is that while exposure to positive role models during socialization leads to positive socially acceptable behaviour, negative behaviour is also acquired through modelling from exposure to negative behaviour.

This perspective overlaps with the sociological perspective discussed above and the same criticism would apply.

### **3.2. Feminist and Gender-Based Studies**

Feminist theorizations about delinquency often argue that men are more prone to delinquency in patriarchal social set-ups, though various strands of feminism differ in the specific reasons they attribute far greater probability of male delinquency in contemporary situations. Liberal feminists hold the view that the low rate of female delinquency in comparison to male delinquency is due to the fact that their social opportunities provide fewer opportunities to commit crimes, and as and when the roles of women would become more similar to that of men, male and female crime patterns would also converge. Critical feminists argue that criminality is an effect of power, which under capitalist patriarchy, is manifested through a mix of 'misguided masculinity' (Messerschmidt discussed in Siegel and Welsh, 2010) and failure of some men to function well within the parameters of capitalist societies. Those men who cannot do well in life are prone to crime in such circumstances. Women are inherently powerless in such societies. The critical feminists also develop a 'power-control' theory, according to which class/ parental role division influences delinquency by controlling the quality of family life. While in typical paternalistic families with male bread-winners daughters are prepared for 'domesticity' leading to less possibility of engagement in delinquent behaviour in comparison to sons in the same family who are granted greater freedom of choice and movement especially outside the home. In egalitarian families where husbands and wives share similar roles and positions at work and home, and also in families with absent fathers, the probability of delinquency of sons and daughters are similar. This shows that criminality is often a result of power relations rather than innate gendered differences (Siegel and Welsh 2010: 159-163).

Feminist theories have tried to explain causes of violence against women in the context of patriarchal social structures. Dobash and Dobash (1979) were the first to suggest that the fundamental causes of violence against wives are to be found in "a patriarchal society". The "cycle of violence" theory, which emerged from the research conducted by Lenore Walker (1979) on battered wives, is based on the premise that women are not constantly being abused, and that their willingness to remain in an abusive relationship is related to cyclical fluctuations between periods of abuse and relatively peaceful coexistence. It is thought that the interchange between caring and abuse keeps the abused wife from leaving the relationship and the abuser from changing his behaviour. Another way of bringing violence against women and girls into focus is through an examination of masculinities. Such theories suggest that men are socialised

to be violent, and at times are forced to resort to violence. An idealized construction or dominant model of what a man should be like operates in most societies, and some shared characteristics of such dominant masculinities around the world describe men as strong, the breadwinner, attractive, the protector and leader, the decision-maker (Connell, 1995; Connell and Messerschmidt, 2005). Such ideals often place men in a superior position to women and legitimize violent actions by men.

Studies on sexual violence, against women, men and children, have suggested that equations of power along with sexuality lead to commission of such acts (Barbaree and Marshall, 1991; Barbaree, Seto, Serin, Amos and Preston, 1994; Berlin, 1987; Groth, 1979; Groth, Burgess and Holmstrom, 1977; Hazelwood and Burgess, 1987; Holmstrom and Burgess, 1980; Holt, Meloy and Strack, 1999; Kanin, 1985; Palmer, 1988; Sanday, 1981). Coming to behavioural characteristics of sex-offenders, Darke (1990) studying police files of 68 sex-offenders, have concluded that the way the offenders behave in the context of a particular sexual offence is linked to an intent to humiliate, which is connected with needs to demonstrate power, hostility and control. Other scholars like Amir (1971), Clarke and Lewis (1977), Holmstrom and Burgess (1980) have also argued about a linkage between the behaviour of rapists and an intention to humiliate. Douglas and Olshaker (1998) have conceptualized the category of power reassurance rapist, where the rapist is one who nurtures feelings of inadequacy, and attempts to compensate for this feeling of inadequacy by sexually assaulting women, which provides them with a reassurance of their power and potency. Such offenders may even apologize and express their concern for the victims. Another category of rapists termed the power exploitative rapist by Douglas and Olshaker (1998) is about dominating and controlling behaviour towards the victims by use of force, threats and humiliation, to bring them into submission. These categories, while useful in terms of conceptualization, are overlapping in terms of real-life cases (discussed in McCabe and Wauchope 2005). Other scholars such (Knight and Prentky, 1990; Knight, Rosenberg, and Schneider, 1985) have also suggested that rapists are a heterogeneous group displaying characteristics of anger rape versus power rape.

Scholars like Bruce, Pierson, and Kuznetsov, 1993; Groth and Birnbaum, 1979; Hillbrand, Foster, and Hirt, 1990; Knight et al., 1985; Marshall, Barbaree, and Fernandez, 1995; Valliant and Antonowicz, 1992; Valliant and Blasutti, 1992 have categorized offenders based on the age of the victims, particularly focusing on whether the victim is an adult or a minor. While adult sexual offenders were found to be “defensive, aggressive, hostile, resentful, and alienated”, the child molesters were affected by more emotional disturbances, low self-esteem, lack of emotional maturity and confidence and high levels of anxiety (Armentrout and Hauer, 1978; Finkelhor and Araji, 1986; Kalichman, 1991; Panton, 1978 discussed in Shechory and Ben-David 2005). It has also been argued that rapists in general have lower levels of anxiety and higher levels of aggression in comparison to child molesters. Adult sexual offenders are often found to be more affected by post-traumatic stress disorder and major depression in comparison to child molesters who are often more affective, neurotic and socially impaired.

(Ahlmeier, Kleinsasser, Stoner, and Retzlaff, 2003 discussed in Shechory and Ben-David 2005).

Power and socialisation within patriarchal society emerge as the key variables in feminist and gender-based perspectives on crimes against women. As with the case of sociological perspectives, change can only happen longitudinally but unlike purely sociological and psychological perspectives, they provide leads on instilling behavioural change particularly in boys and young men in viewing girls and women as equals rather than as subordinates. Consequently, they can offer recommendations for modifying school curriculum to be more gender-just and family counselling to reduce the stranglehold of patriarchy and hence change the gender dynamics within the domestic space from the very onset of socialisation.

### **3.3. Juvenile and Adult Perpetrators of Sexual Crimes against Women**

The above theories offer at times varying and at times overlapping perspectives on the issue of delinquency. However, when we specifically focus on the two issues of age-based (delinquency of juvenile and adult) offenders and the form of violence against women i.e. sexual violence, we need to look further in the literature. Most theories of delinquency, when they look for causes, as discussed above, include causes of juvenile delinquency leading to adult-life delinquency. What are the behavioural characteristics of juvenile offenders? Who are the victims of juvenile sexual offenders? Phil Rich's study (2009) drawing on statistics in the context of the United States, argues that juvenile sexual offenders are mostly child-molesters, i.e., they do not victimize peer or adult persons. They are also found to be less criminally versatile unlike adult rapists who are often found to be engaged in diverse criminal activities. Studying recidivism, he found that juvenile sexual offenders, when they recidivate, are more like to recidivate non-sexually than sexually. While some the above generalisation do apply to this study, it is difficult to validate them because of the small sample size and limited interaction with the interviewees. Some of the contextual and culture-specific issues around juvenile and adult sexual offenders and offences are discussed in more detail in the context of our field research in subsequent sections of this report.



## 4. CRIMES AGAINST WOMEN THE INDIAN SCENARIO

This section depicts the crimes against women in the Indian context from the three over-lapping perspectives of statistics, social sciences and law.

### 4.1. Crimes against Women in India: Statistical Overview (1980-Present)

In this section we would shed light on the category of “Crimes against Women” from the year 1980 to present, as per the reports published by the NCRB, focusing particularly on data relating to rape, kidnapping and abduction and molestation coming under various sections of the IPC, with a special focus on Delhi which is the specific research site of this project. Since 1986 NCRB is the government agency responsible for collecting and analysing crime data as defined by the IPC. *Crime in India* is an annual publication that contains comprehensive and detailed statistical information on reported cognizable crimes, cases registered and their disposal, arrests convictions falling under IPC and local laws. Recognizing that women may be victims of both general and specific crimes like rape, from 1986 to 1991 its annual report has a chapter “Victims of Rape”, which was changed to ‘Crimes against Women’<sup>1</sup> in 1992. Tables 1, 2 and 3 show tables reflecting the evolution of a dataset on crimes against women by NCRB from 1980 to 2012.

**Table 1: Rape Cases in Delhi 1980-1993**

Year	Total Cognizable Crimes (IPC)	Rape Cases Reported
1980	13,68,529	5023
1981	13,85,757	5409
1982	13,53,907	5427
1983	13,49,866	6019
1984	13,58,660	6740
1985	13,84,731	7289
1986	14,05,835	7952
1989	15,29,844	9752

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<sup>1</sup> This category is sub-classified into: Crimes identified under the IPC such as Rape (Section 376) Kidnapping and Abduction (Section 363-373) Molestation (Section 354) Sexual Harassment (Section 509) and Crimes identified under special and local laws such as Commission of Sati (Prevention) Act, 1987 Dowry Prohibition Act, 1961 Indecent Representation of Women (Prohibition) Act, 1986.

1990	16,04,449	10,068
1991	16,78,375	10,431
1992	16,89,341	11,708
1993	16,29,936	12,218

Source: NCRB

**Table 2: Data on rape, kidnap and abduction, and molestation in India- 1993 to 1999**

Year	Total IPC Crimes	Total Caw	Rape		Kidnapping And Abduction		Molestation		All India Crime Rate (No Of Crimes Per Lac Population)
			Case Reported	% Share	Case Reported	% Share	Case Reported	% Share	
1992	16,89,341	79,037	11,112	14	12,077	15.3	20,385	25.8	9.1
1993	16,29,936	83,954	11,242	13.4	11,837	14.1	20,985	25	9.5
1994	16,35,241	98,948	12,351	12.5	12,998	13.1	24,117	24.4	11
1995	16,95,696	1,06,471	13,754	12.9	14,063	13.2	24,117	22.6	11.6
1996	17,09,576	1,15,723	14,846	12.8	14,877	12.9	28,939	26	12.4
1997	17,19,820	1,21,265	15,330	12.6	15,617	12.8	30,764	25.3	12.7
1998	17,79,111	1,19,012	15,031	11.4	16,381	12.5	31,046	23.6	13.5
1999	17,64,629	1,23,122	15,468	11.4	15,962	11.7	32311	23.8	13.8

Source: NCRB

**Table3: Data on Rape, Kidnapping, Abduction and Molestation in India- 2000-2012**

Year	Total IPC Crimes	Total Caw	Rape		Kidnapping And Abduction		Molestation		All India Crime Rate (No Of Crimes Per Lac Population)
			Case Reported	% Share	Case Reported	% Share	Case Reported	% Share	
2000	17,71,084	1,28,320	16496	11.7	15023	10.6	32940	23.3	14.1
2001	17,69,308	1,30,725	16,075	-	14,645	-	34,124	-	14
2002	17,80,330	1,31,112	16,373	-	14,506	-	33,124	-	13.6
2003	17,16,120	1,31,364	15,847	-	13,296	-	32,939	-	13.2
2004	18,32,015	1,43,615	18,233	-	15,578	-	34,567	-	14.2
2005	18,22,602	1,43,523	18,359	-	15,750	-	34,175	-	14.1
2006	18,78,293	1,54,158	19,348	-	17,414	-	36,617	-	14.7
2007	19,89,673	1,74,921	20,737	-	20,416	-	38,734	-	16.3
2008	20,93,379	1,86,617	21,467	11	22,939	11.7	40,413	20.6	17
2009	21,21,345	1,94,835	21,397	10.5	25,741	12.6	38,711	9.6	17.4
2010	22,24,831	2,05,009	22,172	10.4	29,795	13.9	40,613	19	18
2011	23,25,575	2,19,142	24,206	10.6	35,565	15.6	42,968	18.8	18.9
2012	23,87,188	2,32,528	24,923	10.2	38,262	15.7	45,351	18.6	<b>41.7*</b>

<sup>1</sup><https://factly.in/rape-cases-in-india-the-curious-case-of-under-reporting-crimes-against-women-part-4/>

Source: NCRB

Systematic data collection shows an upswing trend in crime rate against women, even though the figures reflect only those crimes that are reported to the police; even as a large number of very serious crimes may go unreported due to social stigma. More disturbing is the fact that the conviction rate remains consistently low. The following discussion shows how law and policy intersect in the generation of official data on crimes against women.

The 1980s was a landmark period in the Indian women's movement when vigorous campaigns were launched against dowry deaths, rape, the Shah Bano controversy, *sati* and sex determination medical procedures leading in due course to law reforms. The decade began with promulgation of the UN Convention on Elimination of All Forms of Violence against Women (CEDAW), which India signed in 1993. The Mathura case<sup>2</sup> led to changes in the rape law in 1983. Minimum punishment for rape was raised to seven years and more severe punishment for rape by public official, rape of a pregnant woman, statutory rape and gang rape (IPC Sec 376(2)). In addition, a new provision 114A in the Indian Evidence Act decreed in cases of custodial rape, gang rape and rape of a pregnant woman. If the victim states in court that she did not consent, then the court shall presume that she did not consent and the burden of proof would lie on the accused. During the 1990s, the Bhanwari Devi<sup>3</sup> case led to another landmark judgement (Vishakha Guidelines) of the Supreme Court on safety of women at the workplace. Thus during the 1980s and 1990s law became a powerful tool for social reform and the trend has continued to the present with a slew of women friendly legislations like the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the POCSO Act, and the more recent Criminal Law (Amendment) Act, 2013 among others.

However, when the rising trend in reported crimes is juxtaposed with the declining sex ratio during the same period, a more complicated picture of women's status emerges with Delhi taking the pole position both in terms of number of crimes against women and adverse sex ratio as seen in the following two tables

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<sup>2</sup> Reference is to the rape of a minor girl in a police station through which the language of rape and the issue of consent were reworked. Women's groups challenged the depiction of Mathura as a "shocking liar" who was "habituated to sexual intercourse", whose failure to resist implied consent to the abuse, all because there were no injuries involved and the degrading and unscientific "two finger test" proving that she wasn't a virgin.

<sup>3</sup> Reference is to the gang rape of a government social worker in Rajasthan who was raped for campaigning against child marriage in her village

**Table 4: Data on Rape, kidnap and abduction, and molestation in Delhi from 1994-2015**

Year	Total IPC Crimes	Total Cognizable Crimes In Delhi	Rape	Kidnapping And Abduction	Molestation	Rate Of Crime
1994	16,35,241	38,223	309	713	-	2.3
1995	16,95,696	47,686	372	330	-	2.8
1996	17,09,576	59,871	-	-	-	3.5
1997	17,19,820	60,883	544	925	-	3.5
1998	17,79,111	64,882	438	978	-	3.6
1999	17,64,629	58,701	402	986	-	3.3
2000	17,71,084	56,249	435	998	-	3.1
2001	17,69,308	2291	381	964	502	1.6
2002	17,80,330	2216	403	893	446	1.5
2003	17,16,120	3282	490	797	489	2.3
2004	18,32,015	3677	551	881	601	2.4
2005	18,22,602	4351	658	1106	762	2.8
2006	18,78,293	4544	623	1066	718	2.8
2007	19,89,673	4804	598	1167	868	2.6
2008	20,93,379	3938	466	1136	611	2.0
2009	21,21,345	4251	469	1655	552	2.1
2010	22,24,831	4518	507	1740	601	2.1
2011	23,25,575	5234	572	2085	657	2.3
2012	23,87,188	5959	706	2160	727	2.4
2013	26,47,722	12,888	1636	3609	3515	4.16
2014	28,51,563	1,55,654	2096+70	7143	4322	5.5
2015	29,49,400	1,91,377	2199+46	7730	5367	6.5

Source: NCRB

**Table 5: Sex Ratio from 1981-2011**

S.No.	Year	All India Sex Ratio	Delhi Sex Ratio
1	1981	934	808
2	1991	927	827
3	2001	933	821
4	2011	940	868

Source: NCRB

2012 was another landmark in the legal understanding of crimes against women in India that is also reflected in the NCRB database. The Nirbhaya Gang Rape case of 16 December 2012 in New Delhi created a nation-wide outrage, which eventually led to the passing of the Criminal Law (Amendment) Act, 2013, also referred to as the Nirbhaya Act which came force on 3 April 2013, it resulted in amendments to the IPC, Indian Evidence Act, 1872 and Code of Criminal Procedure, 1973. The Act enlarges the number of sexual crimes going beyond earlier categories of rape and molestation. It recognizes that lesser crimes of bodily integrity often escalate to graver ones. It seeks to treat cases as “rarest of the rare” for which courts can award capital punishment. The 2013 Criminal Law Amendment clarifies and extends the offense of

sexual assaults or rape as a result of abuse of position of trust. As per the Act, the police can also be penalized for failing to register FIRs. Further, the 2013 Criminal Law Amendment amended as well as inserted new sections in the IPC. It recognized certain acts as offences, such as acid attack, sexual harassment, voyeurism, stalking. Section 354 IPC which earlier read as “Molestation” was amended to read “Assault on a Woman with an intent to outrage her modesty”.

With these legal changes, the number of crime heads under crimes against women has also increased from 11 to 14 in the NCRB Annual Reports from 2013 onwards as seen in the table below:

**Table 6. Data on rape, kidnap and abduction, and molestation in India- 2013-2015**

Year	Total IPC Crimes	Total Caw	Rape		Attempt to Rape		Kidnap and Abduction		Assault on Woman to Outrage her Modesty		All India Crime Rate
			Case Reported	% Share	Case Reported	% Share	Case Reported	% Share	Case Reported	% Share	
2013	26,47,722	2,95,896	33,707	10.9	-	-	51,881	16.8	70,739	22.9	52.2
2014	28,51,563	3,25,329	36,735	10.9	4,234	1.3	57,311	17	82,235	24.3	56.3
2015	29,49,400	3,14,575	34,651	10.6	4,434	1.4	59,277	18.1	82,422	25.2	53.9

Source: NCRB

Criteria of calculation have been changed since 2012 with the use of female population based on RGI's Mid-year projected female population. Ironically, even though the reporting of gender based crimes has increased in the recent past, the rate of convictions has not shown a corresponding rise.

**Table 7: Disposal of CAW cases by the police and the court in Delhi, from 1994-2015**

Year	Disposal by Police- Delhi		Disposal by Court- Delhi	
	Rate Of Disposal	Charge sheeting Rate (Rape+K&A+Molestation)	Rate Of Disposal	Conviction Rate (Rape+K&A+Molestation)
1993	65.4	-	12.9	-
1994	94.4	84.8	97.1	47.1
1995	90.8	68.4	97.3	47.5
1996	87.8	80.1	97.1	32.5
1997	84.5	73.4		(33.04+31.06+22.56)
1998	83.4	87.8	96.6	37.4
1999	84.9	77.7	96.7	32.4
2000	-	-	-	-
2001	89.5	59.5 (84.7+38.7+89.4)	97.2	50.4 (26.6+36.4)
2002	89.1	58.5 (94.9+50.2+95.3)	97.4	37.9 (22.2+32.9+40.2)
2003	89.5	62.9 (94.5+38.1+95.3)	97.5	32.0 (22.1+10.6+26.7)
2004	90.2	57.9 (95.6+44.3+92.8)	97.3	49.7 (16.4+10.2+44.8)
2005	91.7	69.3 (97.1+47.3+95.6)	97.1	62.1 (15.8+22.7+49.3)
2006	92.4	66.5 (98.4+49.6+95.9)	97.1	65.0 (25+36+58.3)
2007	91.9	64.5 (97.8+46.9+97.5)	97.2	64.7 (27.7+35.8+53.7)
2008	93.4	60.9 (98.4+42.9+98.2)	97.1	65.3 (30.6+17.5+56.6)
2009	94.1	54 (95.2+32.7+93)	97.2	58.1 (47.3+30.7+48.4)
2010	94.3	47 (93.7+30.6+97.9)	97.2	51.5 (34.6+37.6+20.6)
2011	94.9	52.9 (96+37+94.1)	97.3	48.1 (41.5+ 38.8+42.9)
2012	96.7	36.9 (96.6+31+95.7)	97.5	52.4 (49.3+38.1+43.4)
2013	94.5	54.2 (98.2+25.5+96.8)	97.5	48.9 (35.7+33.4+40.1)
2014		40.5	15.7	43.7
2015	56.4	26.7	11.1	49.2

Source: NCRB

Several reasons are put forward to account for this state of affairs like failure of the legal system and reluctance of victims to open up to the police and in court. This is not surprising given that we live in a society that abhors rape victims more than it despises rapists. Our society, in lieu of teaching the perpetrators and assaulters not to rape, focuses on telling the victims and survivors not to get raped. While the proliferation of rape incidents and the other crimes against women incidents need to be checked, what is also required is a commitment to provide those victims and survivors' dignity, integrity and respect. Sanctity, purity, honour- are terms that ought not to be connected with rape. We can't ignore the fact that all these crimes against women in some way or the other deal with power politics.

This situation raises the issue of under-reporting and sometimes even over-reporting. After the 2012 Nirbhaya case, we saw a huge rise in the reporting of total cognizable crimes committed and the crimes committed against women. Not denying that there may have been an actual increase in cases, we need to remember that since several new legislations and amendments

were passed to safeguard the victims and survivors, they probably felt more confident to report the crime. Logic dictates that crimes committed would be reported so that the perpetrator can be taken to task and the victim is guaranteed justice. The lack of accurate data about crime in our communities results in more risk to citizens and more hurdles for law enforcement personnel. If accurate crime data is not available or inaccurate, planning and resource allocation cannot be effectively deployed to combat crime. If an area has a high crime rate, it is safe to assume that all sections of people are at a higher risk of being violated with vulnerable groups like women and children at an even greater risk. Any extreme deviation from this in terms of lower incidents of crimes against women could mean potential under-reporting. A state with a high crime rate but with an unusually low incidence of crimes against women indicates widespread fear/stigma associated with reporting crimes against women.<sup>i</sup>

#### **4.2. Perpetrators of Gender-Based Crimes in India: Qualitative Perspective**

There is not enough systematic work on profiles of perpetrators of violence against women, and specifically that of juvenile offenders, in the context of India, apart from some sporadic articles in criminology and in the applied areas of social defense and correctional administration. Some of these studies are available in the *Indian Police Journal* and the *Indian Journal of Criminology and Criminalistics*. Khurana (2010) discusses several psychological perspectives that singularly or acting together may explain criminal behavior. Varshney (2007) enumerates various rights, privileges and protections available to accused persons at length. Ashoka (2009) highlights the educational and vocational background of children admitted to different correctional institutions in the State of Karnataka along with the educational and vocational facilities available to them in such institutions, Yadav and Ojha (2010) document the controversies around, the increasing incidence of juvenile crime and lowering the age of juvenile offenders, increasing incidents of gang rapes and rapes of minors and higher number of compromise and false cases in rape trials.

Many studies on rape are focused on its prevention. Everyday women navigate personal and public spaces haunted by the need to prevent rape. Borrowing from the ideas presented by Sanday (1981) of rape culture, researchers have tried to locate the roots of this culture in India. Patil and Purkayastha (2015) have argued that this culture resides in the radicalised power structure in which women are always seen powerless. This is a theme that feminist theorists have also discussed (Phipps et al 2017).

In Indian society many myths around consent are part of the rape culture. Some acts of gender-based violence are normalized in the culture, tradition, religion, patriarchal structures as well as the unequal power relations between women and men in a particular society. Most of this violence takes place within the four walls of the family and is committed by intimate partners. The family which is supposed to be the place where an individual seeks comfort and protection from the outside world, has become ‘the cradle of violence’ with marriage as ‘the hitting

license'. Due to the social stigma and shame, a woman maintains complete silence over it which makes the matters worse. Kamdar et al (2017) argue that the logic of consent among youth of India is highly problematic.

Long-term structural changes in the societal and legal systems that challenge the community norms on violence and holding perpetrators accountable are the only way to prevent this problem. Law is one way through which such changes can be brought forth. Mitra (2007) argues that culture conflict affects the perception of people in Delhi about rape as defined by law. Prevention of rape is a legal matter rather than a cultural artefact. Definitions of rape and obligation of police to register a case on receipt of a complaint from the victim are based on norms and values of modern Indians who are urbanized and educated. These norms and values are not shared by people living in rural areas and by those who are uneducated and attached to traditional practices and values, wherein rights of individuals, particularly women and girls, are different from what is envisaged in the legal system adopted by modern India. Mitra (2007) has shown that the more urbanized a person is, the more his or her perceptions of what constitutes rape and the legal obligations of police regarding registration of cases of rape are likely to be closer to the provisions of law. This change however is not devoid of the influences of the society. Baxi (2014) has pointed out the various factors that affect the testimonies of women and children in the incidents of rape in India. Given the gender status of victims and the subordinate status of their families the Indian legal system has focussed largely on the rights of the accused rather than victims. Dube (2008) too argues that for too long, the law has centred its attention more on the rights of the criminal than on the victims of the crime.

According to Indian clinical psychologist Rajat Mitra, who has undertaken a study of inmates in the Tihar Jail in Delhi (both under-trial and convicts of sexual offences), behavioural patterns of rapists are diverse, ranging from brutalization and assault to homicide. But two common issues that emerged from the data analysis were privacy and control. The rapists try to take control of the victims, both physically and psychologically. The aspect of privacy that he highlights, points toward how the nature of the act is influenced by whether it is done by a single individual or in a group. According to him, when in a group, the offenders tend to feel a sense of security as well as the absence of feeling of responsibility, and the threshold of their actions goes down. In such circumstances, offenders tend to do things which they would not do in their individual capacity (Mitra to Vyavahare 2013). That perhaps explains the level of brutality reported in gang-rape situations like the Nirbhaya Case.

B. N. Chattoraj (2013) argues that there is dearth of research on rape in India. He notes that considering rape to be a social fact, it can be tackled only through an active interplay between the law and public attitudes. The main emphasis has to be placed on social action towards forestalling conditions of vulnerability of women to rape and providing assistance and support for the rehabilitation of those victimized. He reckons that:



“In a developing society like ours, the state intervention becomes imperative both in correcting the failure of the social system in treating women at par with men and in protecting them from being victimized for sexual gratification” (ibid. 2010: 2).

There is a dire need for a comprehensive scheme of state compensation for the rape victims to be brought in as a part of the substantive law. A special unit should be set up within the police for timely assistance, counselling and guidance for victims or those who are found at risk as well as their respective families. Awareness-building regarding personal safety, sex education in schools and police-public cooperation are viewed imperative in reducing the rape incidents in the long run.

### **4.3. Legal Regime around Rape and Other Sexual Offences in India**

The 2012 Delhi gang rape made a significant impact on the current legislation for rape in India (Kadyan and Unnithan 2017, Talwar 2013, Lapsia 2015). Amidst the public anger and a popular call for more stringent measures to address sexual violence, the Verma Committee was constituted and subsequently the Criminal Law (Amendment) Act, 2013 was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013 under significant international coverage. The approval from both the houses provided for amendments in IPC, Indian Evidence Act, 1872 and Code of Criminal Procedure, 1973 and other laws related to sexual offences which have already been discussed. Some quarters have objected to the ‘skewing’ of the law in favor of women. Fears are expressed about the potential ‘misuse’ of the law by women to frame innocent men (Brereton 2016, Agnes 2015). The fear of an increase in false complaints probably comes more from a fear of the autonomy that women have received by these legal measures. Besides, every law has the potential for misuse<sup>4</sup>.

Like many other laws in the country, the trajectory of juvenile justice laws too began in the colonial period. The Apprentices Act of 1850 was the first legislation, which stated that children between the ages of 10-18, convicted in courts, be provided vocational training as part of their rehabilitation process. This act was followed by the Reformatory Schools Act, 1897, and the post-independence National Children’s Act of 1960. In 1986, the Juvenile Justice Act, 1986 was passed. This Act was later amended and the Juvenile Justice (Care and Protection) Act, 2000 and the 2000 Act was further amended in 2006 and 2011. In the year 2014, following

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<sup>4</sup> A large number of instances of rape go unreported at the same time. As shown by social scientist Aashish Gupta drawing on 2005 data, while 6590 cases of rape per 1000 by husband were reported to the National Family Health Survey (NFHS), only 0.6 per cent of these were officially recorded in National Crime Records Bureau (NCRB) data. The same data set also showed that only 2.3 per cent of rape was by men other than husband. (The Hindu....).

the uproar over the Nirbhaya case in which one of the accused was a juvenile who was reported to have been the ‘most brutal’, a new juvenile justice Bill was introduced, which sought to replace the Act of 2000, and was passed by the Lok Sabha on May 7, 2015. The Bill was passed by the Rajya Sabha in the winter session of the same year, received President’s signature on 31<sup>st</sup> December 2015 and the new Juvenile Justice (Care and Protection) Act, 2015 came into force on 15 January 2016, despite oppositions from child-rights activists. This new Act treats heinous offences committed by males between 16 and 18 years old offences as adults. It has been argued that the change is prompted by the increase in heinous offences by people in this age group as shown in NCRB data. This amendment was opposed by several stakeholders mainly child rights activists due to a variety of reasons: .percentage of juvenile criminals in India is only 1.2% of the total child population and less than 2 percent of total reported crimes: subjecting juveniles to adult judicial system goes against the principles of Article 14 (un-equal treatment of 16-18 year olds among children) and Article 15 (3) of the Constitution as it goes against the objective of protecting children: violation of the UN Convention on the Rights of the Child since It differentiates between children below 18 years of age. In addition, several judgments by the Supreme Court after the Nirbhaya incident opposed any reduction in age. Both the *Salil Bali vs. Union of India & Anr* (2013) and the *Dr. Subramanian Swamy and Ors vs Raju Thr.Member Juvenile Justice* (2014) cases pronounced that age of juvenility should not be lowered from 18. Such judicial pronouncements, however, did not have the effect of stopping the revision in law in trying children below 18 years of age for ‘heinous’ crimes. While the present debate is focused on the age of juvenility for crimes that are seen as ‘heinous’, and various views are advanced, there is hardly any systematic study into the mind of the juvenile offenders of sexual violence. While prescriptive suggestions based on theoretical knowledge drawn from experiences in other parts of the world could be useful, it still does not provide us with an adequate understanding of the issue of juvenile delinquency from the specific perspective of the Indian socio-economic and political milieu. This study, through interactions with juvenile offenders and thereby trying to go into the socio-psychological dimensions of their offences, is an attempt at exploring why and under what circumstances the juvenile gets engaged in crimes against women. While this is only an exploratory study, and hence may not offer conclusive policy prescription, the modest achievement of this study would be to open up an area for further research, which till now remains unexplored.

Apart from the Juvenile Justice (Care and Protection) Act, 2015, another legislation which is crucially important for the research at hand is the POCSO Act. The relevance of the POCSO Act for us is due to the fact that many juvenile sexual offenders are booked for sexual crimes against children. The POCSO Act seeks to protect children from sexual offences such as sexual assault, sexual harassment and pornography.

The media has played a pivotal role in popular perceptions of sexual crimes and in moulding the legal response. A study by the leading Indian newspaper *The Hindu* revealed that a large number of reported cases of rape in India do not end up in conviction, and for valid reasons. In

2013, out of 583 rape cases that were decided in the six district courts of Delhi, only 133 or 23% resulted in conviction. In a six-month long study of rape cases in Delhi, it was found that about a third of rape cases actually involved consenting couples, where parents accused the boy of rape. There is a routinised script in the police First Information Reports (FIRs) where the girl is generally recorded to be 14-years-old, a year short of the age of consent, thus making the case that of statutory rape, along with a narrative of kidnapping after intoxicating the girl with sedative-laced cold drinks. In total, about 40% of the cases were of consenting couples. Another 25% of the cases were based on the ‘breach of promise to marry’. The rest of the cases usually involved preying on unattended children by men in the neighbourhood or other acquaintances in socio-economically deprived areas such as slums. Such cases usually end up in conviction. Juvenility plays a key role in the framing of the socio-legal response to adolescent sexual behavior, consent, framing of charges etc.

## 5. THE EXPERT PERSPECTIVE

As can be seen from the above, women’s rights and child-rights activists have played a major role in configuring the media, legal and by extension state response to gender- based violence against women; they have been instrumental in driving public debate and policy discourse particularly after the Nirbhaya incident. Activist perspectives have not only dominated media reportage but are also alleged to have increasingly influenced both the judiciary and policy makers in the government. Consequently, in order to capture the perspectives of different non-state stakeholders, semi-structured interviews were conducted with experts (n =16) from the fields of social sciences, law, psychiatry, social welfare and media in Delhi. The following table delineates the categories of professionals interviewed:

**Table 8: Number of Experts Interviewed**

Serial No.	Category of Expert	No. of Persons Interviewed
1	Psychiatrists	3
2	Journalists	1
3	Clinical Psychologist	1
4	Legal Professionals	2
5	Child Rights Activists	2
6	Police Professionals	2
7	Government officials	5
	<b>Total No. of Experts Interviewed</b>	<b>16</b>

The expert group also included contacts provided by the NHRC, and an attempt was made to get a broader understanding of crime within the complex realities of urbanization, masculinity, socio-economic change and cultural transformation. Since the views expressed in the interviews conducted with the experts were personal, this section presents the diverse

(bordering on contradictory) perspectives that emerged from discussions underscoring the complexity of the issue at hand.

It may be noted that additional background information about experts interviewed was collected as part of the research protocol but has not been provided in the Report in order to guarantee their privacy. This has been done at the explicit request of the experts themselves, many of whom are public figures in their respective fields of expertise.

Child rights legal scholars and activists strongly contested the reduction in the age of juvenility treating the juvenile perpetrator as an adult for a heinous crime; endorsing the feminist lawyer Vrinda Grover, according to whom:

If stringent laws do not deter adult males, how would it deter a rash and impressionable juvenile? Implementation of the present law rather than amendment is needed; (Kumari, 2015). In fact, according to Ved Kumari, a legal scholar and child rights activist, punishment for rape and murder had been increased in the past, but that has not led to reduction in number of cases (Kumari, 2015). Furthermore, it was also opined that lowering the age would lead to retributive justice and not juvenile justice which is embedded in the real possibility of achieving rehabilitation and reform. Contesting the alleged direct connection between mental maturity and legal responsibility for heinous crimes, Manoharan, Raha and Ramakrishnan ask how children between 16 and 18 are as culpable and blameworthy as adults. Quoting studies by the Research Network on Adolescent Development and Juvenile Justice at the MacArthur Foundation, U.S., they have highlighted that the human brain undergoes key physical changes between 16 to 18 years of age which continue till mid-20s. Even when they are aware that a certain action is wrong, juveniles may be unable to act on that knowledge, and restrain themselves (Manoharan, 2015).

Furthermore, according to child rights activist Nandita Rao, many rape perpetrators, themselves have been raped and exploited by adults, and are made to think that it is a legitimate act. (Rao, 2014).

From the child rights perspective, the arguments advanced were that juvenile offenders are a minuscule number in the larger pool of criminals; the brouhaha created around juvenile crime particularly after the Nirbhaya gang rape is misplaced because juveniles involved in sexual crimes is a minor issue in the overall crime scenario but because the incident affected middle class sensibilities, juvenile crime was taken up by the media supported by the police who do not want to put in the extra efforts to manage children in conflict with the law. In the hierarchy of police work, juvenile justice is on the lower rungs. An impression that the juvenile offender was the most brutal of the four perpetrators in the Nirbhaya gang rape was created which subsequently got translated into the idea that juvenile crime is increasing in alarming proportions. This perception was further magnified by media reports in the media about arson,

rioting, escapes and other violent behavior by inmates of observation and special homes which even the police found difficult to control.

Apart from the inflated numbers of juvenile crime pushed by media and police, ideas from developmental psychology were used by child rights activists to highlight the vulnerability of this group to engage in deviant behaviors as part of normal growing up. Physiological and neurological processes make adolescents more prone to experimentation and risk-taking as their adult identities are developing. Consequently, juvenile offenders have to be treated differently from adult offenders. The Nirbhaya case opened up the whole definition of who is a juvenile offender and under what circumstances and for which crimes can he be treated as an adult offender. While an amendment to the Juvenile Justice Act that allows juvenile offenders between 16 and 18 years of age to be treated as adults for certain heinous crimes under specific circumstances has been enacted, child rights advocates continue to oppose any lowering of the age of criminal culpability below 18 years.

Child rights activists constantly dwell on the brutality of everyday life of the poor and marginalized pushing them into situations for which they should not be solely be blamed for adopting at times deviant behavioral patterns. As a member of the Delhi Commission for Protection of Child Rights said categorically:

“Let’s look at the child who commits a crime as a victim himself from the psychosocial point of view.”

Commenting on the juvenile offender in the Nirbhaya case, a prominent child rights lawyer in Delhi said in the course of an interview:

“He was a participant but not in the gory details. He had also been sodomized. He was out on the street for six years. His family thought he was dead because he stopped sending money to them. And for him being part of the peer group was, it is typical of an adolescent boy of that age group. If left to me, I would not have given him more than two years.”

In contrast to this pro-child stance, law enforcement personnel may not shy away from demanding accountability when a criminal act is involved irrespective of the age of the accused/offender. One former police commissioner told us categorically in the course of an interview:

“It’s an adult crime, it’s an adult offence. Adult crime, adult offence adult trial.”

According to the officer, murder and rape are adult crimes and the Juvenile Justice Board should decide whether the offender was aware of the gravity and the consequences of the act; that will determine if the case should be handled under the juvenile justice or general criminal system. This is what the amendment to the Juvenile Justice Act has done. Child rights need to be balanced against victim rights; and the issue of individual responsibility cannot be sacrificed

at the altar of human rights. Prison reform and crime prevention are a natural corollary of balancing rights with responsibilities. Another way of stating this is that law should not be accused-centric but must balance the rights of both victims and the accused. A person below 18 years should be treated as an adult depending on the gravity of crime and his mental age in assessing the meaning and consequences of his act; and the victim also has to be redressal for the wrong suffered.

Furthermore, social and technological changes are cutting into the traditional understanding of the life course; children are becoming older at an earlier age; menarche is happening at a younger age and sexual activity is getting normalized outside marriage for both sexes especially in urban areas. Media exposure to sex, crime and violence has increased manifold. These factors are also changing the profile of crime especially in cities. A senior law enforcement official explained:

“I think the pattern of violence, the extent of violence have really gone up. The brutality of violence has gone up. And I think disrespect for a women and animosity has also gone up. Such hostility was not there earlier as much because the women was not questioning it either. The woman was not threatening the man. She was not dislodging the man. She was not claiming so much of public space.”

A gendered reading of rape in the context of Indian culture throws up some conundrums: For instance, the stereotypical rapist is a stranger but police statistics show that the majority of rapes (90-95%) are committed by persons known to the victim. So a high ranking police official asked:

“95% of the rape cases take place in domestic setting where, the person committing the crime is known to the victim. So, why to blame the police and what can the police do in our homes?”

According to a legal academic, recently two positive changes have occurred in the rape law viz. the de-emphasis on the sexual history of the victim and the medical examination (challenging the two finger test to see if the hymen is ruptured or not) which challenge stereotypical notions of the ideal rape victim. In 1983 the Supreme Court said in one of its landmark judgements: an Indian woman will never lie about rape because, it is going to impact her chastity and marriage; consequently, the burden of proof lay with the accused and not the victim. Interpreting this judgment a legal scholar and teacher explained that the main reason for not doubting the victim lay in the notion of her chastity or virginity. If that is not an issue then there is no reason why a rape victim cannot lie: He went on to elucidate in the course of an interview:

“If you believe her unconditionally, it has to be under the condition that she is chaste. So if she is chaste that means, it has to show in the evidence like injuries or something like that...’ So, how does one determine whether the testimony of the victim is credible? One thing is the Code of Criminal Procedure requires that the

judge records the demeanour of the woman when she is testifying. That is again where all the stereotypes come back in. you would say, what did you do when you are attacked? Some people struggle, some react violently, some get petrified. But getting petrified is considered unnatural because, medical jurisprudence textbooks in use very clearly say when a woman is attacked, she will fight to the fullest and then she will inflict injuries to the man's body. So, look out for injuries on man's body or evidence of skin and stuff and or nails of the woman. And, when, that does not happen then the question is can I rely on her? Because, she did not struggle. But, now the 2013 Amendment says that the lack of resistance does not imply consent. You do not need to say that statutorily because that is something so obvious. Second is testifying in court. Like, I said CRPC says, you need to record the victim's demeanor. People as you know, react differently when they have to testify in court. Some people are visibly emotional, upset, some others are totally passive and immobile."

Gender and procedural mandates intersect in interesting ways at the outset when the first investigation report (FIR) is filed. Change in Section 166 of the IPC requires that all the police officers have to take FIRs in sexual offense cases, otherwise, they will be prosecuted. Also reporting of child abuse under the POCSO Act which includes sexual crimes is now mandatory. If someone, even parents are not reporting then, they can be prosecuted. So, now the reporting has gone up. But there is no study to prove that the number of crimes have gone up. So what does that lead to? Standardization of the FIR format. As the same legal scholar, cited above, explained;

"All the FIRs especially in Delhi read the same. So, you have a standard format of the FIR. And somebody goes there saying you know, breach of promise to marry, same facts. I was initially drugged the first time and then there was intercourse and then I started living with him and, he said he is marrying me and now he is marrying someone else. It is the same narrative. So, therefore breach of promise of marriage is something that should not be picked up. This also creates a certain backlash against women; we told you women are liars, they do this, they get into something and when it does not work out their way, they are unreliable witnesses, they are unreliable women and they want to take advantage of the system in whatever way."

While child rights and gender rights activists presented a line of argument arising from the interests of the particular constituency they are working for, police personnel displayed a more neutral stance highlighting changes in the crime scenario. Clinical practitioners like psychologists and psychiatrists addressed the issue of gender and violence from the perspective of intrapsychic processes which it is not always to easily understand without the background professional knowledge. All the experts interviewed highlighted the roles of macro-level social changes such as poverty, urbanization, migration, increased number of women in the public

sphere as significant in the increased visibility of gender-based violence. They also highlighted the role of the media in contributing to this state of affairs.

## **6. QUALITATIVE FIELDWORK IN PENAL INSTITUTIONS: NARRATIVES OF ACCUSED AND CONVICTED OFFENDERS OF CRIMES AGAINST WOMEN**

Sexual offenders have their own reasons for committing a particular act of crime. To locate these reasons social scientists, apply many data gathering tools to understand the complex issues. (Scully and Marolla, 1984, 1985) in their two-part study on perpetrators of sex crimes comprising 114 male convicted rapists categorized as admitters, deniers and deniers-turned-admitters. While admitters essentially replicated the same story as the police and victim. But they subtly understated the violence and force they used. They regarded their behaviour as morally wrong and beyond justification. They blamed themselves rather than the victim. Several of them expressed the view that rape was an act of such moral outrage that it was unforgivable. Some broke into tears during interviews. In contrast, the deniers'; accounts differed significantly from the victim and police versions. They attempted to justify their behavior by presenting the victim in a light that made her appear culpable, regardless of their own actions. Five themes ran through attempts to justify their rapes: 1. Women as seductress; 2. Women mean 'yes' when they say 'no'; 3. Most women eventually relax and enjoy it; 4. Nice girls do not get raped; and 5. Guilty of minor wrongdoing. The use of culturally derived excuses and justifications allowed them to view their behavior as either idiosyncratic or situationally appropriate and thus it reduced their sense of moral responsibility for their actions. Some of these findings are validated by our fieldwork as well.

In the second part of the study (Scully and Marolla, 1985) tried to find out the reasons for which some men rape and others do not. They argue that one approach to understand the reasons some men rape is to shift attention from individual psychopathology to the important question of what rapists gain from sexual aggression and violence in a culture seemingly prone to rape. Interviewing the same number of convicted rapists as before, they found that rape is a mean of revenge and punishment. Implicit in this is the notion that women are collectively liable for the rapist's problems. In some cases, victims were substitutes for significant women on whom the men desired to take revenge. In other cases, victims were thought to represent all women, and rape was used to punish, humiliate, and "put them in their place". In both cases women were seen as a class, a category, not as individuals. For some men, rape was almost an after-thought, a bonus added to burglary or robbery. Other men gained access to sexually unavailable or unwilling women through rape. For them, rape was a fantasy come true. They talked of the pleasure of raping – how for them it was a challenge, an adventure, a dangerous and "ultimate" experience. Rape made them feel good and, in some cases, even elevated their self-image. The authors note that men who rape have something to teach us about cultural roots of aggression. They force us to acknowledge that rape is more than an idiosyncratic act committed by a few



“sick” men. Rather, rape can be viewed as the end-point in a continuum of sexually aggressive behaviors that reward men and victimize women.

This study comprises two categories of interviewees from three distinct penal institutions in Delhi, juvenile under-trials housed in the Observation Home for Boys at Sewa Kutir convicted offenders in the Special Home for Boys at Majnu Ka Tilla and adult males in Tihar Jail. Our focus in this the project has been to understand the reasons for rape as provided by the offenders in an institutional setting. The project does not focus on the institution but the influence of prison or correctional home on the mind of the alleged perpetrators. Getting access to the perspective of the alleged or convicted offender on the crime for which he is incarcerated within the four walls of the institution was the main aim of the fieldwork.

### **6.1 Fieldwork in the Observation Home, Sewa Kutir**

The Observation Home for Boys at Sewa Kutir Kingsway Camp Delhi is one of the facilities where under-trial juveniles (between 15 and 18 years) in conflict with law are housed. In attempting to capture the issue of juvenile sexual crimes from the perspective of the accused, the project team thought this would be a good starting point to delve into the issue; the fact that guilt was not established was felt to be a positive factor in opening up the issue for project team members and interviewees conducting the fieldwork. After contact with relevant officials of the Observation Home and interviews with the Superintendent and psychologists as also preliminary individual and group interactions with the inmates, we developed an interview guide for engaging with the boys accused of crimes against women.

Given the limitations of time and institutional context, the format of the short open-ended interview guide used is given below:

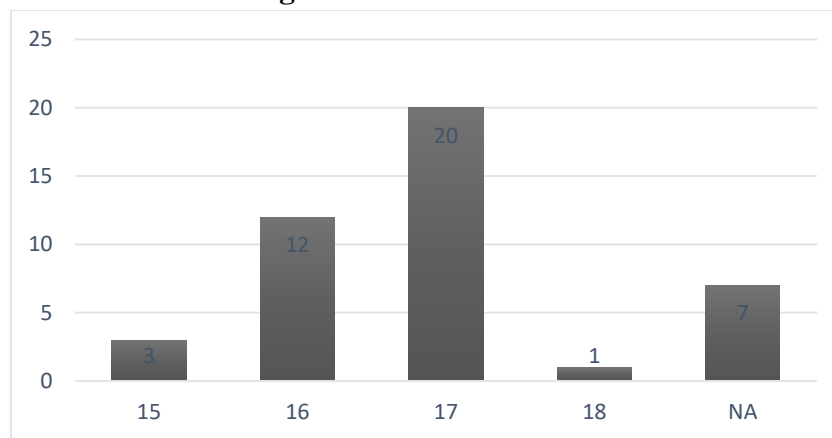
1. Described in your own words the reasons why you are here.
2. Do you think you did something wrong?
3. Do you think you should be punished?
4. Describe how you feel about the whole experience (having done something or being accused of doing something wrong and going through the legal process)?
5. How do you spend your day here?
6. What do you plan to do after you leave this place?
7. Do you have anything else to say or ask?

Permission was granted to conduct only a single interview with pre-selected inmates, which generally did not exceed one hour. . Interviewees were identified by the psychologist based on the specific sections of the IPC under which he was charged and the individual’s willingness to participate in the interview, the team members were given in most cases access to his written psychological evaluation before the interview so that they had a basic understanding of the person and some idea of the crime he was accused of before interviewing him. Since we could not audio-record and the interviews were conducted under supervision of the Observation home officials, we

developed a system whereby one team member conducted the interview and another team member made notes. After the interview the notes were written up together into a full length interview by the two researchers. The same data collection procedure was followed in the Special Home at Majnu Ka Tilla housing convicted juvenile offenders as also in the fieldwork conducted in Tihar Jail. We were able to conduct interviews with 43 interviews between July and September 2015 in the Observation Home. Thereafter, we were told that for the time being there were no other inmates accused of crimes against women and girls.

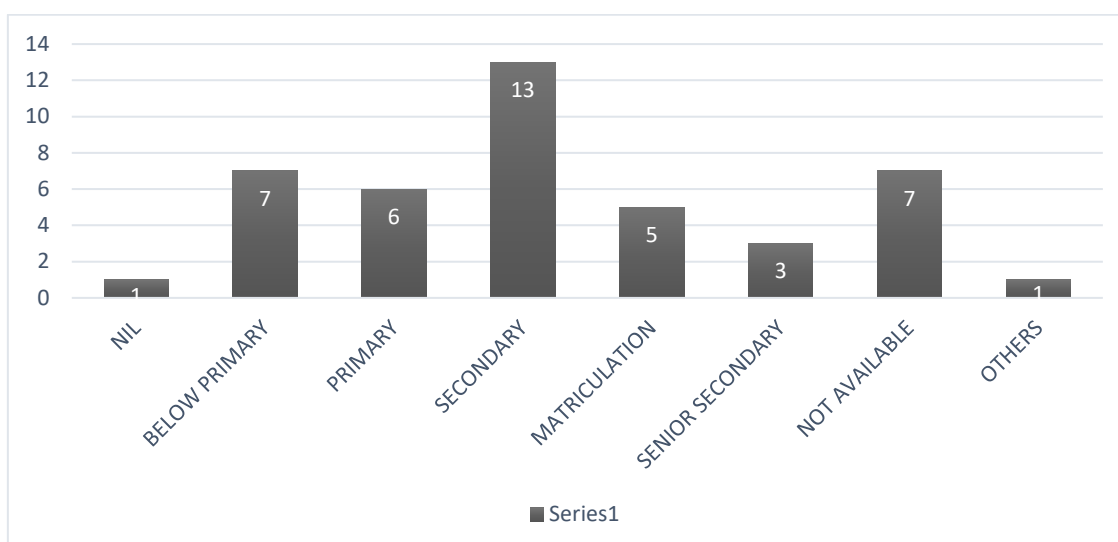
The following tables present a sociodemographic overview of the interviewees from the Observation Home, Sewa kutir.

**Table 9: Age of Interviewees at Sewa Kutir**



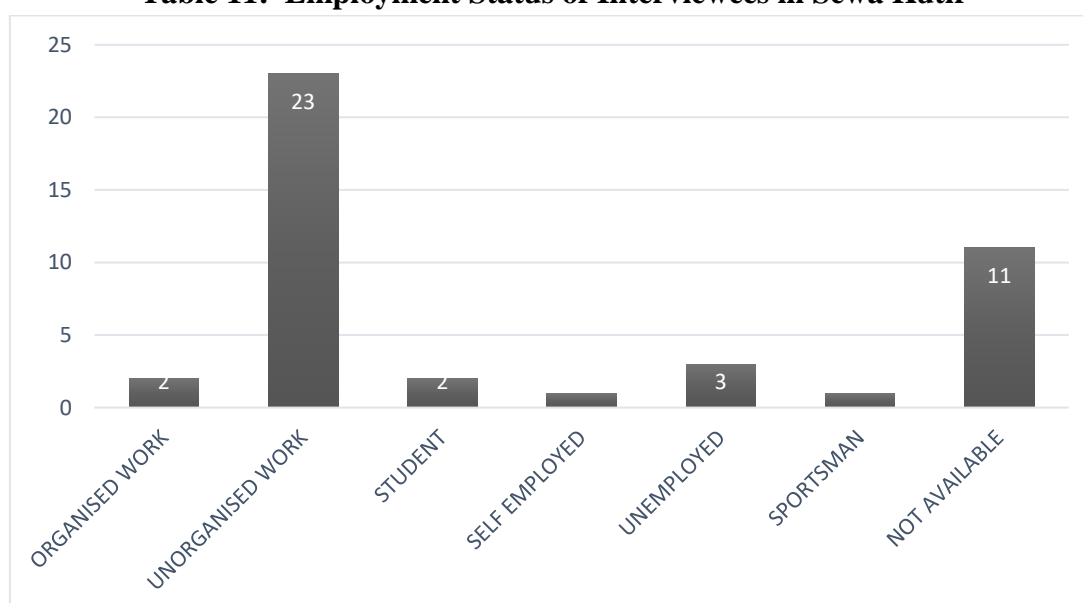
The ages of boys admitted to *Sewa kutir* ranged from fifteen to eighteen years. Maximum numbers of boys interviewed (n=20) were seventeen years of age. Twelve of the boys said that they were sixteen years of age while only three of the respondents said they were fifteen of age. Only one of the boys interviewed noted his age to be eighteen. Out of 43 respondents ages of seven could not be determined due to lack of information. The interviewees said they did not know their age and we did not have access to the official record to get the information.

**Table 10: Education Level of Interviewees in Sewa Kutir**



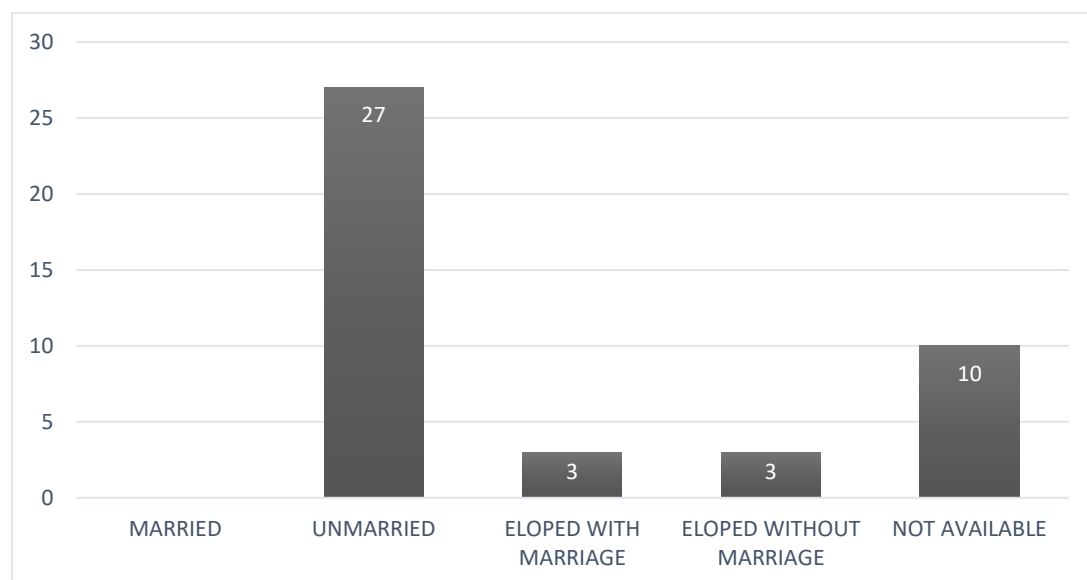
As expected, most respondents were school dropouts. The table shows the last level that the boys reported to have completed. 30% (n =13) of the boys dropped out of school before matriculation due to family pressure or financial hardship. Seven of them started working while they were still in primary school, hence were not able to complete their education till the fifth grade. Only six boys reported to have finished education till fifth class. Three boys reported having finished senior secondary level while five have attained matriculation certificates. One of the respondents was educated in *madrassa* and another never attended school. In the light of the high school dropout rate among juvenile offenders, it stands to reason that efforts to bring down the school dropout rate among adolescent boys would/could translate into a decline in juvenile crime.

**Table 11: Employment Status of Interviewees in Sewa Kutir**



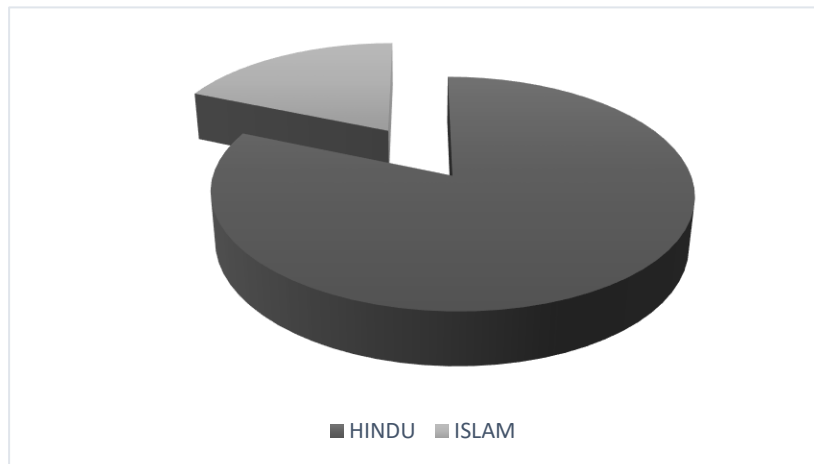
Since most of the respondents were school dropouts, about 50% of the boys were employed in unorganized sector at the time of being apprehended, working as laborers, mechanics and engaged in other kinds of menial work. A majority of them were migrants. Only two of the respondents were still studying with the support of the family at the time of their arrest. One boy owned a shop and another one was an aspiring cricketer. Only two of the respondents were working in an organized work setting as a supervisor and factory worker, while three others were looking for jobs. Given that a majority of the juveniles were forced to be in the job market at an age when they should have been in school, again it stands to reason that their vulnerability to get involved in situations about which they may not have complete understanding is considerably enhanced.

**Table 12: Relationship Status of Interviewees in Sewa Kutir**



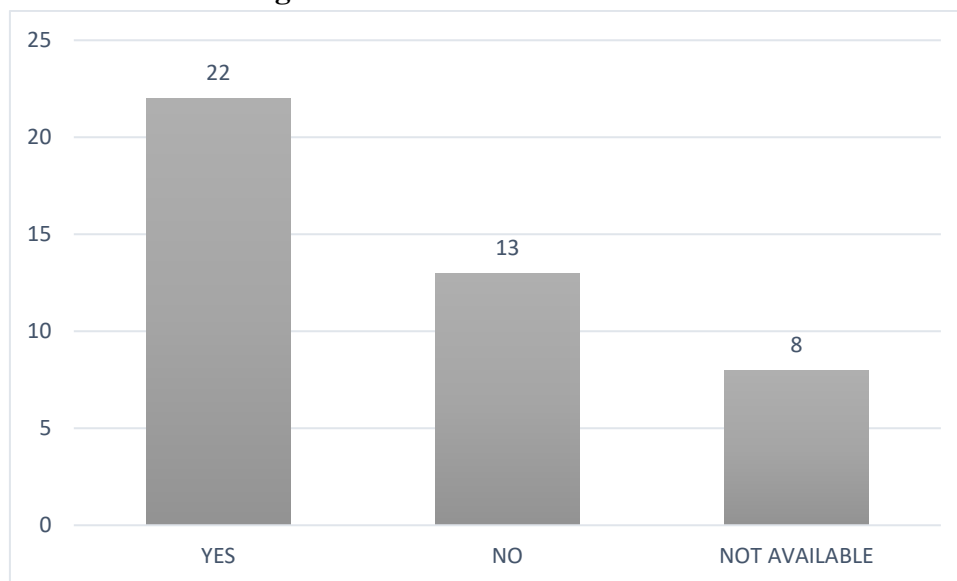
All but one of the boys interviewed in *Sewa kutir* were under the legal age of marriage for males viz. 21 years, but in three of the cases the boys allegedly eloped with the girl to get married. These marriages of minors took place in a temple, which do not have legal standing. In the other three instances of elopement, the boys claimed that they had eloped either without any intent to marry or failed to marry before being arrested. 27 interviewees were unmarried and information about other ten was not available to us. Given that issues of consent, elopement and marriage figure in sexual offences involving minors, it is possible that the remaining 37 interviewees may not have revealed the true nature of their relationship status. Again this absence of data has to be understood in the light of the fact that only one interview under supervision was conducted with each informant. And intimate details often do not emerge in such fleeting contact.

**Table 13: Religion of Interviewees in Sewa Kutir**



More than eighty percent (n=35) of the respondents claimed they were Hindus, in all of the cases this was the same faith as of the family. 20% said they were Muslims. This proportion is more or less in line with the respective numerical strength of the given groups in the population.

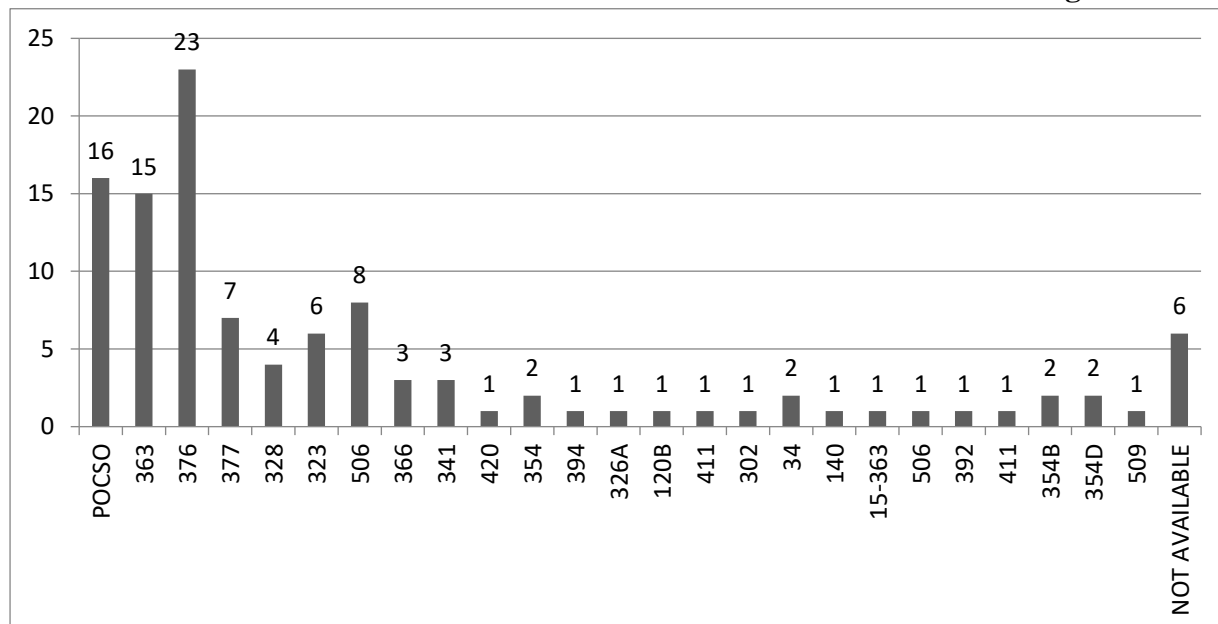
**Table 14: Migration Status of Interviewees in Sewa Kutir**



In an interesting revelation almost half (n=22) of the boys interviewed in *Sewa Kutir* were migrants from other state of India to Delhi. Amongst the thirteen that claimed a non-migrant status most were first generation dwellers of Delhi of migrant families whose parents had come to Delhi. Villages and towns in Bihar, Uttar Pradesh, Rajasthan, and Madhya Pradesh were the sites of migration to Delhi. Again like poor socio-economic status, dropping out of school, working in the unorganized sector as casual workers intertwined with migrant status increases the predisposition to engage in deviant acts, especially in the absence of well-connected kinship

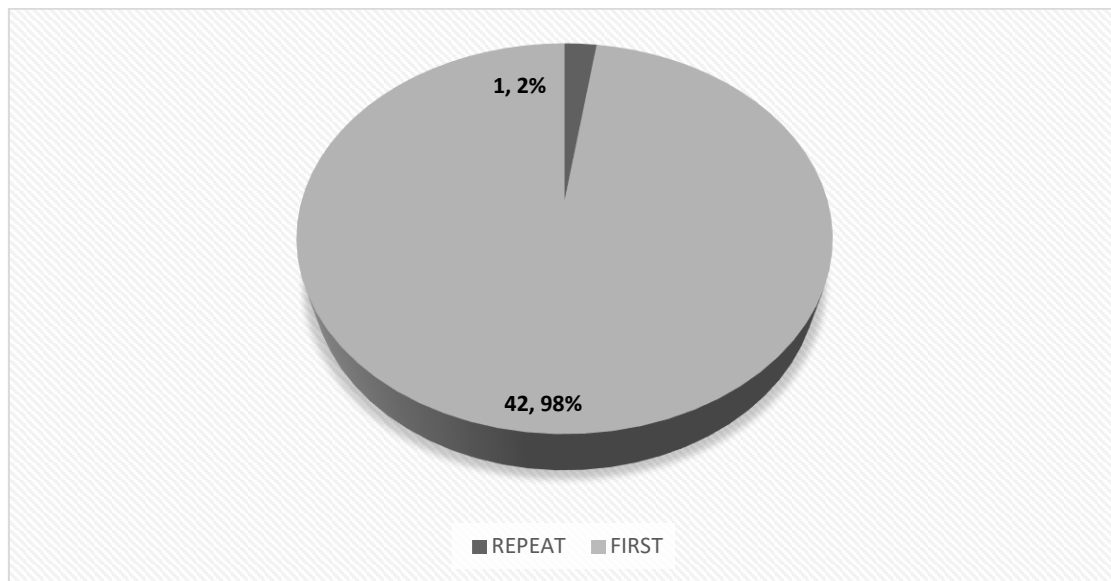
and community networks that is the hallmark of the modern urban landscape. Anonymity and alienation go hand in hand in such contexts making vulnerable even more vulnerable to both being victims and victimizers.

**Table 15: Sections under Which Interviewees in Sewa Kutir Are Charged**



As already mentioned, interviewees were pre-selected by the observation home staff based on our research questions. So, the major sections under which they were charged were rape, molestation, stalking, abduction etc. which are the standard legal categories under which sexual offences fall. The maximum number (n=23) of the interviewed boys was charged under the section 376 of Indian Penal Code (IPC) that denotes an act of rape of a girl. There were seven cases where the boys were charged for raping other boys. Fifteen of the boys were also charged under 363 IPC that is for kidnapping of the victim, the cases of elopement were clubbed in this section. Sixteen of the respondents were charged for rape under the POCSO Act for raping a minor. There were two cases of rape in a gang. Eight of the respondents were charged under the section 506 of IPC for intimidating the victim. Four of them were charged for causing hurt other than the sexual violence by any kind of intoxication under IPC 328 and three were charged under IPC 323 for causing other physical injury to the victim. Two cases of stalking a woman (354D) and forcing her to be naked in front of them (354B) were also reported. There were other charges like cheating (420), receiving stolen property (411), intimidation of the victim (506), There was one case of murder as well (302). In several cases, boys were charged under more than one section of the IPC

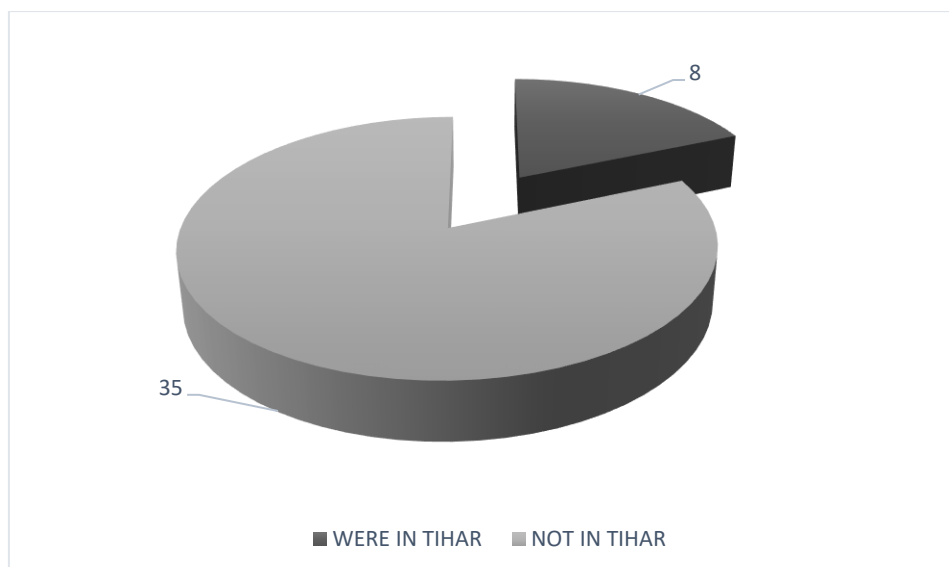
**Table 16: Reported Recidivism by Interviewees in Sewa Kutir**



Only one of the respondents was a repeat offender the rest were all first timers. This finding gives credence to the child rights perspective that reform is critical at this stage to protect the young offender from embarking on a career of crime. It is very important that the juvenile institution be marshalled to intervene constructively to reduce recidivism at this critical point.

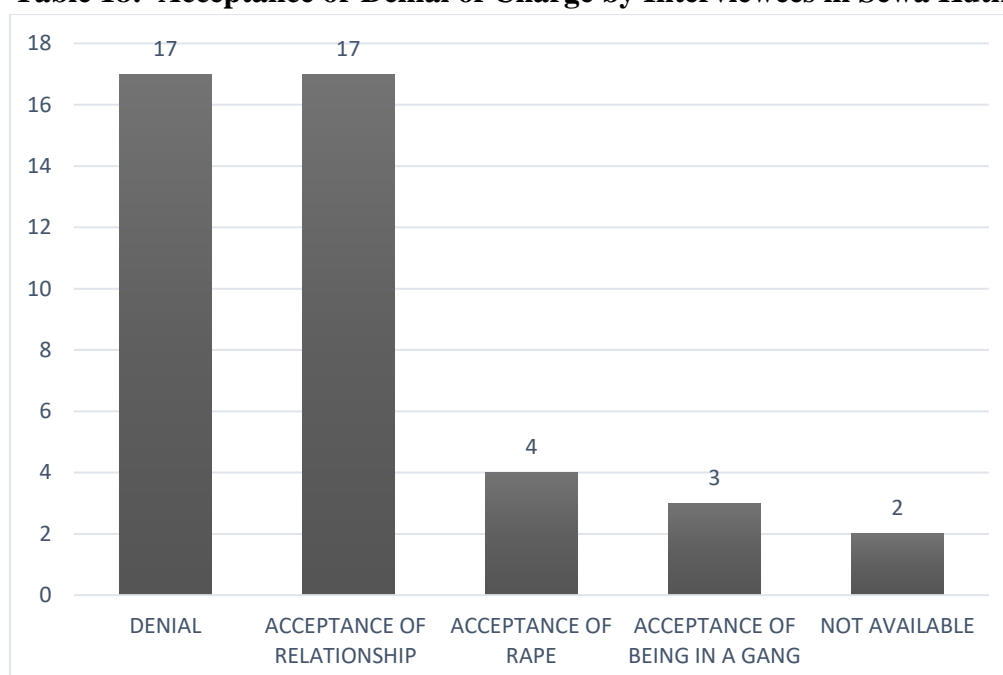
In a number of cases, it was found that confusion over age at the time of arrest resulted in juveniles being drawn into the adult criminal justice system before being retransferred to the Juvenile system.

**Table 17: Juvenile Offenders Sent to Adult Jails**



Around eighteen percent of the boys (n=8) were admitted to Tihar Jail or other adult jails in Delhi over age confusion. Only boys under the age of eighteen are allowed to be housed in *Sewa Kutir* pending a final decision of the case. After resolving the issue by submission of birth and school certificates in the court, the boys mistakenly sent to the adult jail are sent back to *Sewa Kutir*. The respondents claimed the observation home is better place than the adult jail in terms of quality of food and life. This situation reveals not only bureaucratic bungling but also inherent difficulties in identifying juvenile offenders in a context where there is an overweening importance attributed to age whose determination may pose additional hurdles in the absence of or inaccessibility of reliable documentation.

**Table 18: Acceptance or Denial of Charge by Interviewees in Sewa Kutir**



Given that the boys were being interviewed in a penal institution, most if not of all of them denied the charges under which they were arrested. While forty percent (n= 17) denied having any role in the action for which they were charged, claiming that they were falsely accused and framed by either the family of the girl or police. However, denial of wrong-doing was at times attenuated by other aspects. For instance, 40% percent of respondents admitted to having been in a consensual sexual relationship with the victim that either turned sour or was disapproved of by their parents. In these cases the boy usually blamed the parents of the girl for framing him. Some of the respondents expressed concern for the security of the girl who went back to her family after their arrest. Four of the respondents accepted that they had committed rape. Three of boys noted that they were part of a gang that committed rape; but they denied having committed the act themselves. They said they were either making a video of the act being committed by other gang members or just watching from a distance.



### **6.1.1. Case Illustrations from Observation Home**

#### *Romantic or consensual Relationship:*

All the boys under this section accepted that they were in a romantic or sexual relationship with the girl. Things went wrong either due to their decision to not marry the girl or because of family resistance. There were three cases that fell in this category. Rafiq's case highlights the common thread in the cases.

#### *Case Illustration 1*

Rafiq belongs to a very poor family which lives in a small basti named Subhash Nagar in Delhi. He was engaged in menial work in a factory where he first met his girlfriend, a fellow worker. Their romance flourished in the factory setting. They were in a relationship for two years before the girl's mother found out about it making it difficult for her to get out of the house to meet him. Due to this she had to leave her job. Rafiq notes that the girl called him after some time to confess her love for him. She also told him to meet her parents to ask for her hand in marriage. He alleges that as he went to meet her parents, the brother of the girl called the police. He was arrested there and then and was sent to Sewa Kutir under the charges of rape.

Rafiq pointed out that he and his girlfriend were intimate on more than one occasion in their two year relationship. He showed no regret for the relationship but the reaction of his family, the girl's family, the police and the judge of his case made him feel bad about his romantic involvement. He was sent to Tihar Jail for some time due to confusion in the calculation of his age. He characterises his experience there as oppressive and dangerous, while he found Sewa Kutir to be nurturing and safe. He believes that he was charged with rape as the girl was from a different faith from his which her family did not approve of. He said he was confused by the extreme reactions of both the families to the romantic relationship.

#### *Case Illustration 2*

The romantic story of Mukesh is an interesting plot with cheating, manipulation and violence. He met a girl in his neighbourhood and got romantically involved with her on one occasion. It turned out that the girl had another boyfriend who talked to Mukesh over phone about his relationship. He informed Mukesh that the girl he was in love with had been with many boys including the caller. Mukesh again received a call from the same boy telling him that he can catch the girl red-handed in a park near his home. When Mukesh reached there he was captured by the police. He was charged with kidnapping and rape. In the interview, he did not deny having a physical relationship or watching pornography; as he noted it is a common trend amongst the youth of his age. He however denied raping the girl, as she gave consent for the act. Mukesh did not regret the act of sexual relationship but he was very ashamed of being involved with a girl who has many partners. He told that the family of the girl proposed nuptials but he does not want to engage with her. All through the interview Mukesh wanted us to know

that his focus from now on would be the betterment of his life as he had been traumatised in romance. He told that he has given up on the idea of love because of this unfortunate experience.

#### *Case Illustration 3*

The story that Vicky told us was of a couple of teenagers making wrong decisions in the eyes of their parents that led to being brought to the Observation Home. He was emotional at the time of the interview. He sobbed while telling his story. He noted that he is charged with rape and kidnapping of a very close friend. He later suggested that he was more than friends with the alleged girl, who was his neighbor. According to Vicky, she also had feelings for him. He said that the family of the girl was very abusive to her. She was so upset that sometimes she used to talk about leaving the house forever, she even proposed marriage to which he did not agree as they were not of marriageable age: but he promised to consider marriage when they attained the legal age for the same. On the fateful day the girl phoned him asking him to join her after school. She insisted that take her somewhere or she threatened to commit suicide they spent that whole day in the premises of a nearby temple.

From the temple Vicky called a friend to find out whether the police was harassing his parents on the police complaint filed by the girl's family. After learning that this was the case, he and the girl went to a court and found a lawyer. The girl was sent to prayas, an NGO, as she refused to return to her abusive family, Vicky was sent to his village by his parents but he was caught by the police. He was charged with kidnapping of a minor for which he is facing trial while being in sewa kutir. He denies having any sexual relationship; he claims that everything happened because she cares for her while her parents are very rude to their daughter. He was very scared for his family and ashamed for the pain he has caused them.

#### **Peer Pressure:**

Peer pressure emerged as a narrative trope where the interviewee asserts that he was just an audience or onlooker to an act of sexual assault. Out of 43 interviewees, 3 belonged to this group in which peer pressure played a major role in the narrative. Sanjay's case is illustrative of this category.

#### *Case Illustration 4*

Sanjay moved to Delhi in search of employment after finishing his education till class eight in Aligarh. He was dressed very shabby and was not very confident or clear in his way of talking. He asserted that he comes from a very poor family background where his father used to work extra hours as a laborer to put him through school. After finishing schooling, he started working in Public Work Department (PWD) in civil lines, Delhi to contribute to the family finances. He lived in a shared room.

He noted that the incident that brought him to Sewa kutir was a tragic chain of events where he was at the wrong place at the wrong time with the wrong kind of people. The boy whose rape he is charged with was identified as a person who liked to dance on the roads and asking people to film him. One day that guy was overpowered by his roommate just outside their room. Sanjay responded to the screams of the boy who was asking for help. The screams were

also heard by some other people including the father of the boy. When the father called the police he pointed his finger at everyone who was standing near his son irrespective of their involvement with the boy. Sanjay was also sent to Tihar Jail over age confusion which was later resolved when his father brought his certificate from home. He was the only person without bail orders amongst the alleged gang that he was part of.

### **Mistake of the Girl or substance abuse:**

The main narration in these cases are of being fooled or seduced by a girl that the interviewee succumbed to due to sheer curiosity or under the influence of some addictive substance. Again in this group six examples out of 43 fall within this group. Karan's and Deepesh's narratives is illustrative of this group.

#### *Case Illustration 5*

Karan belongs to a typical Nepali family where the father migrated to Delhi for better employment opportunities. His father was a watchman and mother was a housewife. He also has a brother who is quite close to him and is helping in his legal case. Karan had a girlfriend who used to live in his neighborhood. He said that the woman was older to him, had a five year old child and was a drug addict whose husband was in a mental asylum. He noted that the sister of his girlfriend was also married but still stayed with her father. Karan agreed to the long sexual involvement with his girlfriend, the problem-he says-occurred when he refused to marry her. He said that the woman created a huge ruckus after his refusal. Then he said that he agreed to marry her but this was done under the influence of drugs (number 20 and ganja<sup>5</sup>) she filed a complaint against him. He said that he would like to marry her if that is his only chance for freedom. All these ideas come from the concern of his family which is in very bad condition due to the monetary demands of the legal process.

#### *Case Illustration 6*

Deepesh identifies himself as a monogamous man, deeply in love with his young fiancée who was wronged under the influence of alcohol by a "bad girl" which landed him in his current condition. In one part of the interview he told us that he lived with his uncle and aunt (to whom he referred to as mummy and papa) in Ramesh Nagar, Delhi after the death of his parents. Towards the end of the interview however he said that he lived with his fiancée with whom he was getting married as soon as he is released from Sewa Kutir. His story revolved around the promiscuity of the alleged victim and substance abuse.

Deepesh claimed that the girl was a regular visitor of the shop run by his aunt. The girl dropped several hints over a long period of time to attract him. On the day of the incident he remembered

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<sup>5</sup> Reference is to marjauna and heroin

that he was drunk at a Holi party after which he called her to a park where they engaged in sexual activity. According to him the whole thing was only a result of him falling to the advances of the alleged victim who went quietly back to her home after their encounter. He alleges that after that the girl went home to complain against him, which is why her parents called the police. He also said that because he was addicted to alcohol sometimes he loses his sense of control and commit mistakes like this. However he said that from now on he plans to live a homely life with his current live-in fiancée whose name he has tattooed on his chest.

### **Elopement:**

These cases are of juveniles who eloped with the victims without realizing the legal implications of underage sexual relationships or marriage. Seven cases out of the 43 belong to this category. Hemant and Sanjeev's narratives give insight into this category.

#### *Case Illustration 7*

Hemant's narrative suggests that he is in sewa kutir for a classic Bollywood tale of romance, elopement and underage marriage that was against the will of the parents of the girl. The girl who belonged to a very abusive family used to seek solace in Hemant's company. He developed a deep affection and compassion that can be understood as love. One day they both decided to run away to spend the rest of their lives together but they didn't know that their dreams are restricted by the laws of the land that does not allow two 15 year olds to decide about the future of their romance. Her parents were against his caste and financial status also, Hemant said that they wanted their daughter to marry someone else.

After getting married he came back to the city where he was captured by police and was taken to the police station. He seemed depressed of Sewa kutir He was not allowed to talk to his alleged wife in the court. Somehow he is confident that she can never say a word against him. He is sure that if he gets an opportunity to talk to her, it will be found that she has been beaten up and is under tremendous pressure from her home to say bad things about him. He acknowledges the substance abuse problem he has, of alcohol dependence and smoking. He nonetheless asserted that the relationship that he shares with his wife is very deep and meaningful and will continue if given a fair chance.

#### *Case Illustration 8*

Sanjeev came to visit his father in Delhi where he met Rashmi and he claims that they were in love. The abusive family of the girl forced her to take the extreme step elope with. They eloped to his home town with the money that the girl had borrowed from her aunts. In his hometown Sanjeev married the girl in a 'filmy style'. He had no idea about the laws of marriage and the legal status of his marriage. The village people called Rashmi's mother and told her about the incident, Rashmi's parents complained to the police who traced the couple with the help of the phone that the girl had stolen from her home. Sanjeev believes that their love is pure and must be respected by the court, as they were both equal decision-maker in this case. He thinks that

if the physical relationship and marriage are consensual then there should not be any age restriction. He was appeared worried about the welfare of his alleged wife and his own future. He believes that the mother of the girl disapproves of the marriage because of his caste.

### **Conspiracy:**

The eight interviewees falling in this category claimed that they were wrongly charged due to some other conspiracy in either their families or among their peers. Sudhir's case highlights the kind of issues that arise in such cases.

#### *Case Illustration 9*

Sudhir was in Sewa Kutir because his sister filed a complaint against him for raping and molesting her. He told a complex tale of incest wherein his maternal uncle was allegedly having an affair with his sister. He told us that his sister was in physical relationship with his mama (mother's brother). He said that they eloped and after sometime when his sister came back home, then to avoid a backlash at home she filed a complaint against him. By doing this she rendered her mother helpless as she is completely dependent on her brother, and would not oppose the physical relationship between her daughter and brother. The sister however now lives in *nari niketan* (women's home) and is undergoing counseling.

Sudhir was recognized by the Sewa Kutir counselors as a boy with high mental prowess, but they were also not sure about the truthfulness of his story. The economic dependence of the family on the uncle made him a very powerful character in the narrative. Sudhir was not sure whether he would be able to get bail. Even if he gets bail, he is clueless about what to do his life after leaving sewa kutir.

### **Acceptance:**

There were only two narratives in this category. In one case, the alleged offender confessed to a crime which was not necessarily the one for which he was charged. In the second case, the offender claimed that he did not know that the act was a crime in the first place.

#### *Case Illustration 10:*

Hemant is a boy who can be recognized by everyone while entering the campus of Sewa Kutir. He was very shabbily dressed and quite unkempt but he was also the most active person in the corridor and in the psychological counselor's room. The counselor informed us that Hemant was a repeat offender of rape under section 376 IPC. He showed traits like maintaining no eye contact and manipulative talking; he also had scratch marks all over the visible parts of his body. He did not discuss the case with us apart from mentioning that he had little idea as to who framed him and why was it done.

Hemant said he lived with his grandmother in a two-storeyed house and most of their expenses came the rent that they get. He smiled warily at all the questions we posed. Though he said he

was apologetic, he denied the rape charges. He said he was in Sewa Kutir for theft. He was very uncooperative during the interview and did not divulge any case details. He simply said that he would like to return to his normal life and left the interview abruptly. The counselors took special notice of his case and told us that he was a clever boy and knew what to do in order to gain sympathy of the officials at Sewa Kutir; they said he had even attempted suicide on one occasion. The counsellors further felt that there was very little chance of him from becoming a repeat offender. This is despite the fact that Hemant was on their 'best behavior' list.

#### *Case Illustration 11:*

Suresh is from Haryana and lives with his parents in Delhi. He is reported to have had a harmonious relationship with his parents and no reported issue of violence at home. His father owns a 'kirana' (grocery) store. He dropped out of school after standard eight citing poor memory skills. Though he was engaged as a mechanic, he did not any earn money from it. Suresh was charged with indulging in 'unnatural' sexual intercourse under Section 377 of the IPC among other offences. He said that the boy he was alleged to have raped was eight years old and lived in his neighborhood. The boy had come into his father's shop and had been playing with some things when Suresh slapped the boy to stop him from playing. When the boy started crying, Suresh tried to console him and then took him behind the shop and abused him sexually. According to Suresh, the eight year old boy complained to his parents and subsequently he underwent a medical test which confirmed that the boy had been raped. Subsequently, Suresh was taken to the police station. While agreeing to the charges, Suresh claimed that he had no idea what he did to the boy was a crime. He didn't seem hopeful about getting bail. Though he was cooperative in general, with respect to the details regarding the incident he wasn't as forthcoming and gave mostly one-word responses.

## **6.2 Fieldwork for Special Home for Boys Majnu Ka Tilla Delhi**

Adharshila Observation Home and Special Home for Boys is established under the Juvenile Justice (Care and Protection) Act, 2015 at Magazine Road, near the Majnu Ka Tilla Gurudwara in North Delhi. Housed in a British style barracks, the convicted juvenile delinquents stay in the backyard of a rather spacious, green space. Just across the heavy metal entry gate, security guards monitor every incoming and outgoing visitor. Situated in a locality of Majnu Ka Tilla near a very busy road, the ambience of the campus of the Special Home is, however, quiet.

All the interviews were conducted in the counsellor's room, in their presence. This arrangement of interview was not conducive for research as the boys' accounts were carefully monitored in the presence of the officials. Permission to interview the inmates was given by the Delhi Government Department of Women and Child Welfare under whose jurisdiction this facility falls. Seven interviews were conducted with boys convicted of crimes against women. The

juvenile involved in the Nibhaya Gang Rape had also been housed in this very place during the three years of his incarceration, but all the officials were tight-lipped about that case.

The Socio-demographic profiles of the 8 interviewees are given in the following table.

**Table 19: Socio-Demographic Profile of Interviewees Convicted of Crimes against Women in Special Home for Boys, Majnu Ka Tilla**

S. No	Code Name	Age	Marital Status	Education	Acceptance or Denial of The Crime	Migration Status	Home State	Family Type In Delhi	Occupation	Charged Under Section	Religion
1	Alam	17	Unmarried	Not known	Not Available	Migrant	Sitamarhi, Bihar	Extended Family	student	376	Muslim
2	Avinash	18	Unmarried	5 <sup>th</sup>	deny	Non-Migrant	Burari Delhi	Mother, Father, Brothers	Transport Company	376	Hindu
3	Taimur	17	Unmarried	6 <sup>th</sup>	Deny	Migrant	West Bengal	Mother and sister	Na	376 6POCSO	Muslim
4	Vipul	17	Unmarried	5 <sup>th</sup>	Accept	Migrant	Mainpuri, Uttar Pradesh	Extended Family	Na	376/506/ 6 POCSO	Hindu
5	Kumar	17	Unmarried	9 <sup>th</sup>	Accept	Migrant	Mainpuri Uttar Pradesh	stays with uncle	Domestic help	376	Hindu
6	Abrar	15	Unmarried	5 <sup>th</sup>	Deny	Non-Migrant	Bawana Delhi	Mother, Father, 6 Siblings	farmer	377/325/ 342	Muslim
7	Arjun	19	Unmarried	5 <sup>th</sup>	Deny	Migrant	Gorakhpur, Uttar Pradesh	stays with brother	Tailor	376	Muslim
8	Bikram	17	unmarried	3 <sup>rd</sup>	Accept	Migrant	West Bengal	alone	Carpenter	376	Hindu

Eight interviews with juveniles convicted of crimes against women were done at the Special Home for Boys in Majnu Ka Tilla. The socio-demography of this set of juvenile convicts mirrors that of the set of boys in the Observation Home at Sewa Kutir. However, out of the eight interviewees, 4 denied the charges for which they were convicted, three accepted their role in the crime and the remaining one did not give any information.

The following narratives provide a deeper understanding of the lifeworld of young men in conflict with the law in which gender emerges as a central variable.

#### *Case Illustration 12*

Originally from Sitamarhi Bihar, Alam said that he was wrongly charged for the rape of a girl with whom he had no acquaintance. He thinks that the people who charged him with rape were

after his brother-in-law who works in a Masjid nearby; and when they were not able to get to him, they targeted Alam. He lives in Delhi with his family. He was calm and easy to talk to during the interview. In response to how life was in the correctional home, he said that it was peaceful, good and healthy here. He has no friends but he has no problems in sleeping or any other mental trouble. He is learning music to keep himself calm and also tailoring so that he can work in this line in future. Though he said that the charges are false, Alam is not contesting the sentence. The psychologist noted that the boy is very quiet and peaceful.

Alam is of average height and build. He was freshly bathed and dressed smartly during the interview. His voice was composed. He was neither afraid while talking nor anxious or in any hurry. He was not very forthcoming and responded briefly to questions posed to him. He showed respect towards the interviewers, which his general demeanor was as told to us by the counsellors.

### *Case Illustration 13*

Avinash was first arrested in 2013 for allegedly abducting, raping and murdering a minor girl. He is a tall, handsome looking boy who was dressed casually but nicely. He used to stay with his family in Burari before he was charged in this case. His father, who runs a small gas filling shop, had migrated from Darbhanga in Bihar after which he bought a plot in Burari (North West, Delhi) where the family now stays. Avinash presented himself as a sincere, decent and responsible boy. He touched our feet upon entering the room and told us that he had to leave his education after finishing class five to support his visually-impaired brother. The counsellor also sees him as a well-mannered religious boy. Avinash used to work in a medical lab and then later joined a transport company to support his family especially his brother, who was finishing standard twelve from a blind school in Delhi.

Avinash denied the charge of committing rape. This denial is based on his theory that the policemen conspired against him. According to him, because he used to frequent the police station for another case, his face became familiar to the policemen and he was therefore an easy target for false accusations. He refused to admit even knowing the girl whom he was supposed to have raped and subsequently killed. He repeatedly blamed the police for beating and framing him on false charges. He said that he signed a lot of papers, including blank papers, while being tortured in police custody.

On being asked how his life was at the Special Home, he said it was good but mundane. He said he plays cricket and has applied for jobs. He said he plans to run a garment business after being released from the Special Home. In the absence of officers and counsellors of the Special Home for a short time in the course of the interview, Avinash was able to comment freely on life in the institution. He said that several inmates of the special home were repeat offenders. According to him it is necessary to keep the convicts with serious crimes separate from the



others as they are a bad influence on the first time offenders who may not be guilty of the crime with which they are charged with.

From this interview no information about the particulars of the case could be gathered as Avinash was not willing to talk about it in front of the home officials. The fieldworkers also did not have any background information to probe the issue apart from what the interviewee said or the casual remarks of the counsellor.

#### *Case Illustration 14*

Taimur is a migrant from West Bengal and lives in Bawana, Delhi with his mother and sister. He is charged with rape under Section 376 of the IPC. He seemed calm while being interviewed but did not divulge any information regarding the case for which he was charged. At the outset Taimur claimed that he was wrongly charged by a woman who was in a conflict with his mother. He did not offer any explanations about the conflict, the woman, or anything else that may have given us any insight into the case. He seemed to be well adjusted to the life and daily routine in the correctional home. He said that he liked studying and the discipline of the Special Home. He said he found the food better than the food at Prayas where he was detained for a month and 15 days before being sent to Majnu Ka Tilla.

#### *Case Illustration 15:*

Arjun came to Delhi from Gorakhpur with his friend to find a job. He dropped out of school after standard five due to financial difficulties. While working as a tailor in Nehru Nagar in Delhi he claims that he fell in love with a hearing and speech impaired girl in the neighborhood. He is a tall boy and was smartly dressed. He spoke proudly of his appearance and efficiency in work. He was also fearless in mentioning the name and role of the judge in his case. He discussed the case while maintaining a calm demeanor. According to the counsellor Arjun did not follow the discipline or rules in the Special Home.

Arjun is charged with rape under Section 376 of the IPC. He has been in the Special Home at Majnu Ka Tilla for two years and ten months. He said that the case was registered when the girl was seen in his room on one occasion. The girl's mother called the police. He believes that he was falsely accused of raping the girl since they were in love and the sexual intercourse was consensual. He quoted the Gita to say that consensual sex is permitted. However, on being asked how he would feel if any woman of his family engaged in casual sex he said that he would not allow it and in his words he would "break her ribs". When he was asked if he thinks what he did was wrong, Arjun gave no response. His idea of moral and good behavior appeared to be very much tailored for his own benefit suit himself moreover he showed no signs of remorse.

### *Case Illustration 16*

Abrar was a resident of Bawana on the Delhi-Haryana border. He has been at the Special Home since August 2015. He is 16 years old, he dropped out of school after standard five because his father was constantly sick. His father was a farmer. He had 3 elder sisters, 1 elder brother brothers and 2 younger brothers.

Abrar was charged for raping a boy in an agricultural field along with an adult accomplice who is housed in Tihar Jail. According to him he was wrongly charged. He said that Suleiman is the one who actually raped the boy and he trapped him in the matter. On being asked why he thought so he explained that this was because earlier on an occasion he had beaten Suleiman because he had misbehaved with one of his female cousins. Abrar said that since then Suleiman had threatened him that he would file a case against him. Abrar kept emphasizing how innocent he was as he wasn't capable of this kind of behavior. While narrating an incident of rape of a minor girl in the agricultural field where he worked. Abrar's interview reflected the social ethos of his family where men are seen as the bread-winners and women are dependent on men; therefore they can never be equals. According to him women have to always protect themselves as the honor of the family reside in the women. He appeared quite hostile towards women. He believed that women who do not cover their heads or dress in an unconventional way invite rape.

Abrar was of a medium build, with a strong and confident personality. He was not scared while giving the interview, he was very cooperative and spoke more than he was asked; He was dismissive of any religious belief system but strongly adhered to the social learning that he had gathered from his family and community. He knew that his position on women was disturbing which is why he only agreed to speak to the male researcher. He referred to the 'special Home as a jail because of the lack of freedom and isolation from his family. He said he plays volleyball and carom and works as a cook in the Special Home which he enjoy.

### *Case Illustration 17*

Bikram came to Delhi from Siyaldah, West Bengal in search of employment as a carpentry which is the same kind of work that his father has also been doing for several years. He dropped out of school after standard three due to financial difficulties.

Initially he was sent to Tihar Jail due to some age related confusion, after resolution of the confusion he was transferred to this Special Home in Majnu Ka Tilla. The charges of rape, he said, were false as he had eloped with a girl who he was in a romantic relationship with. He claims that they got married in a temple near his home and even though he knew they were underage, he had to marry the girl because she said she would kill herself if he did not marry her. The police caught them as the girl was carrying her mother's mobile phone and they had no proof of marriage. He admitted that he wanted to have a physical relationship with the girl but did not want to marry her. He said that he accepted that he was partly at fault however it

was also the girl's fault since she was the one who insisted on eloping even though they were underage.

Bikram expected the girl to come and meet him or give a statement to the police but she did not.. He also blamed the investigating officer (IO) for not taking into account the fact that the girl had consented to the relationship. Bikram blamed the mother of the girl for his condition because she resented the fact that he had not taken her into confidence even though the two families knew each other well.

According to him even though the Special Home is better than Tihar Jail in terms of living conditions, it is also disadvantageous for him because they won't release him until his parents come and take him. Due to financial and health difficulties it is difficult for his parents to come to the Special Home.

#### *Case Illustration 18*

Vipul is the son of a farmer in Mainpuri, Uttar Pradesh. After the death of his mother, he came to Delhi for employment as his father could not earn enough to support him family through farming. Vipul was dressed smartly and was very calm throughout the interview. He used to live and work with his extended family in Delhi. According to Vipul he is innocent of rape because the girl and he were in a consensual sexual relationship. Furthermore, he said that he thought pre-marital sex was wrong. However because he was under the influence of alcohol at the time of the incident, he had no control over his actions. Vipul blamed peer pressure for pushing him to consume alcohol. He repeatedly mentioned the role of his "bad" friends in the incident, who had told him about sexual pleasure and made him taste alcohol.

A neighbor saw Vipul and the girl together and called the police. He alleges that the girl's parents offered to drop the charges if he paid them money. He also said that he would have not gotten married to the girl because of the caste differences between them. On being asked about his life in the Home Vipul said that he had a good life there because he could protect himself from being bullied by other inmates as had befriended some murder convicts who called the shots among the inmates. The boy was generally cooperative except while discussing the rape. He was confident and calm. The psychologist described Vipul as a troubled and traumatised child with an unpredictable nature.

#### *Illustration 19*

Kumar came to Delhi from Faizabad in Uttar Pradesh. He dropped out of school after standard nine. His father died due to a mental illness and was unable to support his family and his mother was very ill, he was therefore forced to move to Delhi because of the financial distress his family was in. He was working in a 'kothi' in Delhi as a domestic help when he was charged with rape of a minor girl who was the daughter of a person engaged as a driver in the same household. The driver stayed with his family in a room on the top floor of the house. He said

that all the employees had to share a common bathroom. According to Kumar he was wrongly charged with the crime but he was unable to provide any reasons as to why he thought that he was being framed. His narrative was designed to attract pity from the listener particularly because he emphasized the torture he faced while in police custody. He did not provide details regarding the girl.

Upon being asked about his life at the Special Home, he said he was fine. He said he played, watched television but didn't have many friends. The counsellor said that he had received no complaints regarding Kumar and that he was generally calm. The counsellor also noted that Kumar may be lying about his age. Upon release, he said he wants to complete his education and return to his hometown to help his family in farming.

### **6.3 Field Work in Tihar Jail**

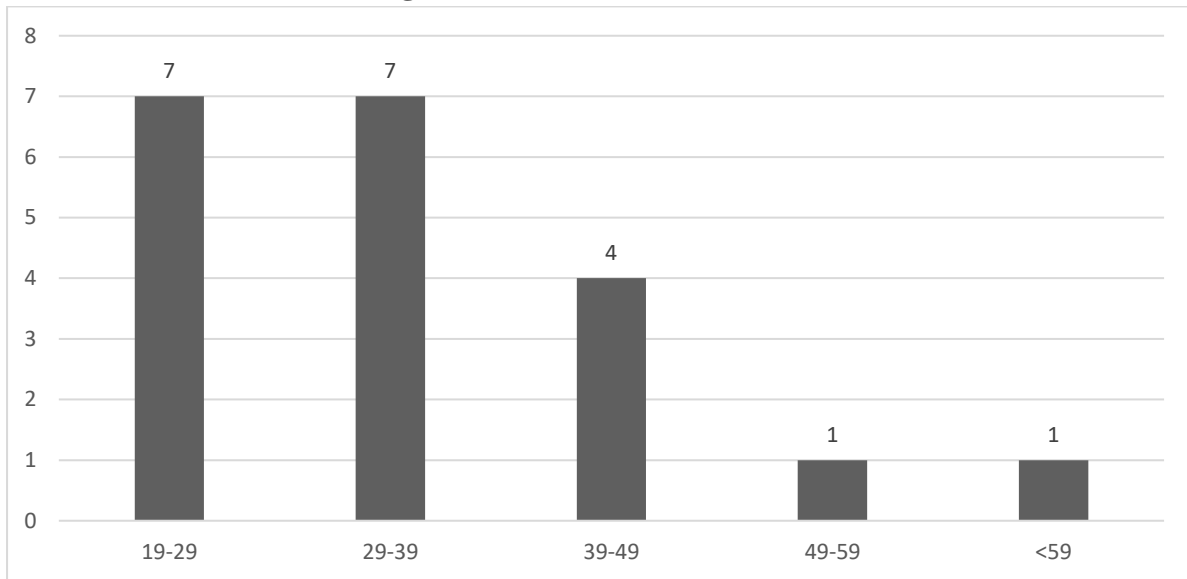
Tihar Prisons, also called Tihar Jail or Tihar Ashram, is one of the largest prison complexes in South Asia. It is run by the Department of Delhi Prisons, Government of Delhi. The prison contains nine central prisons, and is one of the two prison complexes in Delhi, the other being the District Prison at Rohini Prison Complex. Tihar Jail is located in West Delhi adjacent to areas like Janakpuri and Hari Nagar.

The main objective of Tihar Jail is to help its inmate's transition into ordinary members of society by providing them with useful skills, education, and respect for the law. It aims to improve the inmates' self-esteem and strengthen their desire to be law-abiding citizens, to engage, rehabilitate, and reform its inmates, Tihar Jail uses a range of activities to achieve its objectives like yoga, music therapy and other extra-curricular activities. The prison has its own radio station, run by the inmates. Jail inmates also produce a range of products like biscuits, household articles, ready-made garments, etc under the same brand name which are marketed through different outlets in Delhi, Tihar Jail has 15,468 prisoners as on 31.12.2018 inmates against the sanctioned capacity of 10,026, which indicates that the jail is severely overcrowded.

#### **6.3.1 Socio-demographic profile of interviewees in Tihar Jail**

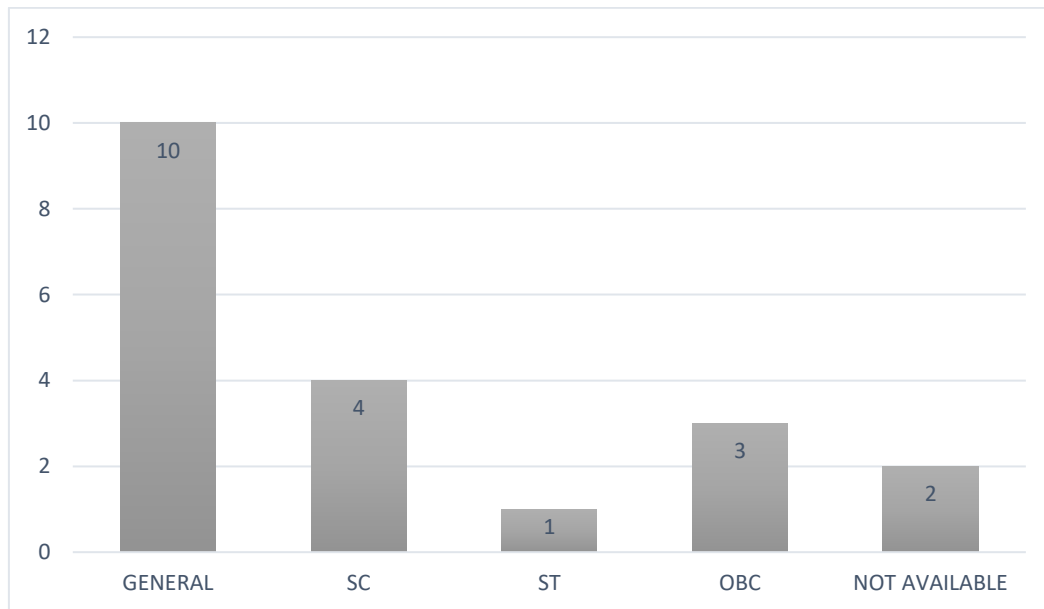
- 20 interviews were conducted in Tihar Jail. Almost all of them were found to be first time offenders. The same fieldwork constraints and conditions prevailed as in the case of fieldwork conducted in the Observation Home at Sewa Kutir and the Special Home at Majnu Ka Tilla. The following tables summarise the socio-demography of the interviewees in Tihar Jail.

**Table 20: Age of the inmates interviewed in Tihar Jail**



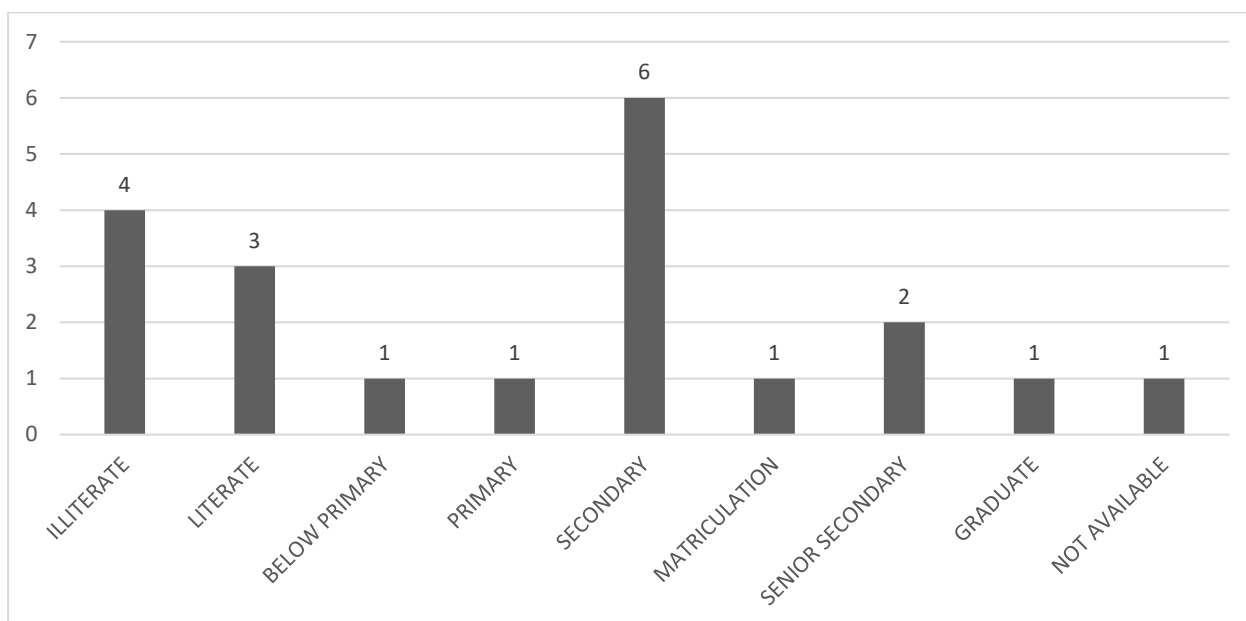
The information about the age of prisoners was provided in the inmates 'data sheets. A majority of them were between the ages of 19 to 39. There were equal number of prisoners (n=7 each) in the age brackets of 19-29 and 29-39. Four of the convicts were between 39 and 49 years of age. One of the prisoner was above 60 years of age, thus he was retired from all his services within the prison. Remaining one was fifty-four years of age.

**Table 21: Caste of Prisoners in Tihar Jail**



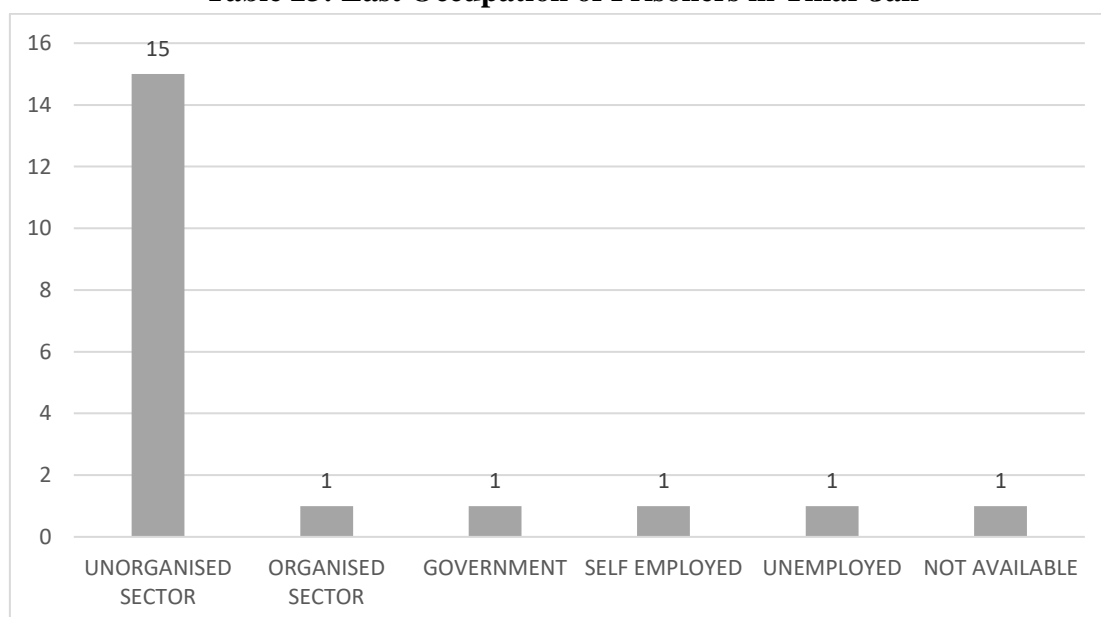
Fifty percent of the convicts (n=10) were upper caste, mostly Brahmins. There were four respondents who belonged to scheduled caste communities and one was from a scheduled tribe. Only three of the interviewed men were from other backward castes.

**Table 22: Education of Prisoners Interviewed in Tihar Jail**



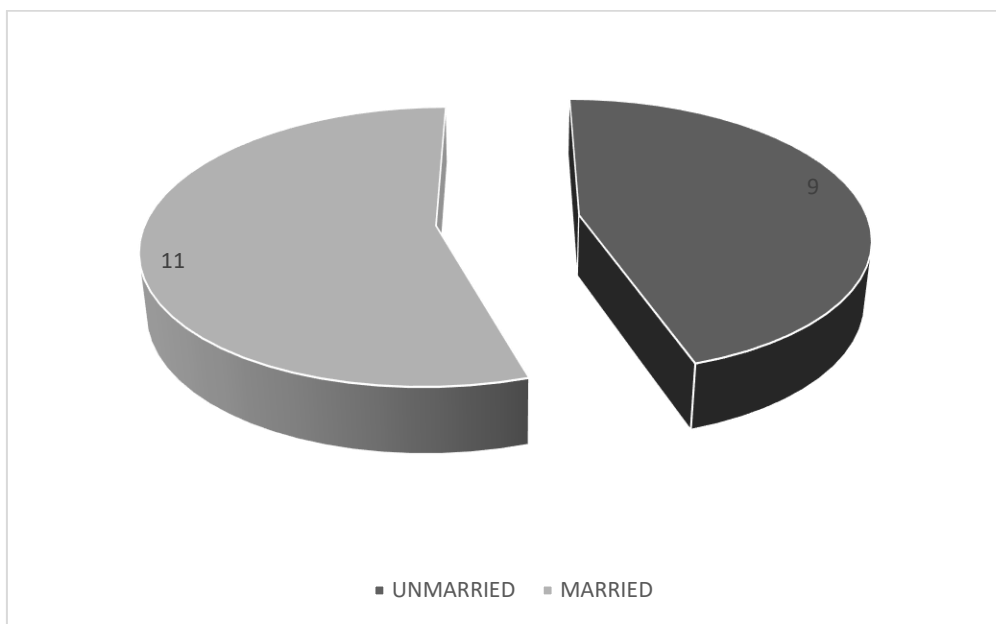
This table provides information regarding the education level of the prisoners in Tihar Jail; More than 50% of the men interviewed were not able to finish school due to the financial needs and familial demands. Six had completed secondary school. Four of the respondents were illiterate while three of them were just able to write their names hence were categorized as literate. One of the men interviewed had a B.Tech degree.

**Table 23: Last Occupation of Prisoners in Tihar Jail**



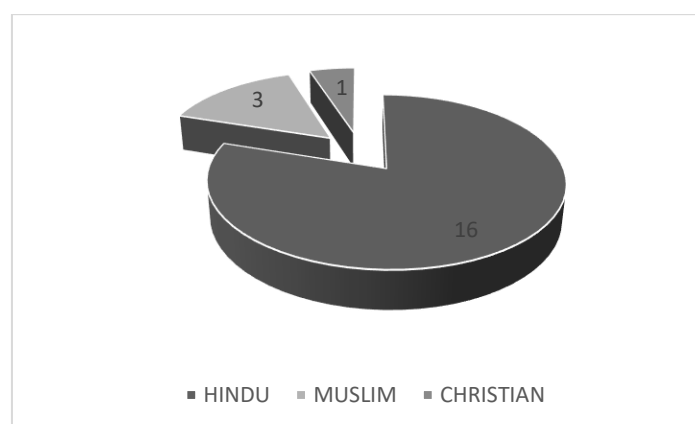
This table is prepared on the basis of the reported occupation of the convicts interviewed at the time of imprisonment. Seventy-five percent (n=15) of the interviewees were working in the unorganized sector, mostly as drivers, cooks, labourers, rickshaw pullers, watchmen, etc. One of the convicts used to work in a private sector bank. There was one government sector employee amongst the men interviewed.

**Table 24: Marital Status of Prisoners Interviewed in Tihar**



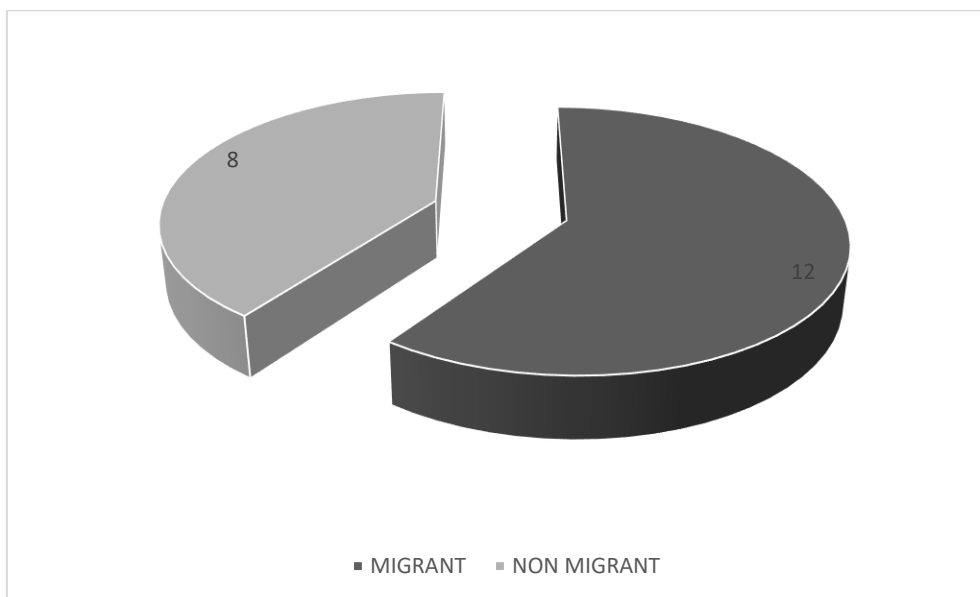
More than fifty percent (n=11) convicts interviewed in Tihar Jail were currently married while other nine were not. The unmarried category includes the widowed and single men. However, even the ones who had never been married accepted having had sexual relationships.

**Table 25: Religion of Prisoners Interviewed in Tihar Jail**



More than seventy percent (n=16) of the respondents in Tihar Jail were Hindu. A small minority were Muslim (n=3) and only one was a Christian.

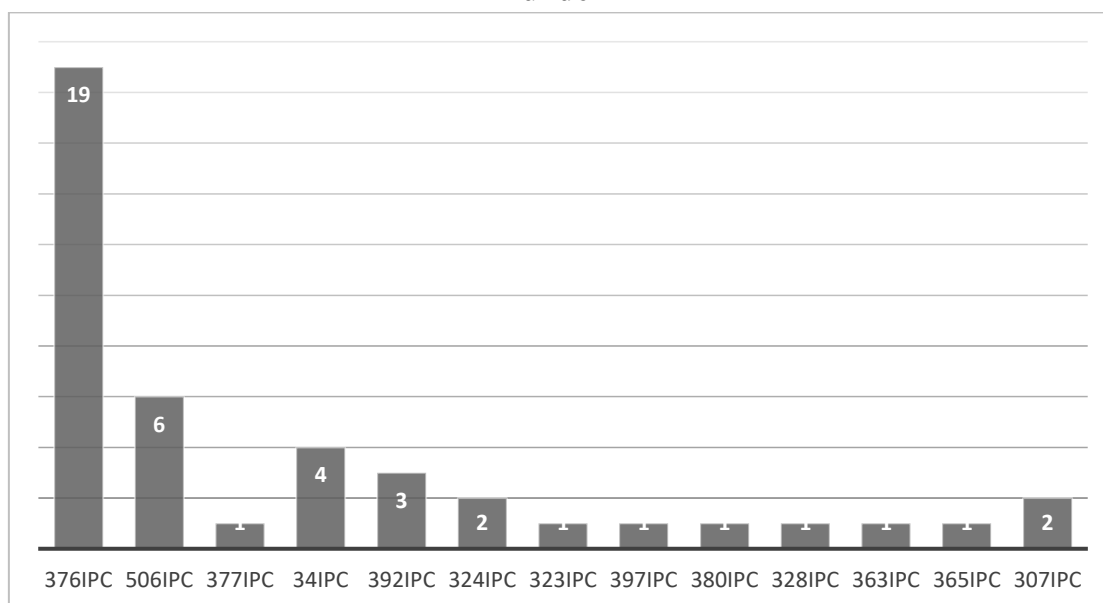
**Table 26: Migrant Status of Prisoners Interviewed in Tihar Jail**



Twelve of the men interviewed had migrated to Delhi mainly in search of employment from small towns of Bihar, Uttar Pradesh, Rajasthan and Uttarakhand. The other eight were long-time residents of Delhi.

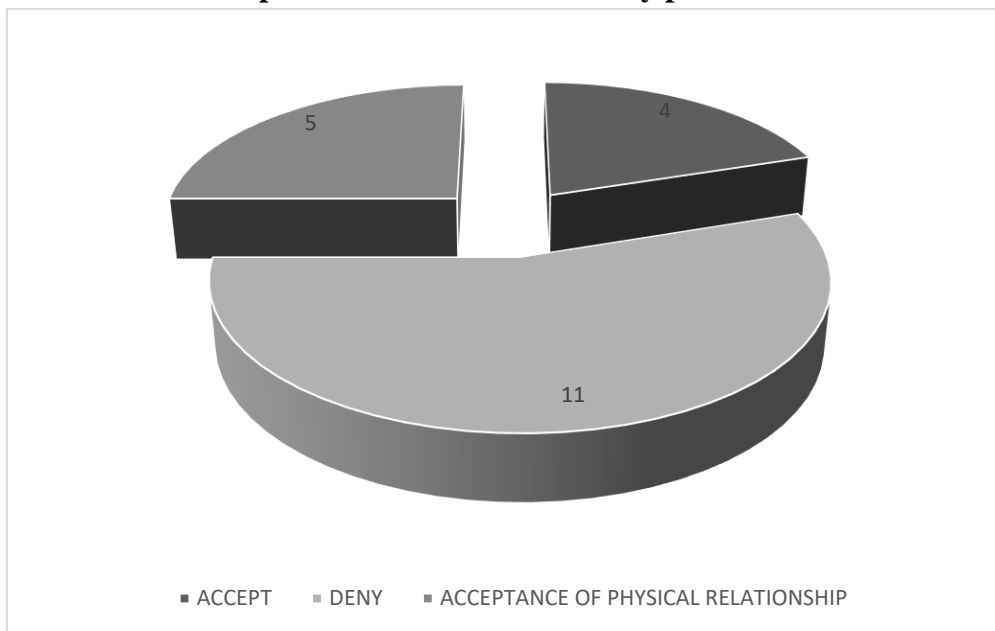


**Table 27: Sections under which the interviewed prisoners of Tihar Jail were convicted under**



According to the information given by the prison authorities' nineteen men were charged with section 376 of Indian Penal code (IPC) for raping a woman. In addition to Section 376 of the IPC, it was found that the interviewees were also charged with Sections 354, 506, 392, 365, 34, 363, 341, 307, 328, 392, 397, 377 and 397 of the IPC. Only one of the interviewees was charged for raping another man under IPC section 377. Section 506 which provides for punishment for intimidation was also a section a majority of the interviewees were charged under. Four of the men were involved in cases of gang rape; hence were also charged with section 34 IPC. Three of them were also charged of robbery under 392 IPC. One of the interviewees was only charged with section 307 of IPC for the attempted murder of a young woman, he wasn't charged with rape.

**Table 28: Acceptance or Denial of Crime by prisoners interviewed**



A majority of the interviewees denied the charges; most of them blamed the criminal justice system which was in their view tilted towards the victim. According to a few others, who denied the committing the crime, claimed that the charges were levied against them due to reasons like family rivalry or alcoholism. Some denied the charges because they claimed that they were co-accused in a gang rape, in which they played little to no part. Only five of the interviewees admitted to having sexual intercourse with the alleged victim.

However even in these cases of admission, the interviewees claimed that the girl in their respective cases had turned hostile due to some reasons and falsely accused them of rape. They denied that the intercourse was without consent. For instance, the inmate, who had a B.Tech degree, had been living with the girl for quite some time. Later the girl started demanding money from him and refused to marry him. In another case of similar nature the woman was living with the accused and later demanded that he transfer the house which was in the name of the accused's deceased wife in her name. The accused claimed that because he refused to do so, the woman charged him with rape.

Only four interviewees took full responsibility for sexually assaulting a woman. In one instance, the interviewee could not deny the charge because his case was well reported in the media; it was a typical stranger rape case. It involved three other juveniles who did not participate in the rape but were assisting the accused. The interviewee's juvenility could not be proved. Upon being asked why he had committed the rape, he told us,

"We did not approach the girl to do anything. We just wanted money to pay off the debt. Now I regret what I had done that day. She was crossing the road, we approached her. I took her purse and started

moving. I was calling my friends but they were not there; I turned back to see them. I saw them doing things to her. I was not able to control myself seeing that. I was stupid because of my age”.

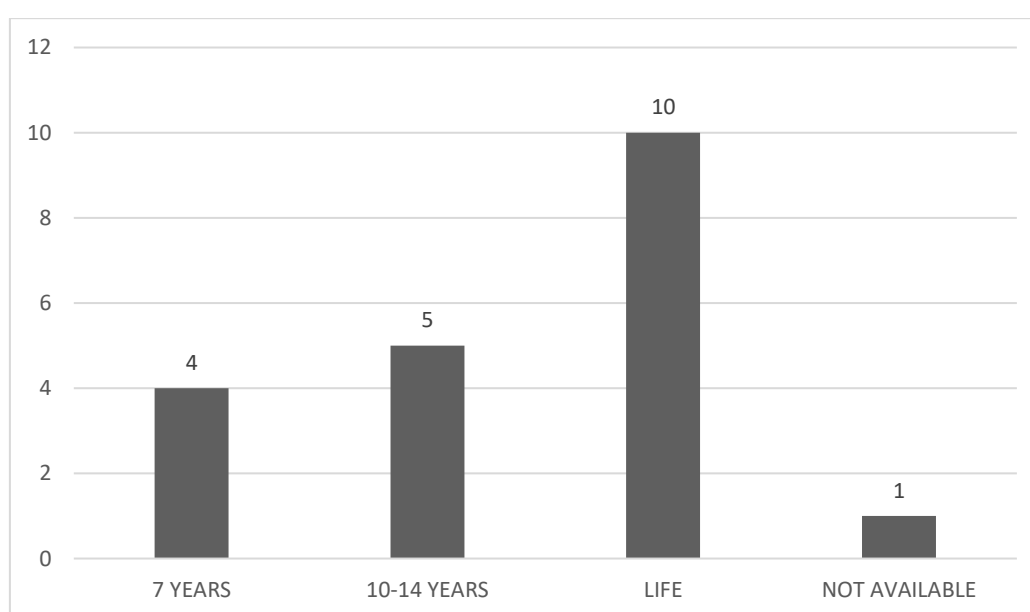
According to him, he might not have committed rape if his friends had not started teasing the girl. However, it was found that his narrative was false because according to media reports the girl was taken to a nearby place and raped while being threatened with a knife. The interviewers found that this interviewee showed no signs of remorse. On being asked what he thought were the possible reasons for the increasing incidence of rape he told us,

“It happens because you know as in our homes there is a garbage system outside home to take the waste products away and get rid of them, now-a-days this is not happening. At one place. Mother, father, sister, brother sit to watch all the garbage that TV shows. In homes of rich people at least they have separate rooms to see these things but not in families like ours, the middle class. That is why things like this happen. All the vulgarities that are shown in TV is the reason for all this. Also the uneducated people do this, they do not have any knowledge about how to control themselves. That is why people do things like this”.

In another instance of admission to the crime, the interviewee said he had raped his girlfriend to exact revenge. According to him:

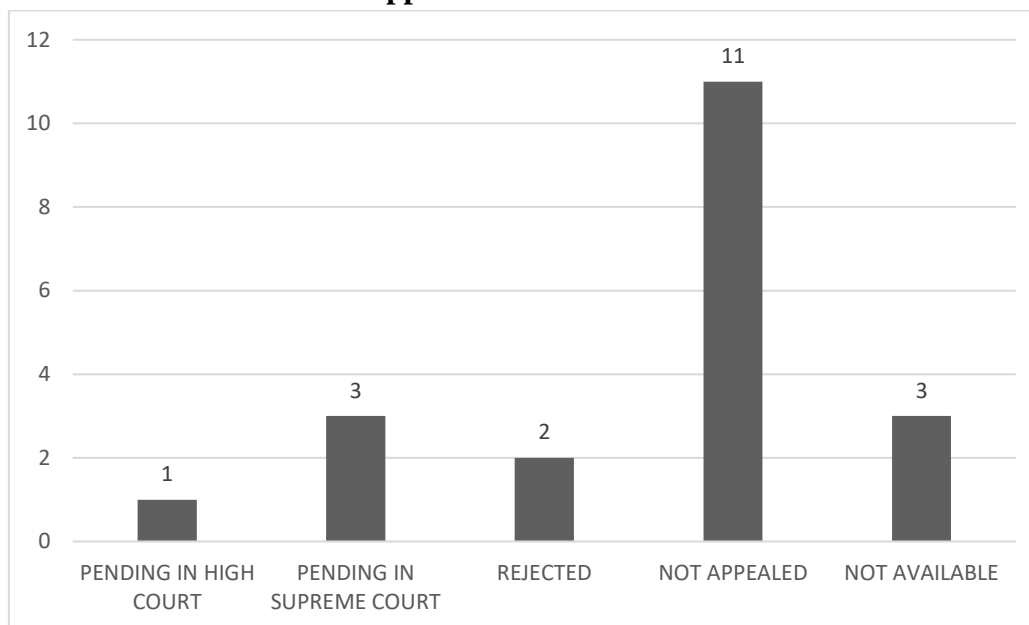
“She refused to marry me; after a long relationship. She asked me to stop seeing her and I was not ready for it. That is why I decided to kill her. I did not rape her. This charge had been made afterwards”.

**Table 29: Punishment for the Prisoners interviewed in Tihar Jail**



Fifty percent of the interviewees (n=10) were sentenced to life imprisonment and 25% were sentenced for 10 years or more. Five of the interviewees were sentenced for five years. While four of the convicts were serving a sentence of seven years, which is the minimum sentence for rape. Convicts under life imprisonment are free to avail leave from jail in the form of furlough.

**Table 30: Status of Appeal of inmates interviewed in Tihar Jail**



There are legal provisions which provide convicts the chance to appeal to a higher court against the punishment given by lower courts. Eleven of the interviewees accepted their fate in prison and have hence not applied for reconsideration or appeal. Three appeals are pending in Supreme Court and one in High Court. Appeals of two of the interviewed convicts have already been rejected by the courts. Information on this issue was not available for three interviewees. The lower rate of appeal by convicts has to be looked at in the broader context of the operation of the criminal justice system in which financial and other kinds of resources are required to carry out litigation which may stretch into years. Secondly, prison life offers the basic wherewithal of survival like food clothing shelter etc. which may not be available to a majority of inmates in the outside world.

### **6.3.2. Case Illustrations from Tihar Jail**

#### *Case Illustration 20*

Ajay was a migrant from Uttar Pradesh. He was employed as a junior engineer in the Public Works Department. The girl he has been accused of raping and he were working in the same company. He was convicted of rape in 2015 under sections 376 and 328 of the IPC; his appeal is currently pending in the Delhi High Court. He has been serving his sentence in Tihar Jail since 2013. He was charged with rape of his girlfriend. According to the FIR, he had drugged his girlfriend's cold drink in office. However, Ajay claims that he was not even working in the office at the time the rape was supposed to have taken place. In his opinion, it is a straightforward case of blackmail but nobody is ready to believe him. He claims that there are a lot of contradictions in the FIR: for instance, on the one hand the woman says that she does not know my parents, but on other she also says that I used to not acknowledge our relationship in front of my parents. Both the things cannot be true. Furthermore, he says that they had a consensual sexual

relationship which soured and subsequently the girl tried to blackmail him. He said that during the course of their relationship, she had taken a lot of money from him, including a house. She also demanded a sum of Rs. 50 lakhs from him. Ajay said that there is a recording of the girl's lawyer asking for this amount. However, he claims that the judge refused to recognize these facts. Ajay also blames the media for disproportionately highlighting the case. According to him Section 376 is misused a lot and false cases are filed against innocent men.

#### *Case Illustration 21*

Abhishek is a 23 year old school drop who was working as private mini-bus driver. He lived with his parents and siblings. His father was a lower level government employee and his mother was a housewife. Abhishek along with three of his friends are co-accused and they have been convicted under sections 376 (g), 392, 365, and 34 of the IPC, and are serving a ten- year sentence in Tihar Jail. While two of his friends are lodged in the Mandoli Jail, the other person is serving his sentence in another jail in the Tihar complex itself. Their appeal is also pending in the High Court.

Abhishek said that they were all partying in Gandhi Vihar (a lower middle class area of East Delhi), when his friends called a “call girl”, with whom his friends were already acquainted. The girl was 24 years old. He claimed that he did not know her at all, but on being asked if the girl's parents were the ones who had filed the complaint he said that the girl didn't have any parents, contradicting his claim that he did not know the girl. They paid her Rs.5000 (out of which Abhishek's share was Rs.1000) to have sexual intercourse with them. They took her to an abandoned and empty stretch so that they would be unnoticed. Abhishek claimed that his friends had already done this before, and therefore, they left the room they had rented for drinking and “everything happened” in the car. He said that one of his friends had hit the girl during the sexual intercourse. However, he claims that because he left the scene immediately, he had no clue what actually transpired. Subsequently, while being dropped the girl was further slapped 3-4 times by one of his friends.

Abhishek said that the intercourse was consensual and therefore the rape charges were false.. He said that his friends were drinking and he wasn't. On being asked if he felt guilty, Abhishek admitted that he did. He said that when in a group, the mind gets influenced by peer pressure. After serving his sentence, Abhishek wants to drive vehicles and take care of his parents. He also plans to pursue higher education and has filed the form for open schooling so that he can complete his secondary education.

#### *Case Illustration 22*

Nabeel is a 29 year old unmarried self-employed furniture maker who was born and brought up in Delhi. His three brothers and he are co-accused charged under sections 376 and 34 of the IPC. They are housed in the same jail of Tihar Jail complex since 2011. He said that they were

charged under Section 376 (2) f of the IPC which provides punishment for rape by a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman. In this instance, the girl is the daughter of Nabeel's mother's brother i.e. distant cousin. The complaint was filed by his mother's brother's father-in-law (mamu ke sasur). Nabeel said that his mother's brother died in 2004. After his death there was some trouble regarding the property. His paternal uncle had three girls and the girl in this instance is the youngest daughter. The person who filed the complaint was taking care of the daughters and therefore wanted to sell his part of the land to fund their marriages. The land in question is in the name of Nabeel's grandfather (nana) and is now taken care of by his grandmother (nani) after his death. All the decisions regarding the land are taken by consensus from all the children including Nabeel's mother. His mother's eldest brother refused to sell the land. They said that the girls could decide themselves about the land when they become adults. However 'mamu ke sasur' was not happy with this decision. According to Nabeel the real culprit here is the wife of the person who filed the complaint because she is constantly looking to pick fights.

According to Nabeel his brothers and he hardly knew the girl. It is a totally false case. However their appeal in the High court has been rejected. Since so much time has passed already, they have not appealed to the Supreme Court. Further, he blamed the skewed criminal justice system. He said that there is no DNA evidence and the forensic tests say that hymen has a crack, but it is not torn. He said that there could many other reasons behind this crack, for instance riding a bicycle. Nabeel said that the girl's statement were also unreliable because she kept changing it. At first she said that they had raped her and then only later she added that they had been raping her continuously for a year. Then, she said it had been happening for 3 years and then later said 4 years. According to Nabeel the case is all made up. The investigating officer was very close to his relatives. He said that they were also asking for money, and they wanted the brothers to marry the girls. Nabeel said that they had agreed to the cash but had declined marriage.

On being asked about the practice of cross-cousin marriages in his community, he said it was not a practice in his family. He denied any close connection with his female cousins, even though he admitted that the victim came and stayed for a short time at their home, he denied any interaction with her. He said that his family was very influential and that he was already betrothed and he will soon get married. He had even applied for parole for this purpose. According to him nobody believed the story of rape.

### *Case Illustration 23*

Brijesh is a migrant from a village in Panna District of Madhya Pradesh. He came to Delhi in 2005 and has been working as a rickshaw driver ever since. He lives with some other migrants from his village in the Rohini of West Delhi. He has been in Tihar Jail since 2011, convicted under sections 307, 328, 376 and 506 of the IPC. He said that on one occasion when he was pulling his rickshaw at night, he was alone and wanted to go to his house and eat and take rest.

Brijesh said that he was under the influence of ganja and liquor and was therefore sleepy and hungry all at the same time. Two ladies asked to be dropped at the nearby metro station. He said that he asked them for Rs. 30 instead of the Rs.20 hoping that they would decline. They agreed to give Rs. 25 and one of them boarded his rickshaw. Brijesh claimed that the way she was talking to him confused him. He thought that she wanted him to do something to her sexually. He recounts that he remembers her agreeing to go to the Japanese Park located nearby. However, he admits that because he was under the influence of drugs, he was confused and therefore it is possible that she must have actually not agreed. He said that according to him the girl sounded like a “loose girl” and he thought she wanted to lure him. He said that he had seen such women, “who sleep for money.” Brijesh did not take her to his flat because the shopkeeper near his house would complain to the builder if he brought women home. Brijesh said that when he had stopped the rickshaw, the girl told him that he had wrongly understood her. She told him that she wanted to go to the metro station by taking any route across the Park. On hearing this Brijesh got angry and confused. He said that he did not remember the exact details and said that he must have hit her and raped her. He said that he was not aware of his actions and was certainly very angry with the situation. He said that the girl was crying and requested him to drop her at the metro station, but he just hit her and left her there.

Brijesh said that in addition to the drugs and alcohol which confused him, he had also been betrayed by his friends. When he came back to his house after the incident, he sat with his friends and told them everything. One of his friends must have told the police. He said the FIR mentioned that workers of the Public Works Department saw him committing the rape. They took the woman to the hospital where she filed a complaint with the police.

Brijesh was at pains to insist that that even though he had committed rape, it was not all his fault. According to him the woman also falsified a lot of things, for instance she claimed that he had put a handkerchief on her nose to make her drowsy, which he denies. He also claims that police may have had a part to play in falsifying of information. He said that even though he has been sentenced to life imprisonment, he does not want his family to waste money on appeals. He said he has told them to forget him.

#### *Case Illustration 24*

Rajesh was a school dropout who had come to Delhi in search of better opportunities. He worked as a driver and lived with his wife and children. He had an extra-marital relationship with his wife’s friend who also resided in the same neighbourhood as him. He said that he was very “famous” in that area. Once Biharis and Jats got into a huge fight, in which I came out as a hero. According to him, the woman was attracted to him because of this. He accused the woman of seducing him. He said that it wasn’t his fault. According to him the woman was very clever and had a “loose character.” He said that she kept a track of his activities and was always was waiting for him to come home. Whenever he was alone she came and met him.

His narrative had all the elements of a potboiler; blackmail, victim turning hostile, family influence and blind laws. He said that his extra-marital relationship was consensual in nature and nothing would have happened were it not for a dispute with his neighbor.

According to Rajesh his neighbor was jealous of him. He said that his neighbor saw the woman going to the government hospital to get an abortion and called the deputy superintendent of police. After this the DSP reached the hospital and interrogated the woman. According to him the woman blurted out his name in nervousness. He claimed that he didn't even know if the child was even his. He said that she had spent one whole night in the office of a property dealer subsequent to which she had abdominal pain the next day. I know because she told me that there were two men that night. I asked her not to do it again.

Rajesh said that the Judge in his case was also laughing at the charges. The case, according to Rajesh, wasn't strong. He said that his family had good contacts, an MLA from Madhubani was also very close to his family. He said that he was very confident that nothing will happen to him. But the public prosecutor who dealt with his case was a woman and she was stubborn. He said that the girl was trained for the testimony to say that he had raped her at gunpoint. He also said that he was offered that if he were to pay up Rs. 5 lakhs then the case would be dropped but he could not afford such a huge sum. At the high court, he said that the woman withdrew all her charges but the high court judge upheld the judgment of the lower court. He said that he planned to appeal in the Supreme Courts and has sought the assistance of a research team to this end. He said that there were more than 200 women who would vouch for him and that he wasn't capable of such behavior.

#### *Case Illustration 25*

Rohit was the main accused in the 'Khooni darwaza MAMC' Rape Case involving the robbery and rape of a young woman in Delhi in 2004 that was frantically covered by the media. He lived with his parents and siblings; his father worked in the municipality. Rohit was in the 9th standard. He used to roam around a lot with his friends, who had the habit of consuming alcohol and smoking.

Rohit said that one of his friends, who had borrowed money had gotten beaten up by the moneylenders. According to him, this is when the story started. He said that they had not approached the girl to do anything, they just wanted money to pay off the debt that his friend had taken. He claimed that they only wanted to take her money. However, when he snatched her bag and ran ahead, his friends started sexually assaulting her. He claims that he "lost control" upon seeing them, and he too participated in the assault. He blames his young age for the rape and said that he regrets it now.

Out of the four accused, the other three had been released. While one of them was only charged with robbery, the other two were released after three years because they were juveniles. Even though Rohit had said that he was also a juvenile at the time, his birth certificate and the bone



density test did not vouch for him being underage. Furthermore, he categorically stated that he was the only one among the four of the accused who had actually raped the woman.

Commenting on the current sexualisation of society he said that it is a result of media and television. According to him the vulgarity that is shown in TV corrupts minds. He also said that it is predominantly the uneducated people who do this because they do not have any knowledge about how to control themselves. Interestingly, he also said that people who eat non-vegetarian food commit rape. According to him, at the time of the incident he used to eat a lot of non-vegetarian food, and therefore he committed the rape.

#### *Case Illustration 26*

Ramesh was a security guard whose wife had died in 2009. He began having a live-in relationship with a 24 year old woman who was pursuing a degree in science. He said that he had started the relationship because he needed somebody to look after him and his children. He said that they had agreed to get married and were just about to do so when she demanded that he transfer his house to her. However, he said that he could not transfer the property because it was in his deceased wife's name, and his children had all rights to it. He said that he had told the woman that after marriage, she will get the rights to the land that he owns: and even he were to die, his son would take care of her. He had told her that though she would not be able to sell the land, she could use it for financial support. Ramesh said that all the property rights were in favour of the first wife according to the law, and he could not change that.

Ramesh said that she had also charged his uncle for abetting the rape. His uncle is 72 years of age, and is in Jail number 3 in the tihar complex. Ramesh said that his uncle is a good man, an ex-service man from Indian Navy. According to him, the woman's attorney falsely claimed that the woman was raped while his daughter was in the same room and his uncle was guarding the door with his rifle. He said that the woman had also claimed that his uncle had held her back and told her that sex has no age.

Ramesh said that his appeal had been rejected by the court. He hasn't been given interim bail to even visit his children. He said that he did not feel guilty at all because he had not committed any mistake, and that the law was at fault here.

## **8. CONCLUSION AND PROJECT RECOMMENDATIONS**

This project has made a foray into the thinking of perpetrators through cursory interactions with a small cohort of juvenile and adult offenders (accused and convicted) in government run penal institutions in Delhi. The project's duration was inordinately delayed due to lack of accessibility to the field sites, notwithstanding the good offices of the NHRC. Finally, when we did get access through assistance from the Delhi commission of Women, the conditions of data collection were so constrained (one-time short duration supervised interviews) that both the quality of the data so obtained and the inferences drawn therefrom need to be taken with a high level of probability. Therefore, the generalizability and applicability of the findings for actionable plans cannot be guaranteed. Nonetheless, we have tried to do some summing up and give some tentative recommendations as required by the terms of reference of the project.

### **8.1 Stringent Laws do not Reduce Crime**

According to many feminist scholars in India deeply ingrained social problems such as ways of grooming, male privilege and a sense of masculine superiority are some of the primary causes of sexual offences by juvenile offenders. Such exposure and grooming affect the way these men view women; in their eyes women are financial burdens to the family and therefore there is a reduced respect for them ultimately resulting in gender inequality and perpetration of violence. Ratna Kapur (2012) argues that demand for stringent laws, i.e., a sexual security regime of the state, fails to address the pervasive nature of patriarchy, power and domination. While harsher punishment is assumed to have a deterrent effect in the popular imagination, empirical evidence shows that more stringent laws do not necessarily bring down the crime rates. While some may make the argument that severe punishment even for minor offences in some of the Middle Eastern countries results in a decrease in crime, from a human rights perspective harsher punishment is not necessarily the solution to deviance or crime. Looking at the perpetrator from a human rights perspective demands moving beyond punishment and imprisonment as modalities for bringing down the crime rate. There is a need to engage creatively with individual, interpersonal and group processes that mould behavior particularly in the context of law enforcement. This was largely the perspective of experts interviewed in this study like child rights and gender rights activists. They emphasized the need for a child-centric approach to juvenile offenders and a reformist approach to adult offenders, while highlighting the adverse consequences of incarceration. They had largely nothing positive to say about the way offenders whether juvenile or adult are currently managed in the criminal justice system in India. Several experts cited experimental approaches in the West which they felt were either absent or badly being implemented in the Indian context e.g counselling for prisoners.

Lawyers and law enforcement personnel that we interviewed, on the other hand, had more divergent perspectives. While some were in favour of amendments like treating juveniles as adults depending on the nature of the crime and the offender's understanding of its gravity and

consequences, others brought up the child rights arguments saying that we need to be more flexible in the case of juvenile offenders given their evolving physical, psychological and neurological status in the context of the lifecycle. But they all agreed that reform had to go hand in hand with deterrence. It's just that modalities of both had to be different for juvenile and adult offenders.

Thilagaraj, and M. Priyamvadha (2008) undertook a study to estimate the proportion of delinquent persistence among a target population and to find out the impact of official intervention on delinquent persistence released juveniles. Data was collected from 58 juveniles released from a Special Home in Tamil Nadu since 2000 under the age group of 14-22 years. The paper examined the impact of official intervention on the life course of individuals by addressing delinquent persistence among released juveniles. Overall the official intervention has important effects on the attitudinal change in the families of the released juveniles; stigmatization in the society which resulted in subsequent delinquent persistence. This study helps in understanding the causation of recidivism through the labelling theory. The theory suggests that excessive police intervention, suspicious neighborhood and resentful family members prevent young offenders from reintegrating in the society. The new law recognizes this approach for convicting the juveniles in India.

Though since 2013 the Indian criminal law has seen several changes, according to many feminist scholars the law has failed to grasp the complexities of sexual violence. Some argue that stringent punishments achieve very little in terms of reducing crime rates. For instance, Scholars such as Arlene Manoharan, Swagata Raha and Shruthi Ramakrishnan have pointed to a study in the context of US which shows that transferring juvenile cases to adult courts and jailing them does not reduce crime, and in fact generally has resulted in increased crime, including violent crimes (Manoharan, Raha and Ramakrishnan, 2015). One of the very significant legal changes after the Nirbhaya case was differential treatment of juvenile offenders depending on the nature of the crime; if a juvenile commits a heinous crime like rape and/or murder and he is deemed capable of understanding both the gravity of the crime and its consequences, then he should be treated as an adult. However, this position again contests the United Nations convention on the Rights of the Child to which India is a signatory and the prevailing thinking in the women and child rights movements in the country. Vrinda Grover, human rights lawyer, argues that it is fallacious to assume mental maturity based on heinous nature of crime, as evidenced from medical studies (Grover, 2014). While the present debate in India is focused on the age of juvenility for crimes that are seen as 'heinous' and the death penalty for rape particularly rape of minors, various views are advanced, there is hardly any systematic study into the mind of offenders of sexual violence. While prescriptive suggestions based on theoretical knowledge drawn from experiences in other parts of the world could be useful, it still does not provide us with an adequate understanding of the issue of delinquency from the specific perspective of the Indian socio-economic and political milieu. This study, through interactions with offenders and thereby trying to go into the socio-psychological dimensions of their offences, is an attempt at exploring why and under what circumstances the offender gets engaged in crimes against women. While

this is only an exploratory study, and hence may not offer conclusive policy prescription, the modest achievement of this study would be to open up an area for further research, which till now remains unexplored.

The design of this study does not allow us to comment on whether stringent laws will bring down crime in the long run. That requires a different type of research like statistical analysis of reported and convicted cases, which does not fall within the purview of this research. But we do feel that from a human rights perspective, mere hardening of laws without any accompanying policy and institutional changes will not make much of a change. Commonsense tells us that stringent laws exist for heinous crimes but have heinous crimes ceased to happen? Do we have any evidence to show that a particular crime declined after a stringent was framed against it? Why should the case be any different for sexual crimes against women?

## **8.2. Perspectives of Perpetrators of Crimes against women (Juvenile and Adult)**

While multiple social cultural and economic factors play an important role in crimes against women, ultimately it is issues of power, aggression and control that underlie such acts. Patriarchal viewpoints configured the narratives of the boys and men interviewed in the study; and the dominant trope seems to be the allurements by the woman, lack of control over impulsive sexual acts and being a. Perpetrators said that they were falsely 'framed' by the woman and/or her family or were the victims of their own sexual impulses. Most juvenile offenders talked about the sexual relationship being consensual in nature including elopement and the girl's family having them charged for kidnapping, abduction and rape with the help of police. Rukmini Srinivasan has explored this issue in detail in her series of newspaper articles in the Times of India and our research corroborates her observations as far as teenage sexuality in urban areas like Delhi is concerned. Young people are sexually active from all social strata. It is just that those belonging to the lower classes, many of whom are migrants who come to the city for better economic opportunities, do not have the economic resources and social capital to avoid or escape from the criminal justice system. That is why prisons and observation homes are largely populated by the poor and migrant groups. It does not mean that the rich and affluent are not involved in sexual crimes. False

Even in the case of adult offenders, it was the woman and her family who was in some way involved in their plight. Even in the case of admission of guilt, the perpetrator framed his narrative as victim driven to or in some way implicated in the act without actually committing it as a volitional act for which sole he was responsible. From this different and not so different ways in which offenders articulated the circumstances which brought them in contact with the law, the subtext of sexuality is prominent. Men are confused about how to handle their sexual urges because the unquestioned privileges of masculinity of yore are being challenged today by discourses of gender equality, women's greater presence in the public sphere and a certain equation between modernity and sexual autonomy largely propagated in the media. At the same

time traditional values of chastity, family honour and women's subordination are very much part of everyday life particularly of the marginalised groups. This creates great confusion and anomie for boys and men as they are given mixed messages. And we as a society have not yet found the means to respond to these contradictory challenges.

### **8.3. The Issue of Consent**

In the traditional frame of Indian society, sexual consent technically did not exist and even in the context of the marriage laws as they exist today, marital rape is not a crime. Confining sexuality within early marriage particularly for women was the dominant modality. Today with late marriage, increasing education and employment of women particularly in urban areas and more competition in society, gendered expectations are changing and so are gender roles. One consequence of this scenario is greater premarital sexual activity among both young men and women. For perhaps the first time, women are exercising sexual autonomy and choice in a social milieu in which premarital sex for pleasure especially for women is still very much taboo. It is in this scenario wherein the issue of consent becomes relevant. According to the POCSO Act sexual activity with anyone below 18 years of age is illegal, and yet today's social context has created the conditions for such interactions. Consequently, the narrative of "false cases" and "framing" by the girl and her family come to represent the deep tensions between tradition and modernity.

### **8.4. Gender sensitisation of Perpetrators in Penal Institutions**

One way to resocialise perpetrators into the changing gender norms of society is through conducting gender sensitisation workshops with outside experts as part of the reform programme in penal institutions. Gender rights experts and psychologists either singly or in combination could be brought in to conduct such workshops. But before undertaking this work, the experts also need to be oriented to the criminal justice system in general and the case histories of the workshop participants. This plan would raise ethical concerns of confidentiality and informed consent particularly in the case of juvenile offenders which need to be resolved before conducting the actual workshops.

### **8.5. Migrant Status and Crimes Against women**

The sociological theories of crime discussed in the literature review section highlights the impact of the social environment like urbanisation on predisposition to all kinds of criminal behaviour. A majority of the offenders interviewed, both juveniles and adults, were migrants who had come to Delhi in search of employment and better living conditions. The move to the city was mediated by other relatives who had migrated from the same place. But living in Delhi for a migrant is filled with hardships. Beyond economic issues, they experience high levels of stress, difficulties in adjustment to a new environment, loneliness, alienation, more exposure

to drugs and alcohol, unsavoury company, etc. the freedom to engage in sexual activity in the absence of family supervision makes these youth more vulnerable to risky sexual behaviour which is borne out by some of the narratives. The clash of values and lifestyles produces a context more conducive to engaging in deviant behaviour.

### **8.6. The Issue of Anonymity and Disclosure**

The keynote of reformatory justice and rehabilitation is to reintegrate the offender into the community after completing his stay in the institution be it a prison or a juvenile home. It is for this reason that the identity of the juvenile offender is not disclosed. Even in the Nirbhaya case the identity of the juvenile was not disclosed. This is done to ensure that he is not stigmatized. If his identity is made public, he may face difficulties in integrating back into the society. For instance, he may not be admitted into a school. However, ironically the same respect for protecting the dignity of the adult offenders is not mandated by the law. In fact names of adult offenders are paraded in sensational media reports along with other personal information. How come the same principle of anonymity is not followed in the case of adult offenders? In fact public.

In the context of anonymity and disclosure of identity, another issue specific to sexual offences with legal implications arises. While revealing the identity of victims of sexual crimes is a punishable offence, the same principle does not hold in the case of alleged or actual offenders, whose names and personal details can be freely circulated. A time has now come when there is a need for safeguards to protect the accused from 'false claims'. According to retired justice M.V. Kanade (Deshpande, 2019) in certain types of rape cases where there is a substantial delay or in the case of a consensual sexual or live-in relationship which ends with complaint of rape in breach of promise to marry, it may merit a preliminary enquiry by the police to test the veracity or even legal locus standi of the case. However, while speaking about this the retired judge emphasized that these clarifications are only in cases where there is a substantial delay or after a relationship has ended in which there is an allegation that consent was given on the promise to marry. Another aspect that scholars discuss in this context is the right of the accused to be anonymous. For instance, justice Kanade argues that the anonymity of the accused can definitely be protected till a charge is framed or till he is convicted (Deshpande, 2019). Such a protection would be very beneficial particularly to the juvenile accused. In order to protect the anonymity of the accused, it is also important that media be careful in reporting on such cases. Although issues of identification and naming of the principal actors may not appear to be significant in the larger picture of things, they have major ramifications especially for accused who are later found to be innocent. This is one of our actionable recommendations of this study.

### **8.7. Sensitization and Training of law Enforcement Personnel**

According to an official at the Delhi Commission for Protection of Child Rights regards greater sensitization of functionaries in the juvenile justice regime as the need of the hour the Juvenile Justice Board needs a thorough training in order to understand a child's approach coming to them after the crime. She further noted that although at present there is no segregation of children accused of crime, there should be a segregation of the freshers or first time offenders from the repeat offenders. Then, there is no constructive activity in juvenile homes, the counsellors are poorly trained, the staff isn't very sensitized and their working conditions and terms are poor further disincentivising them from contributing positively to the institution. On the other hand, the jails are better equipped, they have some system in place, and they have unions and are therefore more democratic. The jails also have better work opportunities. But if the rate of recidivism is high among juvenile offenders, the need to fix the problems at the level of implementation of the juvenile justice system becomes even more urgent.

### **8.8. Prevention or Psychometric variables for identification of Potential Offenders**

Frank C DiCataldo, while comparing adult sexual offenders and juvenile sexual offenders on the one hand, and juvenile sexual offenders and juvenile non-sexual offenders on the other, has argued that while there is a limited overlap between adult sexual offenders and juvenile sexual offenders, the juvenile sexual offenders cannot be clearly distinguished from other non-sexual juvenile offenders. Like any other juvenile offender, they most often do not bear any clinical marks setting them apart from non-sexual juvenile offenders. Both these categories of juvenile offenders seem to share a common set of historical factors working upon them, and appear to have similar origins (DiCataldo, 2009: 19-48). DiCataldo's work further also discusses the absence of any empirically validated risk assessment instrument to measure how likely the juveniles are to commit sexual offence(s), for use in legal and clinical arena. The available instruments have not been able to predict anything beyond the automatic prediction of low-risk or no sexual recidivism, as juvenile sexual offenders recidivate at too low a rate for any instrument to capture them without clubbing a significant number of non-recidivists along with them (DiCataldo 2009: 84). The use of the search for an effective preventive tool based on psychological profiling is not only violative of basic human rights tenets but does not appear to find empirical validation.

Rape is recognized as a social act, a crime that is most often motivated by power; It is an act that is targeted to not only humiliate the woman in question but also the woman's family members, since the women of a family are purported to hold the "family honor" in them. This fact is evidenced even in the interviews provided in this study. There is a crucial need to understand the reasons behind such crimes. In the background of patriarchy, masculinity and power, rape is also used as a tool to control the intimate relations of youngsters by the families.

However, it is imperative to note that such crimes against women also occur in other intersectional contexts for instance, in the case of caste atrocities or war women are raped not only to degrade an individual woman and/ or her family but also to make a statement about dominance of a particular community over others. Therefore a crime like rape must be understood not only in the context of an illegal act that breaches a given statute but as a transgression aimed at violating the agency of the victim(s).



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