

Caste in Law Schools

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Why caste?

- The latest cases:
 - A 13 year old Dalit girl beaten up by three upper caste women as her shadow fell on them
 - A young Dalit man axed for “talking back”. When elders from his clan went to speak to the attackers, two of them were shot.

Human Rights Watch

- (World Report 2008): “Dalits and indigenous peoples (known as Scheduled Tribes or adivasis) continue to face discrimination, exclusion, and acts of communal violence. Laws and policies adopted by the Indian government provide a strong basis for protection, but are not being faithfully implemented by local authorities.”

Law and caste

What happens to these cases?

- How many cases are accepted in the court as caste crimes?
- Regressive judgements in most notorious cases
 - Bhanvari devi, Rajasthan,
 - Khairlanjee, Maharashtra

Caste: public secret of law

- recognised by everyone but the judges imparting verdicts of not guilty.
- Why?
 - Prejudiced judges?
 - Bias in the legal process?
 - Caste blind positive law
 - No knowledge of caste?
- Research question- how much caste is taught, learnt in law school?

Lessons from other jurisdictions

Literature available

- a. Stating the problem: Student experience of alienation- lower grades, participation, career chances of women and non-white law students
- b. Analysis: Why this might be? Law as a colourblind instrument
- c. Remedies: Inclusion into legal education – content and pedagogy – of race, gender jurisprudence

Critical race theory

What is understood as objective or neutral is often the embodiment of a white middle-class world view.

Law students are expected to learn “perspectivelessness”. They must become colourless legal analysts, stand apart from their history, identity and immediate circumstances. In case they embody their race into the discussion they are seen as biased, subjective.

Critical race theory

- Property law: slave owner's suit for damages for a dead slave against the lessee who supervised the slave when he was killed. Was the slave a 'human chattel' or a human agent?
- Probable cause in an arrest of a black person in white locality or a Latina student may have to consider / rationalize / sympathise with an officer arresting herself and car full of her friends on a suspicion that they might be illegal immigrant workers.

Feminist legal theory

- The reasonable man of law – is a white middle class male.
 - So if the court compares the action of the accused with a reasonable man, it would not reflect what a woman would do
- Provocation- not amounting to murder: a defense used in spouse murder
 - by husband – coming upon the wife with her lover
 - Wife – after years of domestic violence – not on sudden provocation

Method

How to find how much caste is taught, learnt in law school?

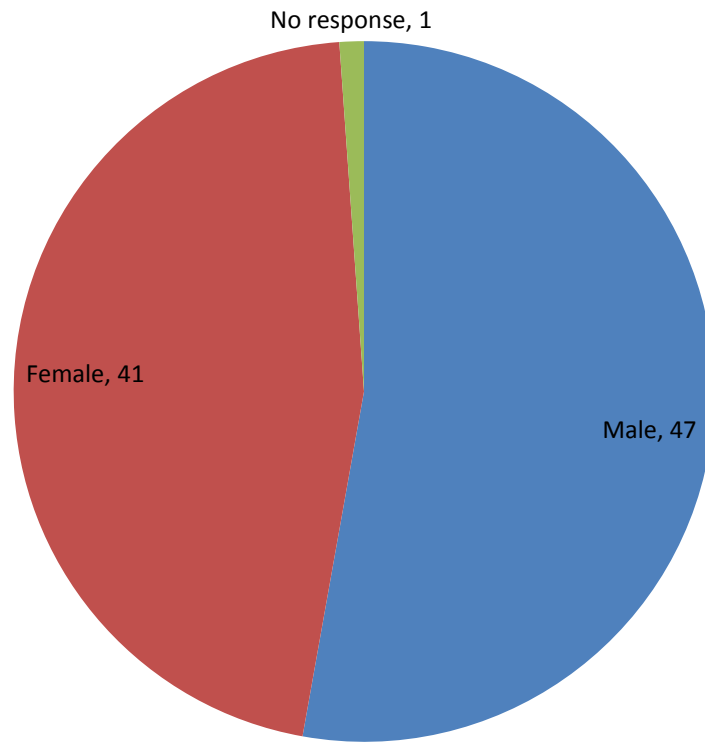
Content analysis: Subject list, faculty expertise

Survey:

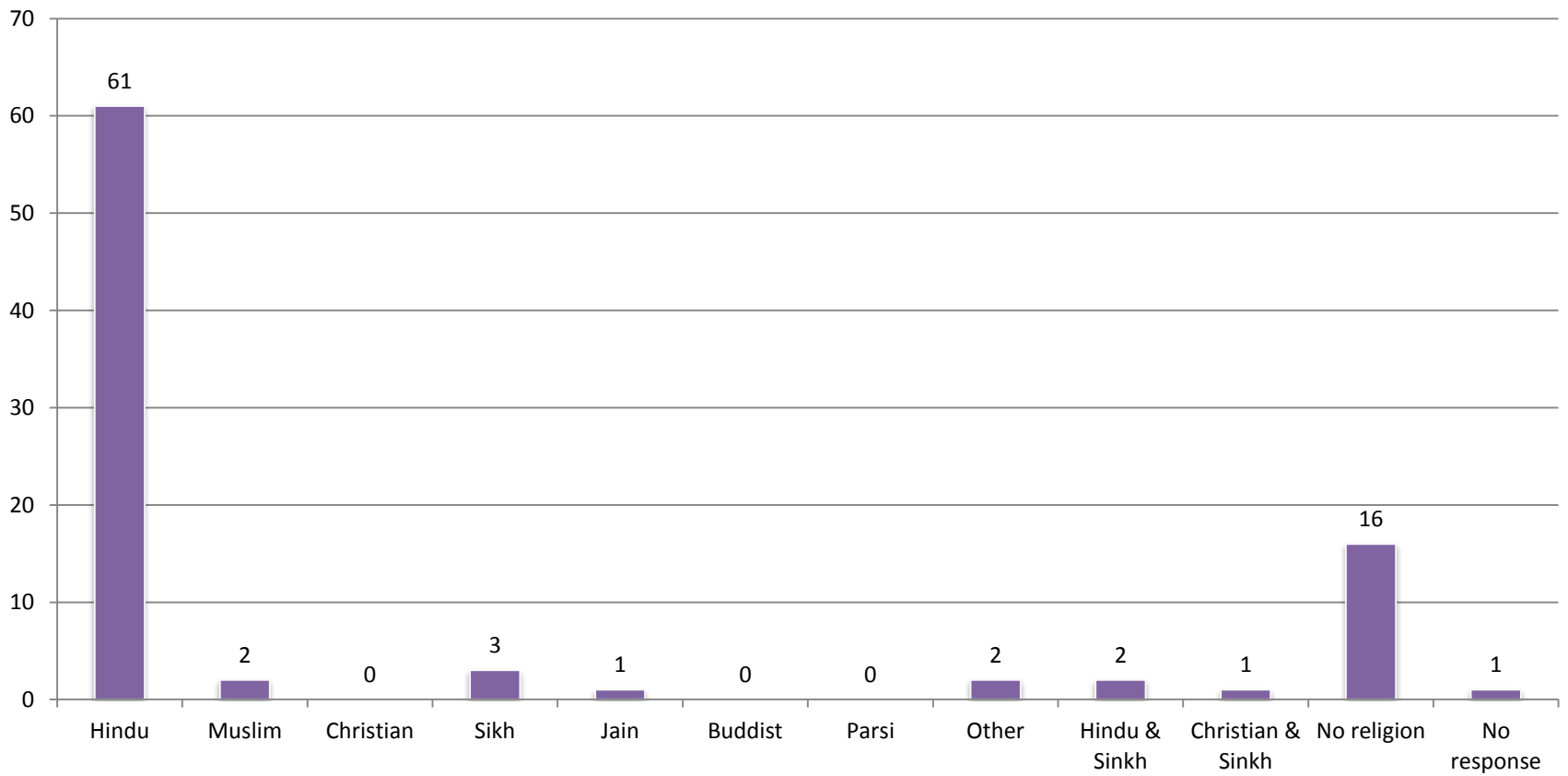
- Respondents: Graduating batch of students
- No= 115 (89 here)
- Location- New Delhi
- Law schools- public, private, semi private-public
- Timeline- April 2015

Data

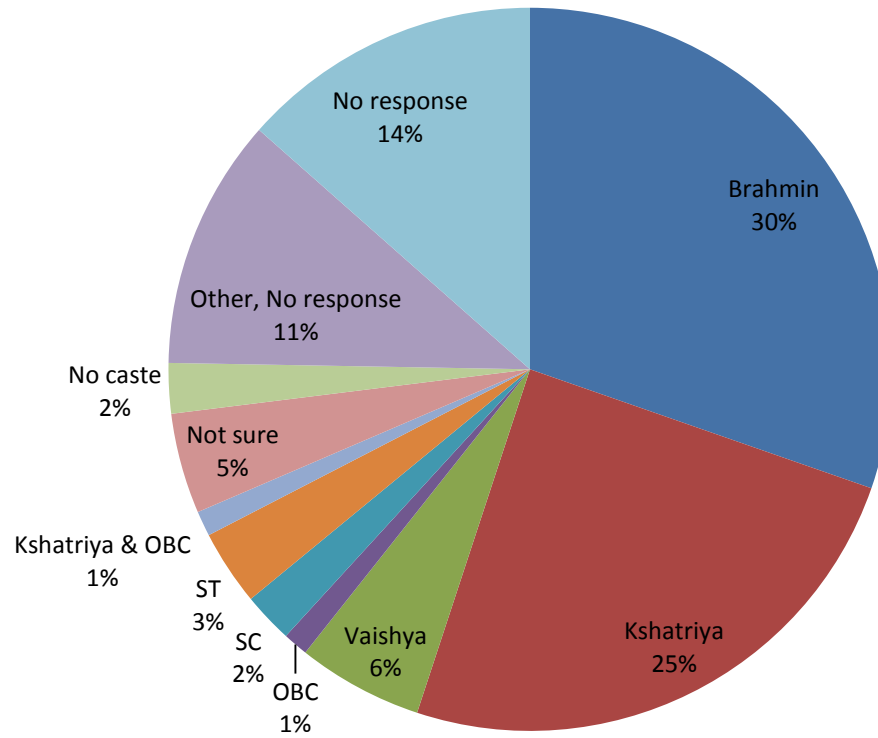
Gender



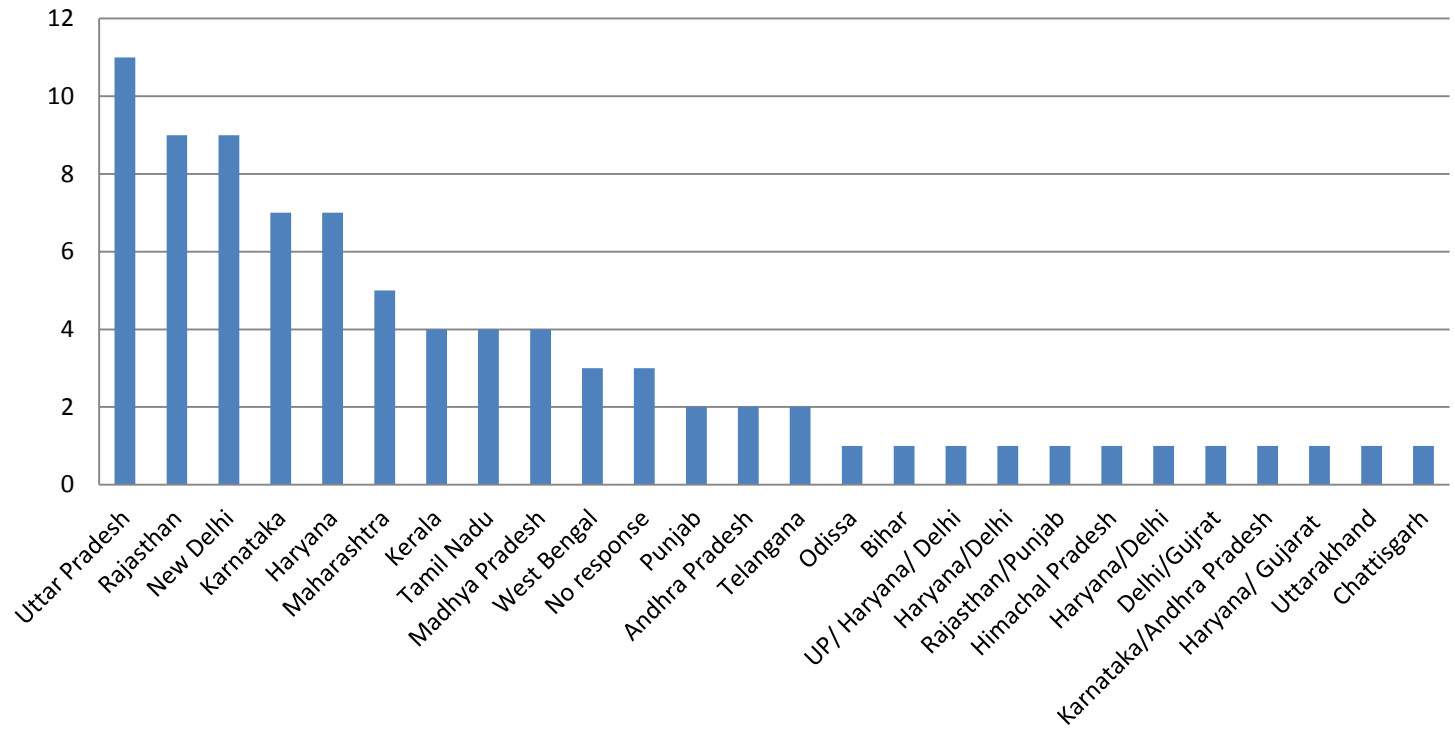
Religion



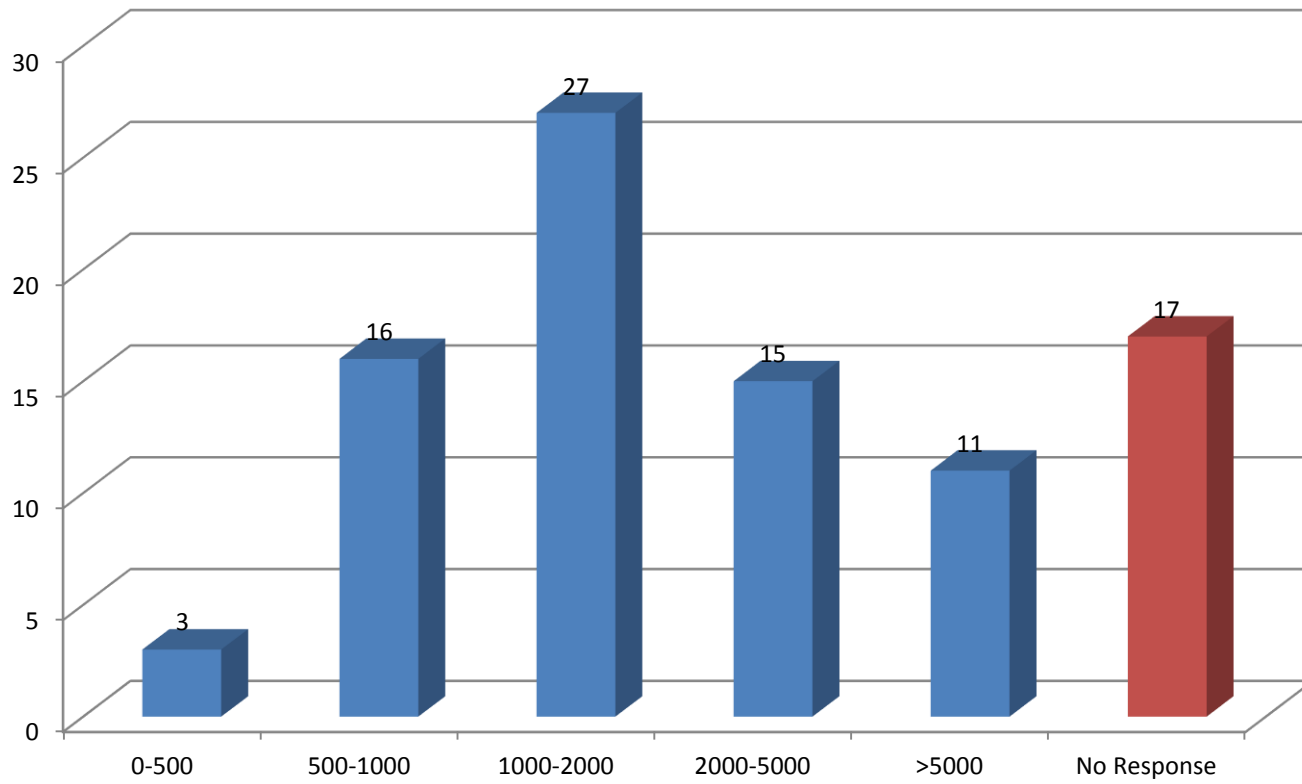
Caste composition



State Composition



Income



Outcomes

Q 15. Have you studied cases of caste in the law school?
In which subjects?

78 answered with a yes

66 wrote any subjects that taught them caste cases

24 stated 'law and poverty' as the only or the first subject

Positive: as law and poverty is taught at all and considers caste

Negative: as learning caste only in relation to poverty is like learning of gender in DV jurisprudence

Faculty emerges as a vital component.

Outcomes

Q. 17. What cases do you know?

32 answered with at least one case.

- Majority did not quote a single case

Q. 18. Mathura rape case. Details

42 answered with some details.

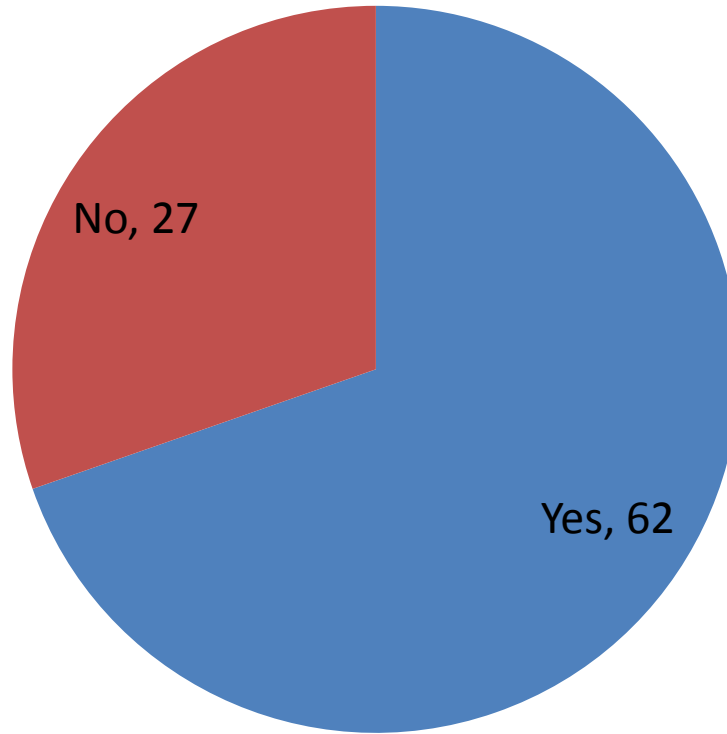
Mathura = Ryland v Fletcher of rape law in India

Outcomes

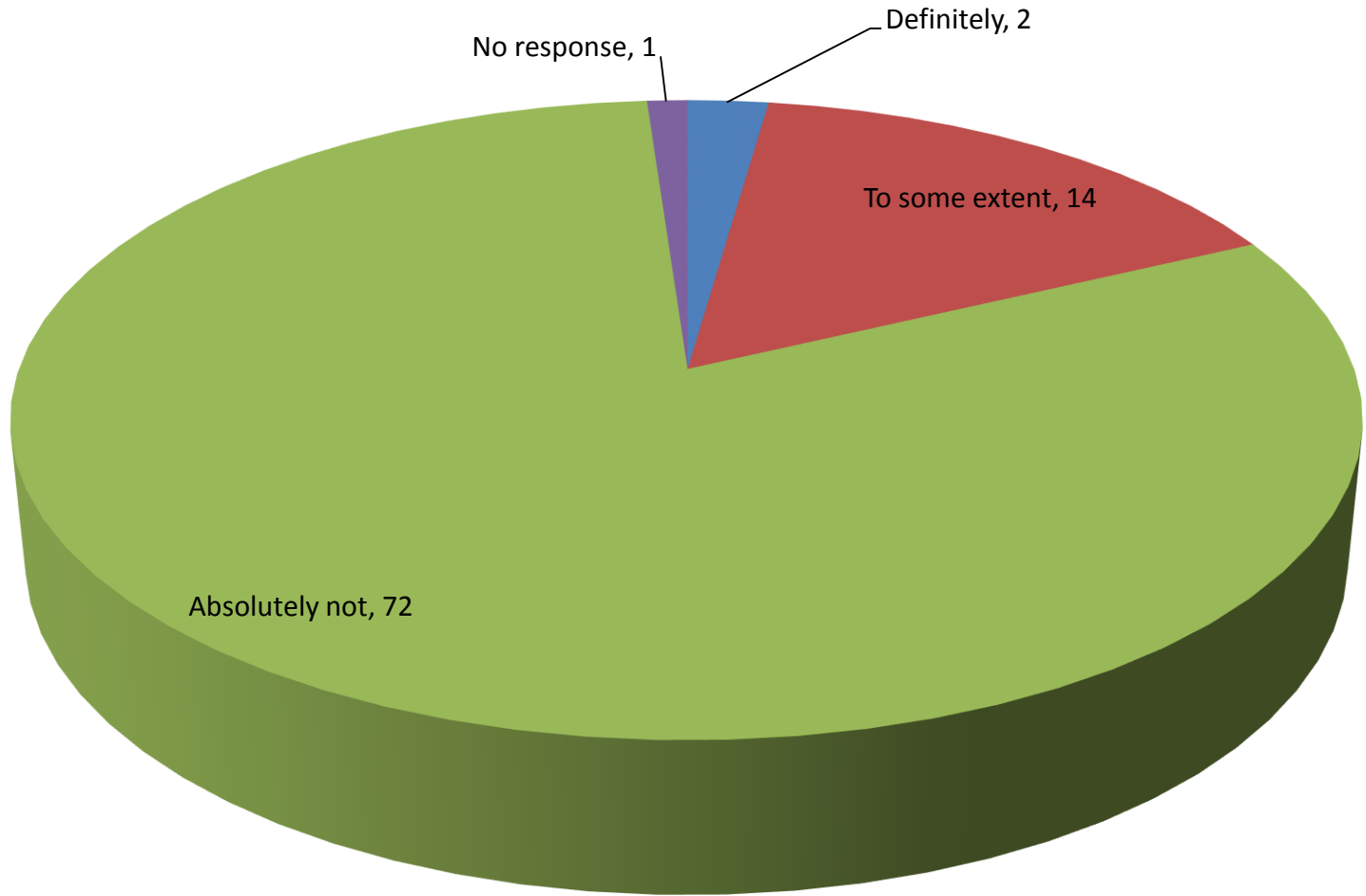
Q 23. There is a theft in the township. Pinya Hari Kale is a Phase Pardhi and resides in the basti outside of the township. The police arrest him first and question him. Why?

1. The police are just following their usual practice. They always begin investigation from the most suspicious characters. Pinya is one such character. (15)
2. The police have the power to arrest people they think are dangerous and habitual to crime so they were within their power. (6)
3. He probably committed the crime as his community, the *Phase Phardis*, has been notorious for committing crimes in the past. (12)
4. None of the above, I think,.....

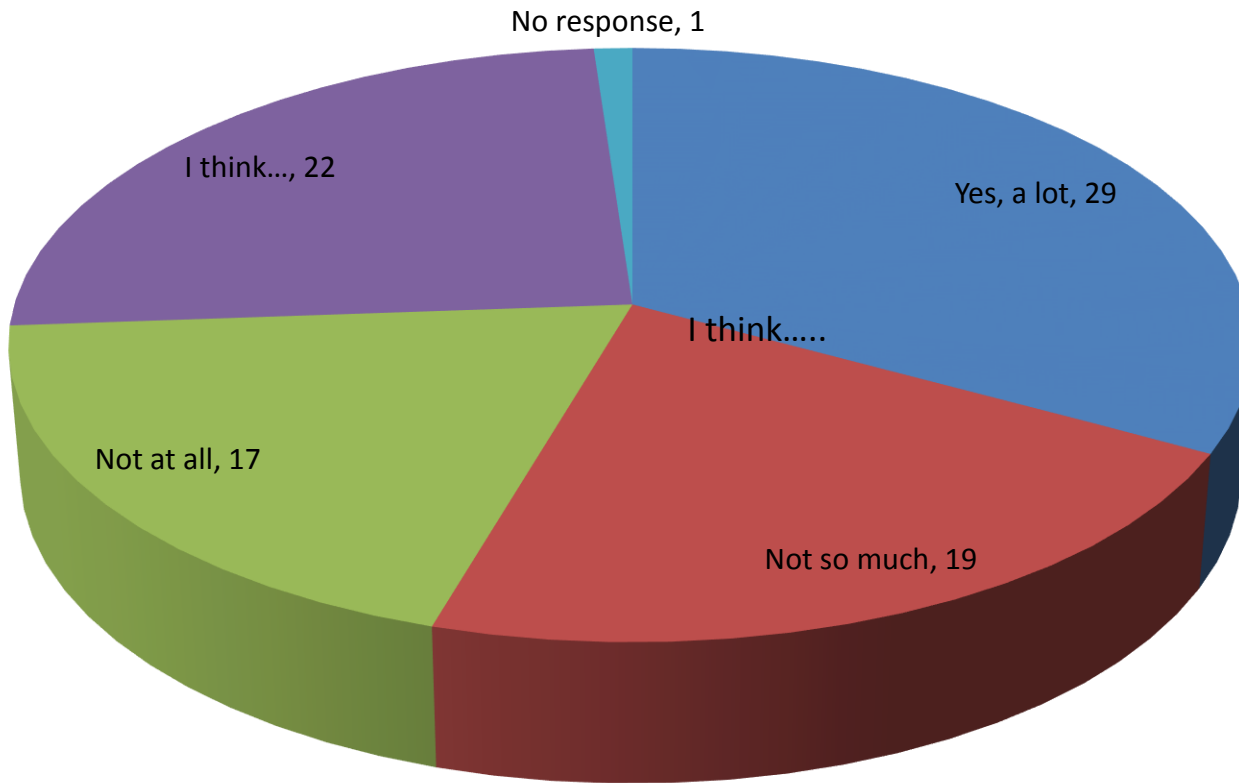
Does caste determine class in our society?



Do you think people's intelligence depends on what caste they are born in?



Do you think caste matters in employment?



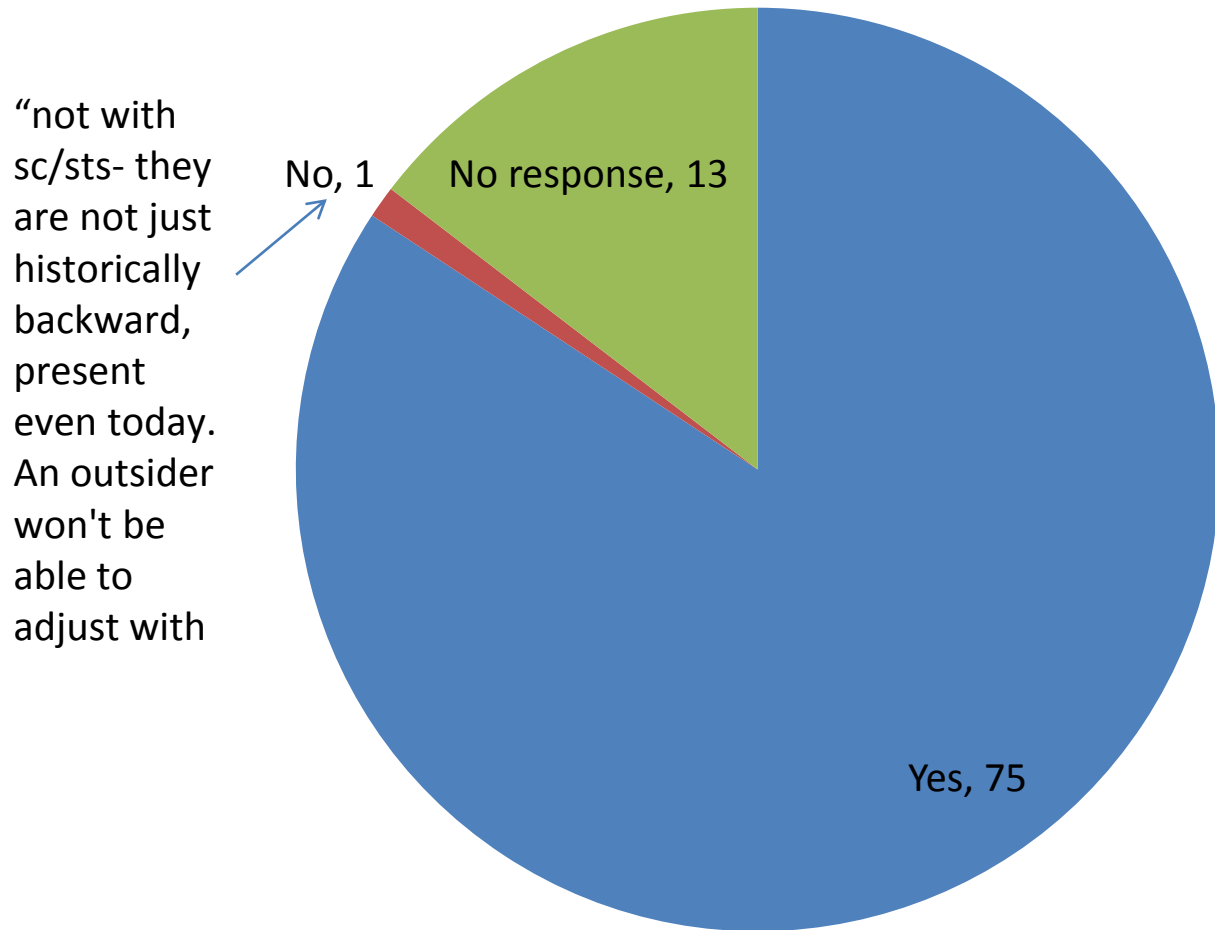
I think...

| |
|--|
| it does. But how much depends on where such opportunity exists |
| knowing the caste of probable recruit might colour opinions |
| it does to an extent |
| I think it doesn't but people to make fuss of it by tagging the person and ignoring his intelligence |
| reservation is means of compensatory discrimination for the wrongs committed in the past |
| a biased interviewer would definitely account for caste |
| That it shouldn't matter but be surprised if the employers are prejudiced |
| It should via reservation till we are able to remove the inherent inequity created by caste |
| I do not have the practical experience to comment on the same |
| it does matter to an extent outside of metro cities |
| depends upon where you are applying. Govt+ yes, privates + depends may be not so much |
| it matters, but it shouldn't |
| in some areas in India (non-metropolitan cities) it does |
| it should not matter, but maybe it does |
| it happens but it is sick! |
| it does in some areas & does not in the rest. Reservation is one method. |
| it shouldn't |
| Caste should be removed from the application form. |

The one in red – not representative. It does exist but, rarely captured.

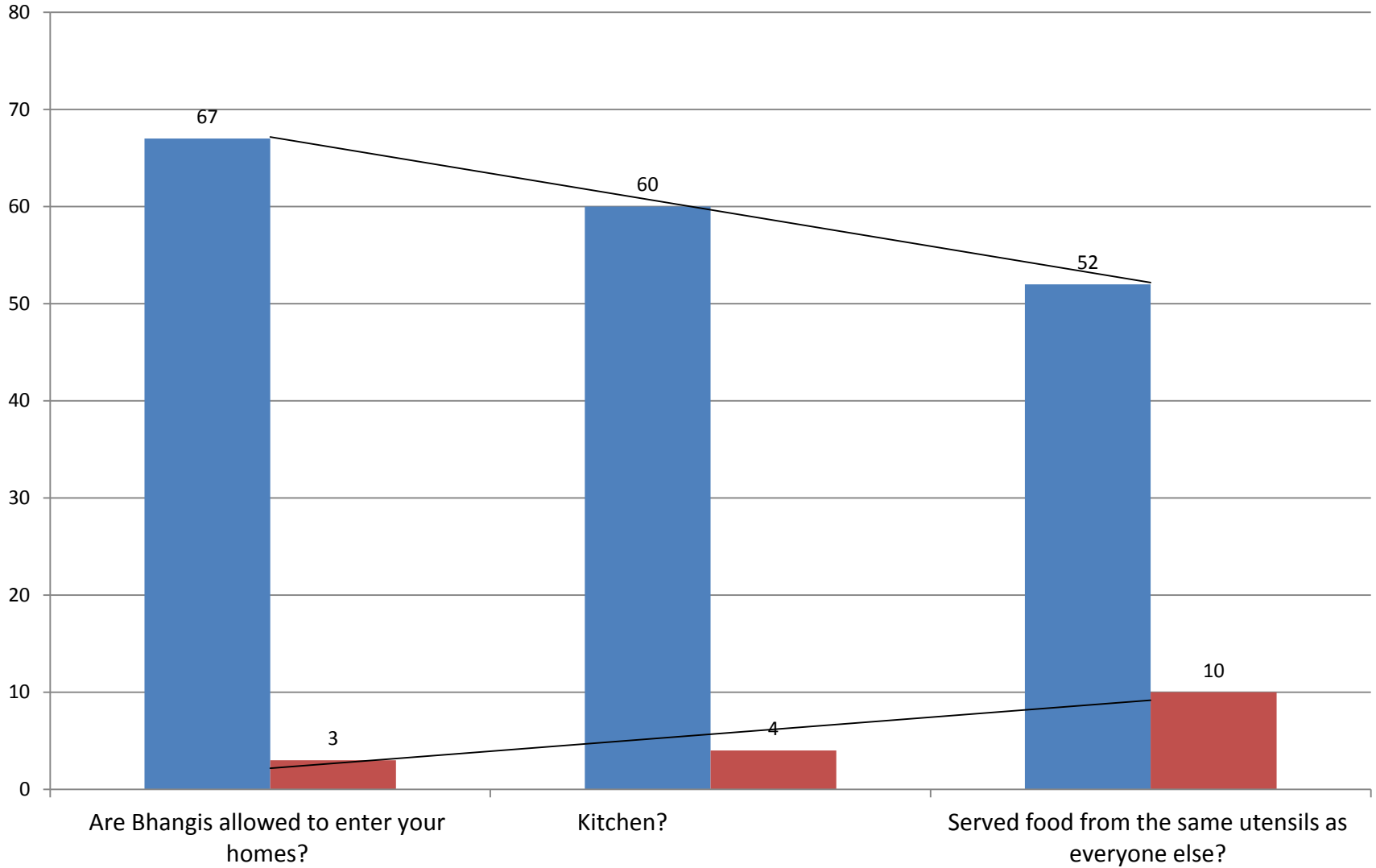
So, this shows, mostly people either are thinking positively or at least want to present themselves as thinking positively. Similar responses from other questions such as

Would you have an inter-caste marriage?



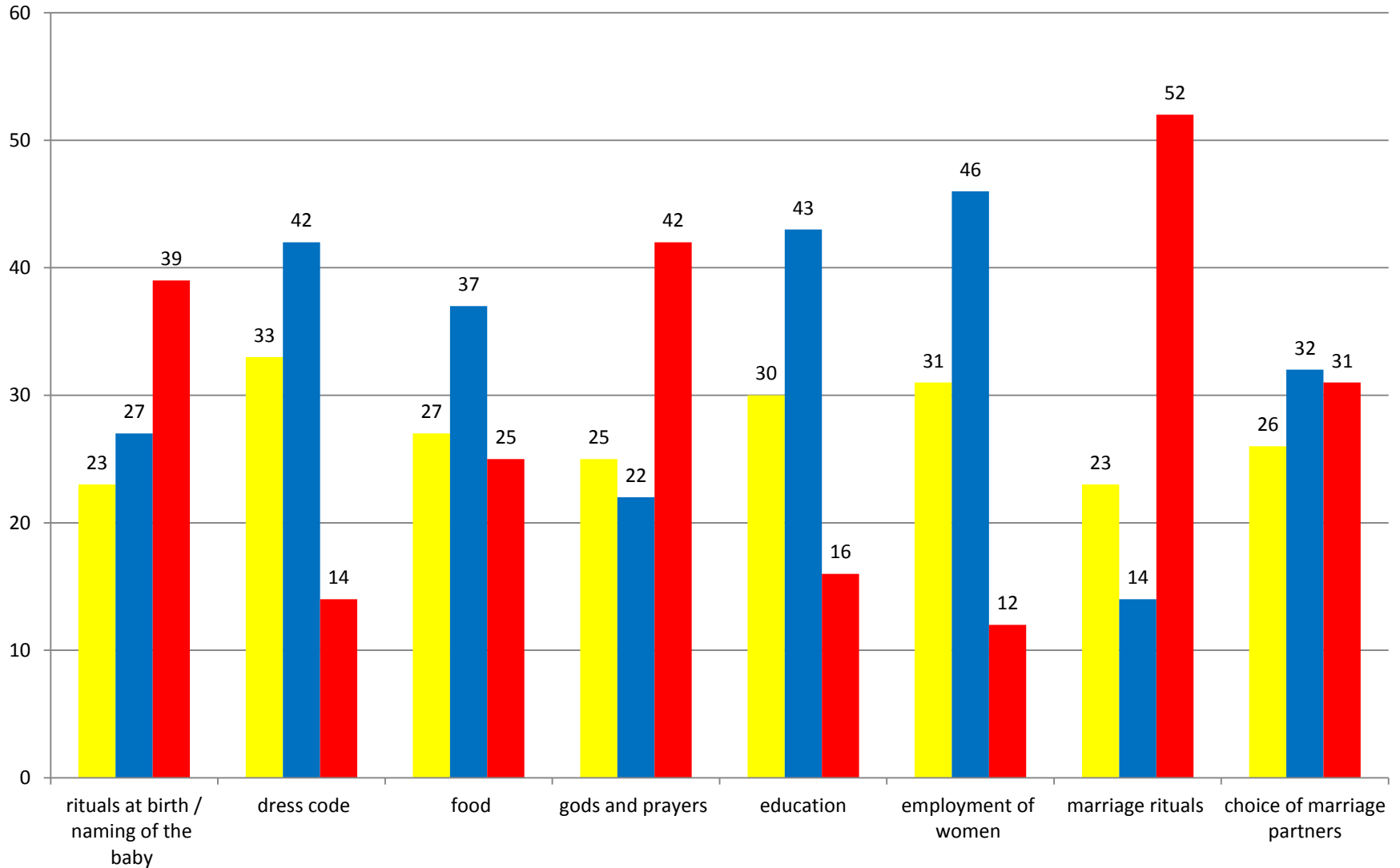
Are untouchables allowed in your homes?

Yes No Linear (Yes) Linear (No)



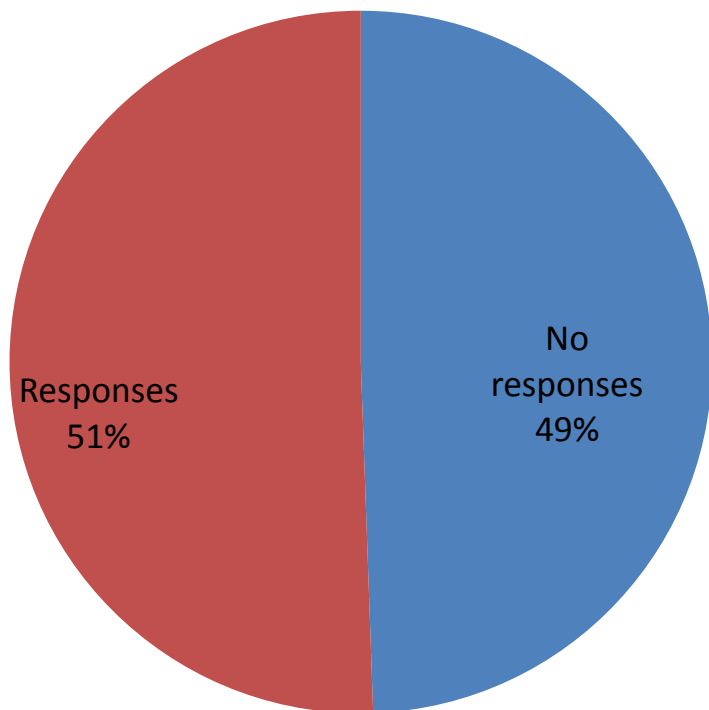
Are any of the following influenced by caste in your family?

No response Yes No

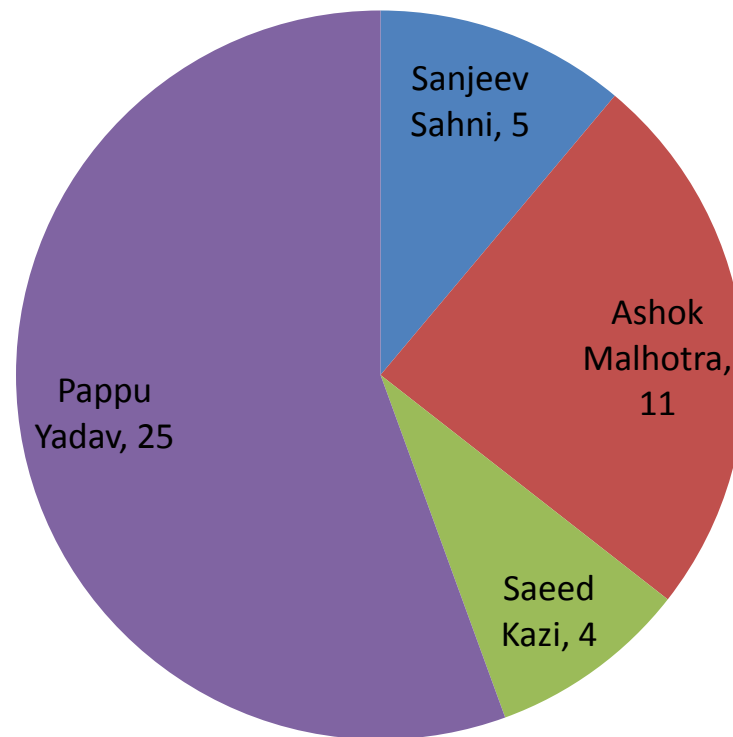


This civil servant was found guilty of corruption in 2003

Response rate



Responses



But a possible problem

Pedagogy of inclusion

what would it mean for caste?

- Classroom strategies for including different caste groups into class discussion
- Centralizing the experience of the lower castes into the curriculum, cases etc.