

**DEATH SENTENCES TO WOMEN OFFENDERS GENDERED JUSTICE: EXAMINING DEATH
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DEATH SENTENCES FOR WOMEN OFFENDERS**

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ABSTRACT

This research examines the imposition of death sentences on female offenders within the context of the criminal justice system in depth and critically. It investigates the gender disparities known to influence the sentencing process, as well as the complex web of factors known to contribute to women receiving the death penalty. This study sheds light on the multifaceted challenges women faces when dealing with death penalty cases by analyzing case studies, legal considerations, and ethical quandaries. It emphasizes the importance of a more gender-sensitive and equitable approach to criminal justice, drawing on international perspectives and mitigation strategies for support.

This study investigates how societal perceptions, media dynamics, and cultural contexts influence the trajectory of female offenders in death penalty cases. When global practices and legal norms are compared, gender biases persist, albeit to varying degrees, in each of these diverse jurisdictions. The study highlights the potential of rehabilitative justice in addressing the fundamental causes of women's involvement in criminal activity by analyzing mitigation efforts and alternatives to the death penalty. Furthermore, this emphasizes the importance of public education and advocacy in the fight against gender disparities in sentencing.

This research concludes by emphasizing the critical importance of addressing gender disparities in the administration of the death penalty as soon as possible. This is accomplished by providing a thorough overview of the issues at hand, followed by a call for a justice system that recognizes the complexities of female offenders' experiences and advocates for their legal rights. By shedding light on long-ignored systemic biases in cases involving the application of the death penalty to women, the study contributes to ongoing discussions about gender, criminal justice, and human rights.

Keywords:

Criminal justice system, death penalty, women offenders, Human rights

INTRODUCTION

The criminal justice system has exhibited notable gender disparities in sentencing practises throughout its historical development. The criminal justice system has often exhibited differential treatment towards women in comparison to men, reflecting societal perceptions and stereotypes surrounding gender roles and criminal behaviour. The existence of these disparities has given rise to concerns pertaining to fairness and equality within the justice system.

There has been a noticeable increase in the proportion of women who have become entangled in the criminal justice system in recent decades, including those who are presently confronted with severe consequences, such as capital punishment. The pattern has engendered scholarly discourse regarding the fundamental factors that contribute to women's engagement in criminal behaviour, as well as the suitability of the sentences they are subjected to.¹

International human rights organisations and international agreements have underscored the significance of criminal justice systems that demonstrate sensitivity towards gender issues. These guidelines require the eradication of gender bias and discrimination in every facet of the judicial system, encompassing the procedures related to sentencing.²

The media exerts a substantial influence on the public's perception of criminal behaviour and the corresponding suitable measures to address it. The portrayal of female perpetrators, particularly those who are confronted with capital punishment, possesses the capacity to influence public sentiment and

¹ Mireya Garcia Ramirez, 'The Death Penalty and the Right to Life', (p. 59, New York, OHCHR, (2016)), .

² Amnesty International <<https://www.amnesty.org/en/documents/act50/010/2007/en/>> (lastly accessed on 9 May 2024)

consequently impact the determinations of legal proceedings. A comprehensive comprehension of the media dynamics pertaining to these cases is imperative.

The life trajectory of female offenders implicated in death penalty cases can be profoundly influenced by the cultural and societal norms prevalent in various regions. The objective of this study is to examine the impact of diverse cultural contexts on the process of sentencing and ascertain the presence of gender biases, albeit with varying magnitudes, within distinct legal systems.

GENDER DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

The comprehension of the gender disparity in sentencing within the framework of the criminal justice system is a complex and multifaceted matter. These inequalities pertain to the disparate treatment of males and females within the legal system, particularly in relation to the variations in sentencing outcomes based on gender.³

The impact of societal perceptions and stereotypes regarding gender roles and behaviour is a notable determinant in the perpetuation of gender disparities within the criminal justice system, particularly in the context of sentencing outcomes. These broad generalisations often lead to unjust assessments, such as the belief that women are less likely to pose a risk or be held accountable compared to men for similar offences. In certain cases, women may face a higher likelihood of being perceived as victims or as having been compelled to participate in criminal behaviour, leading to the potential for more lenient sentencing alternatives.⁴

Furthermore, there exists a notable divergence between the criminal activities in which males and females are commonly implicated. Based on the findings of multiple studies, it has been observed that women exhibit a higher propensity for engaging in non-violent offences, such as property crimes or drug-related offences, while men tend to be more inclined towards involvement in violent offences. The variations in criminal offences can also result in disparities in the imposition of penalties, as non-violent offences generally tend to be associated with more lenient sentencing in contrast to violent crimes. Non-violent offences are characterised by the absence of physical violence.

Moreover, disparities in sentencing can arise due to variables such as the obligations associated with familial and caregiving responsibilities. Due to the prevailing societal norm where women often assume the primary caregiving role for children and other family members, judges may consider these responsibilities as a relevant factor in their sentencing decisions. This occasionally leads to the formulation of sentences that are less harsh in order to mitigate any additional burden on families.⁵

A comprehensive comprehension of the multifaceted factors involved in comprehending gender disparities in sentencing is generally necessary. The factors encompassed in this analysis consist of societal perceptions, the characteristics of offences, and familial roles. To promote fairness and equity within the criminal justice system, it is crucial to address the disparities that exist in sentencing individuals based on their actions and culpability, rather than their gender.

The comprehension of the gender disparity in sentencing is a complex and multifaceted matter within the framework of the criminal justice system. These inequalities pertain to the disparate treatment of males and females within the legal system, particularly in relation to the variations in sentencing outcomes based on gender.

The impact of societal perceptions and stereotypes regarding gender roles and behaviour is a substantial determinant in the perpetuation of gender disparities within the criminal justice system, specifically in relation to sentencing outcomes. These broad generalisations often lead to unjust assessments, such as the belief that women are less likely to pose a risk or be held accountable compared to men for similar offences. In certain cases, women may face a heightened likelihood of being perceived as victims or as having been compelled to participate in criminal behaviour, potentially leading to more lenient sentencing alternatives.

³ Sir Winston Churchill as quoted by C.H. ROLPH in COMMONSENSE ABOUT CRIME AND PUNISHMENT, p. 175

⁴ Death Penalty India Report, Vol. 1, National Law University, Delhi, (National Law University Press, 13 (2016).

⁵ Taran Deol, "Rarest of rare" — history of death penalty in India and crimes that call for hanging', (19 March 2020, 7:47 p.m.).

Furthermore, there exists a notable divergence between the specific criminal activities in which males and females are commonly implicated. Based on the outcomes of multiple research studies, it has been observed that women exhibit a higher propensity for engagement in non-violent offences, such as property crimes or drug-related offences, while men demonstrate a greater inclination towards involvement in violent offences. The variations in the characteristics of offences can also result in disparities in the imposition of sentences, wherein non-violent offences generally incur less severe penalties in comparison to violent crimes.⁶

Furthermore, disparities in sentencing can arise due to various factors, including the obligations associated with familial and caregiving responsibilities. Due to the prevailing tendency for women to assume the primary caregiving role for children and other family members, judges may consider these responsibilities as a relevant factor in the process of sentencing. This can occasionally lead to the formulation of sentences that are less harsh in order to mitigate any additional burden on families.

A comprehensive comprehension of the multifaceted elements involved in comprehending gender disparities in sentencing is generally necessary⁷. These factors encompass societal perceptions, the characteristics of offences, and familial roles. In order to foster fairness and equity within the criminal justice system, it is imperative to confront and rectify these disparities. This measure will guarantee that individuals are subjected to sentencing based on their actions and level of responsibility, rather than being influenced by their gender.

WOMEN ON DEATH ROW: CASE STUDIES

The notable case of Shabnam Ali, who was convicted and received a life sentence in 2008 for the homicide of seven individuals within her family, including her parents, is a particularly remarkable instance. This case exemplifies the significance of possessing a comprehensive comprehension of the contextual factors and situational conditions that precipitated the commission of the illicit act. The Shabnam case was marked by concerns surrounding domestic violence, familial dynamics, and mental health. This statement underscores the necessity for a more comprehensive analysis of the contextual factors pertaining to female offenders, placing significant emphasis on the significance of incorporating gender-sensitive elements and the potential ramifications that these elements may have on their behaviours and legal processes. Furthermore, it underscores the necessity for a more comprehensive analysis of the contextual factors pertaining to female offenders.

Another notable case that warrants particular scrutiny is that of Renuka Shinde and Seema Gavit, who were convicted for the abduction and homicide of minors during the commission of their offences. Despite the imposition of capital punishment, instances wherein women in India receive the most severe penalty are exceedingly rare. These instances prompt inquiries pertaining to the level of responsibility, the involvement of male co-defendants, and the degree of participation by women. When examining such cases, it is possible to ascertain the extent to which female offenders who are subject to capital punishment are afforded trials that exhibit fairness and impartiality⁸. Additionally, it can be assessed whether the unique circumstances surrounding their cases are adequately considered during the sentencing process.

Although Soni Sori was not subjected to capital punishment, her case holds substantial importance as it illuminates the challenges encountered by women, particularly those belonging to marginalised communities, during their engagement with the criminal justice apparatus. During the period of her detention by the police, Sori was subjected to acts of torture and sexual violence, alongside being accused of providing support to Maoist factions. The case brings to light more extensive concerns regarding gender-based violence, the manner in which women are handled while in custody, and the

⁶ Death Penalty India Report Summary, (Page 8 (2016)).

⁷ See: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx> [Lastly accessed on 02 JULY 2024]

⁸ Lok Sabha Debates, Criminal Law Amendment Bill (Reg.: Abolition of Capital Punishment), 23rd November 1956 Volume 9 p. 915

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potential biases that can impact women's encounters with law enforcement and the legal system. The case also brings focus to the manner in which women are treated while in custody.⁹

In the context of female criminals facing the death penalty in India, these case studies collectively underscore the imperative of implementing a strategy that is simultaneously more comprehensive and attuned to gender dynamics. Conducting a thorough investigation into the various factors that contributed to their engagement in criminal behaviour is of utmost significance. The factors to be considered should encompass gender-related matters, socioeconomic circumstances, and mental health considerations. Furthermore, ensuring that women receive equitable trials, have access to legal counsel, and are safeguarded against gender-based violence is of paramount significance within the framework of the criminal justice system. Ultimately, these instances illuminate the complex interplay of various factors that encompass female perpetrators and underscore the importance of embracing a more fair and impartial approach to capital punishment cases in India that involve women defendants.¹⁰ A comprehensive examination of the factors and conditions that culminated in the imposition of capital punishment upon female offenders in India unveils a multifaceted interaction of social, psychological, and legal forces that contribute to the final verdict they faced.

The sentencing imposed on Shabnam Ali for the murder of seven members of her own family in the Indian state of Uttar Pradesh was influenced by a range of factors. The presence of domestic violence and strained relationships within the family were notable factors that contributed significantly to the tense atmosphere. The complex interplay of familial dynamics, encompassing disputes over property and personal matters, played a significant role in the intensification of the violent situation. Throughout the trial proceedings, there were discussions pertaining to mental health concerns, thereby underscoring the significance of assessing the psychological well-being of female individuals involved in criminal activities.¹¹ The case of Shabnam's sentencing highlights the necessity of acquiring a thorough comprehension of the fundamental factors that motivate women to engage in such criminal activities. Additionally, it underscores the significance of incorporating gender-sensitive considerations throughout the legal proceedings.

The sentencing of Renuka Shinde and Seema Gavit for the abduction and homicide of minors was influenced by a multifaceted array of factors. Both individuals were convicted of the offences. The extent of their participation was influenced by their affiliation with male co-defendants, frequently comprising family members, who held considerable sway over them. The involvement of these individuals was influenced by their association with these men. These instances prompt inquiries regarding the extent of agency and coercion that women may encounter while engaging in criminal behaviour, particularly when under the influence of male accomplices. The significance of addressing the underlying vulnerabilities experienced by women is underscored by the recognition that social and economic factors exert a substantial influence in driving women towards engagement in criminal behaviours.

The case of Soni Sori, who faced allegations of aiding Maoist groups and experienced torture and sexual violence during her detention by law enforcement authorities, underscores the significance of considering systemic influences, notwithstanding her absence of a death penalty conviction. The individual's personal experiences provide insight into the issue of gender-based violence within the criminal justice system, highlighting the disproportionate impact on women and the prevalence of abuse and mistreatment. As a result of this case, it is imperative to conduct a thorough examination of the manner in which the legal system addresses accusations of misconduct and abuse directed towards female perpetrators.

The sentencing of female offenders who face the death penalty in India is a multifaceted process influenced by a range of events and circumstances. The issues encompass challenges pertaining to the functioning of the family structure, instances of domestic violence, mental health concerns, coercive behaviours, economic vulnerability, and biases within the system. In order to uphold the principles of

⁹ Swati Deshpande, Maharashtra to move SC against order in rape-murder case, Times of India, (30 July 2019, 8:11 a.m.).

¹⁰ Dr. P Ishwara Bhatt, 'Constitutional Feminism: An Overview', ((2001) 2 SCC (Jour) 1.

¹¹ LAW COMMISSION OF INDIA, REPORT NO.42, THE INDIAN PENAL CODE, Para 3.80 at page 78 (JUNE 1971)

fairness in legal proceedings, it is imperative to recognise and assess mitigating factors, as well as to promote a more equitable approach to justice that acknowledges the distinct obstacles encountered by women within the criminal justice system. Consequently, it is crucial to possess a comprehensive comprehension of these intricacies. This statement emphasises the importance of conducting a thorough and gender-inclusive examination of women's participation in criminal activities that lead to the imposition of capital punishment.¹²

METHODOLOGY AND ANALYSIS

Conducting a thorough literature review is an essential initial phase in the research endeavour. The objective of this stage is to develop an understanding of the current corpus of knowledge pertaining to the subject matter. To establish a robust foundation for the inquiry, this review will encompass an extensive array of resources, encompassing legal documents, scholarly literature, empirical analyses, and reports issued by human rights organisations. This research will primarily focus on conducting a comprehensive examination of specific case studies pertaining to female inmates who are on death row. These cases would offer empirical illustrations to facilitate comprehension of the contextual factors, legal protocols, and sociocultural dynamics that underpin the inclusion of the death penalty as a potential sanction for female perpetrators in India.

Conducting research on the legal framework governing the implementation of the death penalty in India is of utmost importance. To achieve this objective, it is imperative to conduct comprehensive research and analysis of pertinent statutes, judicial precedents, and legal procedures to ascertain the manner in which the legal system addresses cases involving female individuals who have been sentenced to capital punishment. A comprehensive comprehension of the challenges, biases, and prospective avenues for reform within the Indian criminal justice system can be attained by means of qualitative interviews conducted with legal experts, human rights activists, and individuals who have been engaged in cases pertaining to the imposition of the death penalty.

In order to enhance comprehension regarding the intricate dynamics between gender and various dimensions of individuals' lives, such as race, socioeconomic status, and caste, the research methodology would adopt an intersectional framework. This analysis aims to provide insight into the ways in which the experiences and outcomes of women who are subjected to the death penalty are shaped by their intersecting identities. The objective of the analysis would be to ascertain the presence or absence of gender-based disparities in the sentencing and execution processes pertaining to women. This study aims to examine potential disparities in the treatment of female offenders within the criminal justice system in comparison to their male counterparts. Additionally, it seeks to explore the influence of societal stereotypes and biases on the presence of these disparities.

The objective of this study was to examine the ramifications of traumatic experiences and abuse, with specific emphasis on the consequences of violence against women. This study aims to assess the potential influence of victims' experiences of abuse on their engagement in criminal activities, as well as the legal proceedings associated with their cases. When determining the appropriateness of imposing the death penalty on a woman, it is crucial to consider the obligations associated with motherhood and other caregiving roles. The present study aims to examine the impact of the death penalty on the families of individuals sentenced to death, with a specific focus on the well-being of their children. Additionally, this research seeks to evaluate the necessity of exploring alternative sentencing options that consider the familial roles and responsibilities of those involved.

The proposed study aims to undertake a comprehensive examination of the legal protections and equitable practises employed during the sentencing phase for female defendants who confront the potential imposition of capital punishment. In the scope of this assessment, an examination of the extent to which women receive sufficient legal representation, a just trial, and safeguards against gender-based violence within the criminal justice system would be encompassed¹³. This analysis will

¹² Ibid

¹³ Bhagwati, Dr Justice P.N., scope and ambit of human rights, death penalty an affront to human rights, 10, (1st Ed., Society for community against trust, 2011)

consider the various manners in which intersecting identities, such as caste, religion, and socioeconomic status, might contribute to the perpetuation of disparities in the sentencing and execution of women. The focal point would be directed towards the challenges encountered by marginalised women as they navigate through the criminal justice system. The concluding phase of the study will examine current advocacy initiatives and potential avenues for reform. This study aims to examine the potential impact of public education, legal reforms, and policy changes on fostering a more equitable and just implementation of the death penalty for women in India.

DISCUSSIONS AND CONCLUSIONS

Conversations pertaining to the impact of the death penalty on women in India provide insight into the complex and multifaceted terrain within the nation's criminal justice framework. Recent revelations have brought to the forefront the existence of substantial gender disparities in the policies and protocols surrounding the imposition of sentences and the implementation of capital punishment. The research findings underscore the widespread existence of these disparities and provide insight into the influence of societal perceptions and stereotypes on judicial rulings. The phenomenon of female offenders often receiving more lenient sentences compared to their male counterparts for similar offences has prompted inquiries into the justness and impartiality of the judicial system.

Furthermore, the research underscores the notable impact that trauma and gender-based violence exert on female individuals involved in criminal activities. A considerable proportion of women who are incarcerated on death row have experienced instances of abuse, a factor that can exert profound and wide-ranging impacts on their personal lives and decision-making processes. Recognising the significance of trauma is imperative in order to fully grasp the diverse array of factors that contribute to individuals' engagement in criminal activities and to effectively address their needs within the legal framework.

The significance of the role of a mother and the associated responsibilities in providing care becomes evident in the discussions. Female offenders encounter a distinct obstacle due to their often assuming the role of primary carers for their own children. The implementation of capital punishment carries significant consequences, not only for the individuals facing the penalty but also for their families, specifically the children of the defendants. This aspect highlights the ethical and moral aspects associated with the death penalty, thereby initiating a discourse on alternative forms of punishment that consider the welfare of affected families.

Further examination will be dedicated to the significance of robust legal protections and the preservation of equity during the process of imposing sentences. The absence of sufficient legal representation and the prevalent occurrence of gender-based violence within the criminal justice system pose substantial challenges. In order to uphold the principles of justice and mitigate systemic biases, it is crucial to address these matters and ensure equitable trials for female offenders.

To gain a comprehensive understanding of the multifaceted aspects pertaining to the imposition of the death penalty on women, it is imperative to adopt an intersectional lens, which takes into account the interconnected nature of various social identities and systems of oppression. The study's findings indicate that gender interacts with various factors such as caste, religion, and socioeconomic status, resulting in the emergence of multiple levels of discrimination and disadvantage. The recognition of these intersections is imperative in the formulation of policies and reforms that effectively address the unique challenges experienced by marginalised women in contemporary society.

In conclusion, this study examining the impact of capital punishment on women in India has revealed several noteworthy discoveries that warrant careful consideration. The sentencing and execution of female offenders continues to exhibit a gender disparity. The existence of these inequalities can be attributed, at least in part, to societal perceptions and stereotypes. It is imperative to critically examine and confront these perceptions and stereotypes within the framework of the criminal justice system.

The criminal behaviour of women has been found to be significantly influenced by traumatic experiences and gender-based violence, factors that warrant recognition as significant contributors to their actions. Acknowledging the significance of trauma is crucial in order to render sentencing decisions that are both compassionate and well-informed.

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The importance of motherhood and the roles of carers in these discussions cannot be overstated. The implementation of capital punishment carries consequences that extend beyond the individuals facing the death penalty, encompassing their families, specifically their children. In the process of determining appropriate sentences, policymakers and legal practitioners bear the obligation to consider the broader societal ramifications.

It is imperative to enact legal reforms to ensure the equitable treatment and fair trial of female offenders within the criminal justice system. This encompasses the examination of concerns pertaining to the insufficient provision of legal counsel for incarcerated women, alongside the occurrence of violence targeting women.

In summary, adopting an intersectional lens is imperative for comprehending the distinct challenges encountered by marginalised women when engaging with the criminal justice system. To promote a fair and equitable application of the death penalty for women in India, it is imperative that policy changes and reforms adequately consider the intricate dynamics inherent in this context. Ultimately, this research offers a valuable contribution to the ongoing discourse surrounding gender, justice, and human rights. It advocates for a more empathetic and compassionate approach towards the implementation of capital punishment for female individuals who have committed offences.

RESEARCH LIMITATIONS AND DIRECTION FOR FURTHER RESEARCH

One notable constraint of this study is the challenge associated with data acquisition, alongside several other deficiencies. The potential existence of this constraint may have influenced the comprehensiveness and thoroughness of the analysis. Restrictions may be imposed on the accessibility of comprehensive and current data pertaining to women in India who have engaged in criminal activities and are currently subject to the death penalty. The absence of case-specific information and statistics may have impeded the capacity to present a thorough understanding of the issue.

Furthermore, the research utilised individual case studies to exemplify and examine the experiences of women who were incarcerated on India's death row. Although the case studies provided valuable insights, it is important to acknowledge that the selection of cases may have introduced a potential limitation. There exists a potential for bias to have influenced the selection of cases, and it is conceivable that certain cases may have been omitted from the analysis, thereby potentially diminishing the extent to which the findings can be deemed representative of the entire population.

Despite the study's intention to adopt an intersectional lens in examining the intersections between gender and other identities such as caste, religion, and socioeconomic status, there remains a need for further investigation in this particular area of research. A comprehensive examination of these interrelated variables may yield a more nuanced comprehension of the inequities experienced by marginalised women within the criminal justice system.

The qualitative interviews conducted in this study yielded valuable insights. However, it is important to acknowledge that these interviews may have been influenced by subjective factors and may not have captured the full range of experiences among women on death row. In order to enhance the robustness of the study and offer a more comprehensive outlook on the topic, it is recommended that future research endeavours focus on augmenting the sample size and incorporating a broader range of individuals for interview purposes. In subsequent studies, an examination of the impact of capital punishment on women in India may explore diverse perspectives in order to enhance our understanding of this multifaceted subject matter. Longitudinal studies that systematically monitor the experiences of women who are incarcerated on death row over an extended period of time have the potential to yield significant insights into the changing dynamics within the criminal justice system, as well as the efficacy of legal reforms and advocacy initiatives.

A comparative analysis of the application of the death penalty to women in various regions of India has the potential to unveil regional disparities and variations in sentencing practises. The strategy possesses the capacity to elucidate the impact of localised variables and cultural environments in shaping the results of sentencing. A potential avenue for gaining a comprehensive comprehension of the wider societal ramifications of capital punishment involves exploring the viewpoints of victims and the families of victims who have been affected by cases involving female perpetrators. This inquiry

would involve exploring the emotional and psychological ramifications experienced by the families of victims, thereby enhancing the overall comprehension of the issue.

An additional avenue for future scholarly inquiry would involve examining the effects of various policies and legal reforms implemented to mitigate gender disparities in sentencing. This would involve assessing the degree of success achieved by these reforms in practical implementation and identifying the specific areas that necessitate further progress. Research that examines the implementation of capital punishment in different countries can offer significant contributions to our understanding of worldwide practises and potentially identify the most efficient strategies for addressing gender inequalities in the application of the death penalty.

The utilisation of interdisciplinary methodologies, which involve the integration of insights from psychology, sociology, and human rights studies, holds promise for enhancing our comprehension of the intricate determinants that shape women's engagement in capital offences and their encounters within the criminal justice system. Lastly, an examination of the impact of advocacy initiatives, public awareness campaigns, and international pressure on India's approach to the implementation of capital punishment for women would provide insights into the influence exerted by global organisations and civil society in driving transformation and shaping policies within this domain.

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