



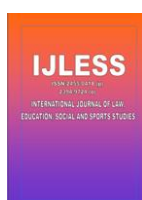
Mandatory Death Penalty and Human Rights: The Intersection of Gender and Capital Punishment in India and the USA

Swikriti Mahajan

PhD scholar from Department of Law Jammu University

Email:swikritimahajan100@gmail.com

DOI: [10.33329/ijless.12.1.1](https://doi.org/10.33329/ijless.12.1.1)



ABSTRACT

The convergence of mandatory death penalties and human rights creates serious difficulties, notably for women in India's and the United States' legal systems. The death sentence is frequently attacked as a breach of fundamental human rights, particularly the right to life, which is enshrined in the Universal Declaration of Human Rights. This punitive approach disproportionately impacts underprivileged populations, notably women, who may be particularly vulnerable in the court system. In both countries, gender biases can influence legal outcomes, with women frequently receiving harsher sentences as a result of cultural prejudices and discrimination.

Mandatory death penalties remove judicial discretion, preventing judges from taking into account mitigating considerations such as the defendant's background or the circumstances of the offense. This rigidity can increase gender inequities, as women are more likely to face the death penalty for offenses involving domestic abuse or coercion. Furthermore, the psychological impact of a death sentence, particularly for women, can result in serious mental health disorders, exacerbating their predicament within an already faulty legal system.

In India, cultural stigmas and gender-based violence collide with legal systems, frequently resulting in disproportionate sentence for women. Similarly, in the United States, systemic racism and socioeconomic issues exacerbate the difficulties experienced by female defendants. The use of capital punishment not only raises ethical concerns, but it also emphasizes the critical need for reform in how gender effects legal processes and human rights considerations.

To summarize, addressing the nexus of gender and obligatory death penalties is critical for furthering human rights safeguards and guaranteeing fair treatment within judicial systems.

Keywords: Mandatory Death Penalty, Human Rights, Gender Disparities, Legal Outcomes, Capital Punishment, Judicial Discretion, Systemic Discrimination.

1. Introduction

A statutory scheme referred to as the mandatory death penalty compels judges to use the death penalty for certain offenses without giving them a choice. Strictness in the application of this policy has serious implications-considering its interaction with gender and human rights issues, in particular. Critics argue that the mandatory death sentence violates basic human rights, especially as it interferes with the right to life granted by the Universal Declaration of Human Rights. Because judges do not possess discretion, they can neither consider mitigating factors such as the defendant's history, nor the circumstances surrounding the commission of the offence. This might lead to disproportionately harsh sentencing outcomes in certain cases - especially for women and other vulnerable groups¹.

The death penalty, therefore, provides a critical situation for human rights violations in both India and the US. Gender-based systemic disadvantages are often reflected in the imposition of the death sentence. Legal outcomes have considerable implications based on gender; women are handed harsher punishments because of the prevailing social preconceptions and cultural stereotypes.² There is an important gender bias in sentencing policies, too, based on research that show cases involving female victims to be more likely to receive death sentences than those concerning male victims. Moreover, women who are sentenced to death are often subjected to more forms of discrimination due to their economic status and previous experiences with gender-based violence.³

This article's premise is that mandatory death sentences and gender intersection exacerbate human rights abuses, most pertinently against women. We can gain an improved insight into the critical need for reform in death penalty practices so as to ensure fair treatment in legal systems through the implications of this junction in India and the USA.

2. Historical Context of Capital Punishment

2.1. Capital Punishment in India

India's colonial history and subsequent legal evolution are integrally related to the historical development of the death penalty in the country. Death penalty, in the ancient Indian traditions of law, was undoubtedly one of the indispensable instruments for maintaining social order. The codification of the death penalty for certain crimes by the Indian Penal Code of 1860 paved the way for more systematic use of the death penalty during the British period⁴. The average number of people the colonial government executed annually between 1925 and 1944 stood at 577. The law applied then was harsh, but it worsened with time as independence drew near⁵.

India retained several colonial laws even after gaining independence, with the 1898 Code of Criminal Procedure (CrPC) and the Indian Penal Code (IPC) being a couple of them. The CrPC initially provided that judges should explain reasons for declining to apply capital punishment when it was available⁶. The 1955 and 1973 amendments to the CrPC introduced crucial changes in it⁷. It declared that the death penalty should only be meted out in "the rarest of rare" occasions and life imprisonment should be the norm. Such influential Supreme Court judgments like *Bachan Singh v. State of Punjab*, 1980 and *Jagmohan Singh v. State of Uttar Pradesh*, 1973 vindicated judicial discretion as such also made the death penalty constitutionally tenable⁸.

Significant instances have shaped the legal structure of the death penalty in India, especially regarding its application to women and other groups relegated to the periphery. The Supreme Court has attempted to balance human rights concerns with social demands for justice in its decisions; yet many issues persist with gender prejudices and structural injustices in the very fabric of the legal system.⁹

2.2. Capital Punishment in the USA

The long and complex history of capital punishment in the US reflects societal views on crime and punishment. In colonial times, executions were public spectacles to discourage crime, which is when the practice started¹⁰. The legal system became patchwork over time as a number of states adopted their own laws regarding capital punishment.

The middle of the 20th century marked a period of challenges within American courts that made crucial claims against the constitutionality of the death penalty. It was also during this time that concern over racial discrimination and arbitrary sentencing led to a temporary imposition of the death sentence suspension in landmark judgements by the Supreme Court, such as *Furman v. Georgia* (1972). This case forced many states to alter their laws concerning the death penalty and revealed structural defects in how it was administered.¹¹

In *Gregg v. Georgia* (1976) and subsequent decisions, the death sentence was reinstated under revised statutes aimed at remedying earlier constitutional problems¹². While the Court established rules designed to ensure fairer trials and sentencing practices, debates over their implementation continue to this day, particularly concerning racial biases and the administration of cases involving women on death row.

Generally, the death penalty has an also controversial past across both India and the USA, influenced by change in legal systems and cultural values. And future laws on the death penalty will be greatly influenced by continuing debates concerning gender prejudice and implications on human rights as society's values change.

3. Gender Bias in Legal Systems

3.1. Gender Bias in India

Such cultural preconceptions that interfere with court judgments form the nucleus of gender bias in India's judiciary. Social norms often dictate the way women are treated within the judicial system, even when the constitution promises equal rights. For instance, Section 497 of the IPC criminalizes adultery but punishes only men for 'sex with another man's wife'¹³. This is one such law which reflects outmoded gender stereotypes. This provision deprives women of control over their own sexuality, emphasizing the fact that they are the property of their husbands¹⁴. Furthermore, judicial stereotyping often results in judges drawing inferences from assumptions of appropriate female roles and behavior. In sexual assault cases, courts mostly concentrate on the victim's character and not on the perpetrator's conduct, which vindicates victim-blaming narratives¹⁵.

Gender bias in sentencing is rampant, case studies have shown, and among those is the situation where a man was released under a bail order under the POCSO Act on an undertaking that he would marry his victim upon attaining majority¹⁶. In addition to trivializing seriousness of sexual offenses, such decisions perpetuate patriarchal values where marriage takes precedence over the justice of a victim. Exacerbated prejudice also befalls the women of marginalized communities in that structural injustices and cultural biases more severely limit their access to justice.

3.2. Gender Bias in the USA

Structural racism in the US has particularly worsened gender bias in the legal system to create a problematic interaction with women of colour. For similar crimes, a study has found that while women, particularly those of colour, receive harsher punitive measures than their male counterparts¹⁷. Social preconceptions that portray women as being less 'capable' of committing crimes contribute to this inequality by leading to punitive actions motivated by prejudices rather than fair judgment of guilt.

An example of this is the fact that, according to research, women convicted of murder are more likely than men to receive a life imprisonment sentence¹⁸. A trend suggesting a worrying phenomenon

of female offenders being evaluated not only on the basis of their behavior but also against social standards for moral and feminine conduct. Moreover, the complications of race and gender are intertwined. For instance, Black women are subject to double jeopardy most of the time because of racial bias and gender bias during sentencing¹⁹.

Further to that, while gender discrimination in schools has been dealt with by seminal cases such as *United States v. Virginia* (1996), the criminal justice system is yet to totally embrace equal treatment²⁰. The persistence of this inequality calls forth the urgency upon reforms to end these structural injustices and ensure that everyone, regardless of gender or race, gets fair treatment.

4. The Impact of Mandatory Death Penalty on Women

4.1. Psychological Effects

Being under the compulsion of the mandatory death penalty has heavy psychological effects, especially for women. Studies indicate that life imprisonment can lead to severe psychological problems in prisoners, like utter despair, anxiety, and post-traumatic stress disorder (PTSD)²¹. Owing to gender stereotypes and cultural norms that depict women as caregivers rather than offenders, women often suffer extra psychological burdens. This can even increase emotions of shame and guilt if they are found guilty of crimes involving the children or family members.

The psychological effects of the death penalty on women can be illustrated through Shabnam Ali, who was awarded the death penalty for her involvement in the murder of her family members. Apart from facing execution at the hands of the legal jurisdiction because of her crime, Shabnam suffered the stigma of society as a woman who had committed such heinous crimes²². The long-term psychological effects are usually overlooked in judicial proceedings, especially the emotion trouble of seclusion and fear of death together with the stigma attached to a woman's prison sentence.

4.2. Socioeconomic Factors

For women on death row, socio-economic factor plays a critical role in the nature of their litigation processes. Poor women often do not have the means and legal profession that may impact significantly on their defense²³. This is particularly evident in the US and India where quality legal aid can be limited by the lack of finances, with such limitations leading to poor defense strategies in capital appeals.

Cases like those of Renuka Shinde and Seema Gavit, who were sentenced to death for multiple murders in India, reveal how the frustration of poverty forces people into committing crimes, which then lead to more severe legal forms of punishment on account of institutionalized prejudices in the system of jurisprudence. Such women are often devoid of resources to plead their case properly or offer mitigating circumstances regarding their socioeconomic backgrounds that might affect the delivery of justice in such cases.

According to research, women from underprivileged backgrounds or those belonging to less represented groups are over-represented in the United States' death row. Research further proves that female defendants with fewer financial capabilities stand to face 'harsher verdicts' compared to their wealthier peers who could afford the best legal representation²⁴. Because of this socioeconomic divide, women belonging to underprivileged families are more susceptible to the machinations of the judicial system which contributes to an injustice circle.

5. Cultural Stigmas and Gender-Based Violence

5.1. In India

In India, opinions about female criminals are highly influenced by cultural stigmas, mainly for the reason that it leads to severe verdicts and punitive actions as a reflection of deeply rooted social

standards. The conflict arises when women deviate from these duties as traditional perspectives often depict them as the family's moral guardians and carers. Since the acts of women crime perpetrators are socially constructed as a violation of cultural norms, they often suffer from extreme judicial scrutiny and stigma particularly for violent crimes. This cultural bias might lead to harsher sentences because juries and judges may be influenced by stereotypes that present crime- committing women as abnormal or immoral.²⁵

For example, the public or social narrative often blames the victim in cases of honour killings or domestic violence, rather than addressing the real issues that lead to violent acts²⁶. Women who take the life of violent husbands in self-defense are also at risk for severe punishment because their actions challenge traditional gender roles and motivate public outrage. Cultural stigma can make the severity of the punishment more extreme for women, as shown by the case of Shabnam Ali, who was sentenced to death for killing her family members. Her conviction not only illustrates how the legal system reacted to her behavior but also highlights societal views that characterize her as an aberration rather than a product of her circumstances.

On another hand, courts may support cultural assumptions instead of challenging them and mirror cultural biases which exist in society in its verdicts. While the Supreme Court of India has been progressive enough to recognize gender bias in legal judgements, the outcome of death penalty convictions is still determined by age-old perceptions²⁷.

5.2. In the USA

Stories of domestic abuse play a huge role in how female offenders are sentenced within the US. Because of the common misconceptions about gender roles and victimization, women who kill their abusers often face specific challenges in the justice system. When the women are perceived as having violated traditional feminine norms by using violence, these stories often lead to harsher punishments²⁸.

Research has concluded that juries tend to be biased against female murderers who kill in self-defense and view them with suspicion rather than compassion. For instance, the way in which domestic violence stories can distort perceptions of accountability is reflected in stories involving women like Marissa Alexander, who fired a warning shot at her violent husband and was sentenced to 20 years in prison. The context of domestic violence is not well accounted for by the judicial system that often results in disproportionate sentencing outcomes for women.²⁹

Furthermore, research has indicated that victim gender is a significant factor in capital punishment instances. The possibility of giving a death sentence rises dramatically when the victim is a woman, especially if she is thought to be defenceless or innocent. This discrepancy might result in harsher punishments for female criminals who transgress these gendered standards, as it reflects society beliefs that value female victims more than male victims³⁰.

In general, cultural stigmas and biases that affect how people view female criminals and affect court decisions are present in both India and the USA. A critical analysis of the construction of gender-based violence narratives and their influence on legal procedures is necessary to address these problems.

6. Human Rights Implications

Of course, there are important human rights problems that arise from the mandatory death sentence since it infringes the fundamental right to life as guaranteed by Article 3 of the Universal Declaration of Human Rights (UDHR) and still largely promulgated by the international human rights treaties³¹. A system of justice is said to be fair if it adopts the proportionality principle that is foregone when the capital punishment does not feature judicial discretion. It pays no heed to special facts about

every case, including mitigating factors such as socioeconomic status, mental health, or the circumstances surrounding the crime². Women and other marginalized groups fall amongst vulnerable populations likely to be sentenced disproportionately due to this rigidity³.

International human rights norms are increasingly supportive of the abolition of capital punishment. Instruments, such as the Second Optional Protocol to the International Covenant on Civil and Political Rights, aim to abolish the death sentence globally. Regional agreements that absolutely prohibit the death penalty, such as Protocols No. 6 and No. 13 to the European Convention on Human Rights, further underline this trend. This is demonstrated in these frameworks with increasing consensus that the death penalty is cruel and it is ineffective as a deterrent to crime.

Advocacy groups are necessary to discuss the human rights consequences of mandatory death sentences. Organizations such as Death Penalty Focus and Amnesty International expend a lot of effort to educate people about the inequities of the death penalty. They conduct studies, write papers, and participate in grassroots activism all to raise public awareness of the underlying prejudices and defects in death sentence systems³². For instance, Amnesty International's campaigns draw attention to the manner in which the death penalty strikes down parts of the underprivileged sections and perpetuates structural inequality based upon socioeconomic classes, gender, and race.

In addition, these organizations often collaborate with international institutions to promote reforms within countries still implementing the death penalty. These organizations push for legal changes at the national level to ensure national legislations are aligned with international norms of human rights and support stays on execution³³.

The World Coalition Against the Death Penalty focuses on collective actions to fight human rights violations linked with the death penalty and involves various NGOs across the globe to help enhance the abolition struggle³⁴.

In conclusion, obligatory death sentences represent larger structural injustices in legal systems besides violating basic human rights. Advocacy organisations play a crucial role in opposing harmful behaviours and advancing changes that preserve justice and human dignity for all people.

7. Reform Proposals

Comprehensive legal reforms aimed at establishing a more equal judicial system are necessary to address gender disparities in capital punishment cases. Legislators must first thoroughly examine current laws to find and change any discriminatory clauses that disproportionately harm women. Judges will be able to take into account mitigating factors including the defendant's background and the circumstances surrounding the crime if mandatory death sentences that do not permit judicial discretion are abolished³⁵. The justice system can more effectively defend the rights of every person by promoting a legislative framework that places a high priority on equality.

Second, it is impossible to exaggerate the significance of judicial discretion in sentencing. Giving judges discretion allows them to customise punishments according to specific facts, which is especially important when dealing with female defendants. Social biases that frequently result in more severe punishments for women can be lessened by judicial discretion³⁶. Judges and other legal practitioners should participate in gender-sensitive training programs to improve their comprehension of how gender biases affect court decisions.

Third, it is crucial to advocate for gender-sensitive legislative structures. This entails incorporating gender viewpoints into the legislative process at every level to guarantee that legislation represent the various demands and experiences of women. For example, nations such as Spain have passed legislation that eliminates the boundaries between different forms of sexual violence, focussing

on consent and improving victim protection³⁷. Other countries looking to rectify gender-based inequities in their legal systems can use these reforms as models.

Furthermore, attaining significant reform depends on expanding the participation of women in the legislature and court. Diverse viewpoints aid in challenging systemic biases and promote more equal decision-making processes. Advocacy organisations are essential in promoting these reforms, rallying public opinion, and holding governments accountable. for implementing reforms that promote gender equality³⁸.

In conclusion, overcoming gender inequalities in capital sentence cases and guaranteeing justice for all people require extensive legal reforms that place a high priority on judicial discretion, incorporate gender-sensitive strategies, and increase the representation of women.

8. Conclusion

When all these elements are put together-between gender and obligatory death sentences and human rights-there arise very significant disparities and inequalities in the two legal systems of India and the United States. Important findings indicate that women who are given the death penalty often face specific kinds of psychological tribulations that are aggravated by the stigmas of society and institutional prejudices that influence judicial decisions. Women who may be the victims of gender-based violence are disproportionately affected by mandatory death sentences because such deprive judges of the discretion needed to take into account mitigating elements such as a defendant's history or experiences of abuse. Socioeconomic variables also exacerbate such problems; disadvantaged women often do not have access to sufficient legal counsel, which in turn leads to biased trials and sentencing.

To ensure fair treatment in judicial systems, reforms are in order. One such reform is the abolition of mandatory death sentences to once again restore judicial discretion while more thoughtfully considering each case. Finally, gender-sensitive strategies must be integrated into legal frameworks so that a separate approach can be applied for women defendants specifically who had been victims of violence⁵.

Advocates for solicitors, the public, and legislators need action calls to be able to approach these urgent needs. In so doing, a call for advocacy groups would help raise awareness and advocate for legislative reform consistent with human rights norms. We may push towards a justice system that respects the rights and dignity of every person, irrespective of gender or socioeconomic background, by promoting reforms in every respect and encouraging people to discuss the impact the death penalty has on women. The ultimate goal must be the global abolition of capital punishment so no one is executed as a result of institutionalized bias or discrimination.

References

-
- 1 Elizabeth Rapaport, "Gender and the Death Penalty," *Golden Gate University Law Review* 20 (1990).
 - 2 Steven Shatz and Naomi Shatz, "Chivalry is Not Dead: Murder, Gender, and the Death Penalty," (2011).
 - 3 Death Penalty Information Center, "Studies: Gender Bias in Death Sentencing," (2024).
 - 4 Victor L. Streib, "Rare & Inconsistent: The Death Penalty for Women," *Fordham Urban Law Journal* 33 (2006).
 - 5 Ideas for India, "Death Penalty for Gender-Based Violence: A Band-Aid Solution for a Broken System," (2023).
 - 6 Naveen Talawar, "Capital Punishment in India," *iPleaders*, December 5, 2022.
 - 7 Oxford Law Blogs, "Abolition, Retention and Capital Punishment in Twentieth-Century India," April 2024.
 - 8 *Bachan Singh v. State of Punjab* (1980) AIR 1980 SC 898.

- 9 David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Harvard University Press, 2010).
- 10 Vikas Kumar Singh, "Historical Background and Recent Development on Capital Punishment in India," *Juris Centre*, December 12, 2022.
- 11 *Furman v. Georgia* (1972) 408 U.S. 238.
- 12 *Gregg v. Georgia* (1976) 428 U.S. 153.
- 13 "The Psychological Effects of Capital Punishment," *American Psychological Association*, 2022
- 14 Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (2004).
- 15 "Gender Stereotypes and Female Offenders," *Journal of Gender Studies*, 2023.
- 16 "Women and Crime: The Impact of Gender Stereotypes," *Criminology & Public Policy*, 2022.
- 17 "The Shabnam Ali Case: Gender Bias in Capital Punishment," *SLSH Blog*, April 17, 2021.
- 18 *Supreme Court Observer*, "Gender Discrimination and Personal Liberty," 2023.
- 19 "Domestic Violence and Sentencing Disparities," *American Journal of Criminal Justice*, 2020.
- 20 "The Impact of Domestic Violence Narratives on Jury Decisions," *Law & Society Review*, 2019.
- 21 "Marissa Alexander Case: A Study in Gender Bias," *Harvard Law Review*, 2018.
- 22 Marian R. Williams et al., "Understanding the Influence of Victim Gender in Death Penalty Cases," *Criminology*, 2007.
- 23 *Amnesty International*, "Women on Death Row Face Despicable Discrimination," October 2021.
- 24 *World Coalition Against the Death Penalty*, "Making Gender Discrimination in Capital Punishment Visible," October 2023.
- 25 "Gender Bias in Legal Systems: Recommendations for Reform," *International Journal of Law and Gender*, 2023.
- 26 *Honor Killings: Cultural Contexts and Legal Responses*," *International Journal of Law and Society*, 2021.
- 27 "Judicial Discretion and Gender: A Critical Analysis," *Journal of Criminal Justice*, 2022.
- 28 "Training Judges on Gender Sensitivity: A Necessity," *Legal Studies Review*, 2024.
- 29 "Gender Mainstreaming in Legislation: Global Practices," *UN Women*, 2024.
- 30
- 31 "Increasing Women's Representation in Judiciary: Strategies and Challenges," *Harvard Law Review*, 2022.
- 32 "Death Penalty Abolition Toolkit," *The Advocates for Human Rights*, 2023.
- 33 *Amnesty International*, "Women on Death Row Face Despicable Discrimination," October 2021.
- 34 *World Coalition Against the Death Penalty*, "Making Gender Discrimination in Capital Punishment Visible," October 2023.
- 35 "Gender Bias in Legal Systems: Recommendations for Reform," *International Journal of Law and Gender*, 2023.
- 36 "Judicial Discretion and Gender: A Critical Analysis," *Journal of Criminal Justice*, 2022.
- 37 "Gender Mainstreaming in Legislation: Global Practices," *UN Women*, 2024.
- 38 "Increasing Women's Representation in Judiciary: Strategies and Challenges," *Harvard Law Review*, 2022.