
JUDICIAL BIAS IN SENTENCING WOMEN: A FEMINIST CRITIQUE OF INDIAN JURISPRUDENCE

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ABSTRACT

This paper critically examines gender bias in sentencing within the Indian criminal justice system, focusing on the leniency often extended to female offenders. Although Indian law professes formal gender neutrality, courts frequently interpret female culpability through a lens of cultural stereotypes, emotional vulnerability, and caregiving roles. Drawing upon case law and empirical research, the paper demonstrates how judicial discretion tends to favour women, especially when they conform to traditional gender norms leading to systemic disparities in sentencing outcomes.

The paper explores the rationale behind such bias, including the chivalry hypothesis, public sentiment and institutional paternalism. While some gender-based mitigation may arise from genuine socio-economic constraints, unchecked bias undermines constitutional principles of equality and erodes public trust in judicial fairness.

The paper concludes with reform recommendations, including codifying gender-neutral sentencing guidelines, implementing judicial training on implicit bias, and promoting transparency in sentencing. Ultimately, the study argues for a legal approach that balances compassion with constitutional equality, ensuring that justice is both contextually sensitive and fundamentally impartial.

I. Introduction:

Sentencing bias refers to a systemic deviation in judicial decisions wherein factors unrelated to the legal merits of a case, such as the gender of the accused, influence the severity of the sentence. While the ideal of justice demands impartiality, in practice, judicial outcomes often reflect the embedded values, assumptions and social hierarchies of a society. One such manifestation is gender based sentencing bias, wherein the gender of the offender may result in differential treatment before the law.

This paper focuses on a particularly complex part of sentencing bias, which is the perceived leniency extended to women in India's criminal justice system. Empirical observations and select case studies suggest that women often receive comparatively lighter sentences than men for similar offences. This trend raises critical questions about whether such disparities stem from protective paternalism, cultural constructions of femininity, assumptions of caregiving roles, or a broader reluctance to incarcerate women. While these disparities may superficially appear favourable to women, they also risk undermining the principle of equal justice and may reinforce stereotypical notions of gender roles.

The primary objective of this paper is to explore the patterns and underlying logic of gendered sentencing in India. By examining case law, sentencing data, and judicial reasoning, the paper aims to uncover whether leniency is consistently afforded to women and under what circumstances.

Beyond mapping trends and comparing jurisdictions, the paper also seeks to understand the normative and institutional rationales that may sustain sentencing disparities. Are judges influenced by the assumption that women are less culpable? Do societal expectations about motherhood and domesticity weigh into sentencing decisions? Or does the lack of gender sensitive alternatives to incarceration contribute to this divergence? These questions probe the deeper rationale behind what may otherwise appear as a benign or even progressive practice.

Finally, this study will analyse the broader implications of gendered sentencing practices on justice, equality and penal policy. While some may argue that judicial discretion allows for a humane and context sensitive approach to justice, unchecked bias, whether favourable or unfavourable, however, it risks eroding the rule of law and public confidence in the judiciary. The paper concludes by recommending legal and institutional reforms aimed at achieving a

more principled and transparent sentencing framework, one that upholds gender equality while remaining sensitive to social realities.

II. Gender Bias in Sentencing in India:

The Indian criminal justice system, while formally gender neutral, often exhibits gendered patterns in sentencing that reveal deep rooted judicial paternalism. Women offenders are frequently portrayed not as autonomous legal subjects, but as caregivers, victims, or dependents, roles that induce leniency and invoke discretionary mitigation during sentencing.

Judicial Construction of the “Reasonable Woman” –

One of the most pointed critiques of this phenomenon comes from Usha Ramanathan, who argues that Indian courts tend to conceptualize the “*reasonable woman*” not as a rational, autonomous legal subject but as one situated within domesticity, vulnerability and passivity. This image is embedded in the societal archetype of womanhood and is subtly reflected in court reasoning¹. The judicial tendency is not just to interpret the act, but to interpret the woman herself in light of her perceived social role.

For instance, in *Satni Bai v. State of Madhya Pradesh*², the Hon’ble Supreme Court opined on what a “reasonable mother” would do after injuring her child. It stated, “*The normal reaction of any mother would have been to go hysterical and clutch the body of her son.*” This logic, though perhaps meant empathetically, but exposes an unconscious application of gendered expectations. Here, the court did not just assess the criminal intent or action but filtered the reaction through an archetype of maternal instinct.

Gendered Discretion in Sentencing: Judicial Practice –

This gendered lens often leads to disproportionate sentencing, especially when judges invoke special considerations for women. In *State of Kerala v. Anu Santhi*³, a woman convicted alongside her extra-marital partner for killing her child and husband was treated with leniency. The Sessions Judge who herself was a female judge, in her judgement opined

¹ Usha Ramanathan, *The Reasonable Woman*, in *Engendering Law: Essays in Honour of Lotika Sarkar* (Eastern Book Co. 1999).

² *Satni Bai v. State of Madhya Pradesh*, (2010) 2 S.C.C. 646 (India).

³ *State of Kerala v. Anu Santhi*, Sessions Case No. 1480/2014 (Sessions Ct. Thiruvananthapuram, 2016) (India).

that, “A2 is a woman, a member of a weaker section (with apologies to feminists). So I am inclined to take a slightly different view in the matter of imposing sentence to her. I feel that extreme penalty need not be imposed on her.” The explicit invocation of gender as a mitigating factor, while apologizing to feminists reveals the paradox. Even as the judiciary recognizes the problematic nature of such reasoning, it continues to indulge in it.

Similarly, in the colonial-era case of *Supadi Lukadu v. Emperor*⁴, a woman attempted suicide by jumping into a well with her infant tied to her back. Although initially charged under Section 302 (murder), the court reduced it to Section 304A (causing death by negligence), citing her disturbed mental state. The court noted her suffering and implicit desperation, which played a decisive role in sentencing.

These cases demonstrate how gendered assumptions, mental fragility, emotional overwhelm and caregiving pressures influence sentencing outcomes. While men committing comparable offenses may face harsh penalties, women are more likely to receive judicial sympathy if they fit the normative roles of wife or mother.

Effects of Paternalism: Sentencing Disparities –

This judicial leniency is not codified in any statutory law but emerges from discretion in interpreting mitigating factors. Courts often emphasize women’s vulnerability, lack of criminal history, or family responsibilities, thereby reinforcing gender stereotypes under the guise of individualized justice.

Empirical findings also reflect this. A study by Franklin and Sugiura highlights layperson and institutional tendencies to sanction female offenders less harshly for identical crimes. This psychological bias is mirrored in judicial behaviour, particularly in sentencing phases where judges have broad discretionary powers⁵. Furthermore, Indian courts treat women offenders as exceptions, morally deviant from the normative expectations of womanhood and paradoxically reward them with leniency as part of “*corrective paternalism*”⁶.

⁴ *Supadi Lukadu v. Emperor*, A.I.R. 1925 Bom. 310 (India).

⁵ Lisa Kort-Butler & Michele Kugler, Same Crime, Same Sentence? Disparities in Laypersons’ Sanctioning Preferences for Male and Female Offenders, and the Link to Respondent Gender Bias, 90 *Sociological Inquiry* 361 (2020).

⁶ Female Criminality

In some instances, this bias results in a form of gendered mercy that, while seemingly beneficial to women, undermines the principles of legal equality. It implicitly punishes those women who defy traditional roles like non-maternal women, assertive women, or women involved in violent crimes without a male manipulator as these have been a few recorded reasons in the verdicts. Such women are often treated more harshly because they disrupt the judiciary's idealized construct of femininity.

The Contradiction of Equality and Compassion –

Thus, Indian courts remain caught between constitutional formalism, equality before law and societal conservatism, which valorises specific gender roles. This contradiction generates uneven sentencing landscapes. As Usha Ramanathan argues, judicial decisions are not just responses to legal violations but acts of cultural narration, deciding who is “redeemable” and who is not⁷.

While compassionate sentencing is vital, it must not come at the cost of perpetuating stereotypes or undermining justice. A truly egalitarian approach must decouple womanhood from domestic passivity and treat women not merely as exceptions in the justice system, but as equal agents of law, capable of both virtue and culpability.

III. Rationale Behind Gendered Sentencing Bias:

Gendered sentencing bias in criminal justice does not arise in a vacuum, it is deeply embedded in the sociocultural, psychological, and institutional fabric of society. Courts, consciously or unconsciously, reflect prevailing norms about gender roles, culpability, and the capacity for reform. This chapter explores the rationales behind such bias, revealing how perceptions of women as less blameworthy shape judicial discretion in ways that often conflict with formal legal equality.

Sociocultural Perceptions and the Image of the Caregiver –

Central to the rationale behind lenient sentencing for women is the widespread cultural perception of women as primary caregivers and moral guardians. Women are traditionally viewed as nurturing, emotionally vulnerable, and less capable of harm. These

⁷ Ramanathan, *supra* note 1.

perceptions translate into judicial assumptions that women are less dangerous or more amenable to rehabilitation than men.

The Chivalry Hypothesis –

The “*chivalry hypothesis*”⁸ offers one of the most cited explanations for gender disparities in sentencing. It suggests that judges, especially male judges are more likely to exhibit leniency toward female defendants who conform to traditional gender norms. These women are perceived as respectable or redeemable, leading to softer punishments for crimes that would earn harsher sentences for men. This has been evidenced in both empirical studies and judicial reasoning. For instance, in *Anu Santhi’s case*⁹, the Sessions Judge’s recorded her comment that “*A2 is a woman, a member of the weaker section (with apologies to feminists)... I feel that extreme penalty need not be imposed on her*”, thereby admitting to gender-based mitigation, which was upheld by the High Court as well.

Sonja B. Starr’s study of federal sentencing in the United States further validates the chivalry hypothesis. Her data revealed that women were 50% less likely to receive a prison sentence than men, even after controlling for factors such as prior criminal history and offense severity¹⁰.

Paternalism v. Equality –

The roots of gendered leniency also lie in paternalism, a historical outlook that views women as needing male protection. This outlook persists in the legal system, even when it conflicts with constitutional guarantees of equality. While Indian courts proclaim equality before the law under Article 14 of the Constitution, their practice sometimes contradicts this principle.

Such paternalism is also evident in cases like *Supadi Lukadu*¹¹, where the court reduced the charge of a woman from murder to causing death by negligence, citing her disturbed mental state, a consideration less frequently extended to male defendants in

⁸ Maria Elizabeth Grabe et al., Gender in Crime News: A Case Study Test of the Chivalry Hypothesis, 9 *Mass Communication & Society* 137 (2006).

⁹ *State of Kerala v. Anu Santhi*, supra note 3.

¹⁰ Sonja Starr, Estimating Gender Disparities in Federal Criminal Cases, 17 *Am. L. & Econ. Rev.* 127 (2015).

¹¹ *Supadi Lukadu v. Emperor*, supra note 4.

similar circumstances.

Gender as a Mitigating Factor –

Courts frequently cite women's familial roles, particularly motherhood as mitigating factors. Sentencing outcomes in cases like *State of Himachal Pradesh v. Nirma Devi*¹², were influenced by the woman's responsibility toward her children, resulting in a significant reduction in punishment despite the severity of the offense. Similar considerations are rarely applied to male defendants, reinforcing the stereotype that caregiving is inherently female and overlooking the rights of children with incarcerated fathers.

Public Sentiment and Layman's Bias –

Gendered perceptions are not confined to the judiciary, they are mirrored in societal attitudes. Laypersons consistently recommended harsher penalties for male offenders across a range of crimes. Female offenders were perceived as less culpable, especially when their actions could be interpreted through lenses of desperation, mental illness, or maternal stress.

This public sentiment reinforces the judiciary's tendencies, creating a feedback loop between legal and cultural narratives. The portrayal of female offenders in media and courtrooms as 'victims of circumstance' further amplifies the inclination to empathize with women, particularly when they conform to conventional norms of femininity.

While the leniency shown to women may be well-intentioned, it is rooted in archaic conceptions of gender and undermines the principle of equal justice. Treating women differently because of their perceived roles as caregivers or their emotional makeup does not promote fairness, rather, it institutionalizes inequality. Reform must involve not only revisiting sentencing guidelines but also confronting the cultural narratives that shape judicial discretion. Equality before law must mean accountability without distortion by stereotype.

IV. Conclusion:

The analysis of gender bias in sentencing reveals a complex intersection between empathy,

¹² *State of Himachal Pradesh v. Nirma Devi*, Crim. Appeal No. 4062 of 2013 (H.P. High Ct. 2024) (India).

cultural perceptions and the legal principle of equality. While judicial discretion is meant to allow flexibility for humane and individualized justice, its systemic application along gendered lines has resulted in outcomes that often depart from the constitutional guarantee of equality before the law. When courts consistently view women as less culpable or more deserving of leniency due to their roles as mothers, caregivers, or victims of social circumstance, they risk reinforcing patriarchal assumptions rather than dismantling them.

It is undeniable that some gender-based mitigation stems from legitimate socio-economic realities. For example, women may have limited access to legal aid, face discrimination, or carry the disproportionate burden of childcare. However, the persistence of a pattern in which female offenders are regularly afforded lighter sentences, particularly when they conform to traditional gender roles, creates a structural imbalance. Judicial empathy, when unconsciously tethered to paternalistic ideals, erodes the consistency and fairness expected from an ideal justice system.

India's penal and judicial record reflects these tensions vividly. Since independence, India has executed only one woman, Rattan Bai Jain in 1955, despite numerous capital cases involving women post 1955. According to *Project 39A's* 2022 prison statistics, out of 165 death sentences handed down, only two were awarded to female convicts, both of which were overturned by higher courts¹³. This trend highlights the judiciary's continued hesitance to apply the most severe penalties to women, regardless of legal parity in statute. Meanwhile, women constitute only 4.1% of India's total prison population (23,772 out of over 5.7 lakh)¹⁴, and there is still no consolidated public data on female conviction rates, making systemic analysis more difficult but also raising questions about data transparency and policy prioritization.

These disparities highlight the urgent need for reform. Three key recommendations emerge:

Codification of Gender-Neutral Sentencing Guidelines:

Sentencing frameworks must clearly articulate that gender, in itself, should not be a mitigating or aggravating factor unless tied to specific socio-economic evidence. Objective criteria would curb the excesses of discretionary empathy.

¹³ *Project 39A - Death Penalty in India: Annual Statistics Report 2022* (National Law University Delhi 2022).

¹⁴ *Prisons in India: Mapping Prison Manuals and Measures for Reformation and Decongestion* (Centre for Research & Planning, Supreme Ct. of India 2024).

Judicial Training on Implicit Bias:

Courts need institutional training to recognize and correct unconscious gender biases. Awareness of the “chivalry effect” and its implications can promote more balanced decisions.

Transparency and Accountability:

Sentencing judgments must include detailed reasoning when deviation occurs, especially in cases involving gender-based mitigation. Public access to data on sentencing trends by gender would also enhance oversight.

The path forward must embrace a delicate balance. A humane criminal justice system cannot ignore lived realities, like the impact of incarceration on single mothers or the legacy of abuse many female offenders carry. However, compassion must not curdle into stereotype. Judicial decisions must reflect both formal equality and contextual understanding, ensuring that gender is neither a shield from justice nor a reason for injustice.

Future research and policy making must continue to explore whether equity-based approaches, such as sentencing reform sensitive to caregiving or systemic disadvantage, can coexist with constitutional commitments to neutrality and non-discrimination. As India evolves, its legal system must reaffirm that empathy and equality are not mutually exclusive, but must be ethically and legally balanced in the pursuit of justice.