

**MATERNAL MERCY AND JUDICIAL MASCULINITY: GENDERED SILENCING IN  
INDIA'S CAPITAL PUNISHMENT JURISPRUDENCE**

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**ABSTRACT**

*This paper explores how gendered expectations and patriarchal morality shape judicial attitudes toward women sentenced to death, focusing on the case of *Shabnam v. Union of India*. As India's first woman to face the death penalty in independent memory, Shabnam's trial revealed not only a failure of due process but also the deeper social anxieties surrounding female defiance. Her motherhood, instead of evoking empathy, became a mark of betrayal; her womanhood, a justification for condemnation. Through an analysis of the "rarest of rare" doctrine, the paper argues that legal determinations of collective conscience often mirror social prejudices rather than objective justice. A comparative reflection on the case of Lisa Montgomery in the United States further illustrates how trauma and mental illness are routinely dismissed when women's actions violate traditional notions of femininity and nurture. Drawing from cultural texts such as *Bandit Queen* and Amrita Pritam's *Ajj Aakhaan Waris Shah Nu*, the study examines how law frequently silences women's grief and transforms their suffering into moral spectacle. Ultimately, the paper calls for a feminist jurisprudence of clemency—one that acknowledges context, trauma, and emotional complexity in sentencing. By urging the legal system to listen not just to guilt but to grief, it argues for a justice rooted in empathy rather than retribution, capable of confronting the gendered biases that continue to define capital punishment in India.*

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## INTRODUCTION

In the dim confines of Mathura prison, Shabnam waits not just for the gallows, but for history's judgment. She is India's first woman to be sentenced to death in independent memory. Her crime: the murder of seven family members. Her motive: love. but under those horror titles and news she was not someone we thought to be, she was someone who chose her love over society, but no one understood this. The courtroom did not just weigh evidence—it performed a morality play. Her motherhood was not a mitigating factor; it was a betrayal. Her femininity, not a plea for mercy, but a reason for revulsion. In the nation where motherhood is considered as a blessing her pregnancy was considered as a failure. the law didn't see her trauma, her struggles, or her emotions it only saw as a person committing wrong. she wasn't just punished for her actions; she was punished for stepping out of her role in society as well.

### THE “RAREST OF RARE” DOCTRINE: WHOSE CONSCIENCE DOES THE LAW SERVE?

Death penalty still plays a crucial role in India, but it is performed and used within the most extreme cases with uttermost caution and hence leading to the most vital doctrine ' the rarest of rare doctrine'<sup>2</sup>. This concept was first introduced from the case of Bachan Singh V State of India<sup>3</sup>, the case briefly involves about Bachan Singh who was convicted the offence of killing his family and upon his bail he committed another heinous crime and then the court convicted him of death penalty. He pleaded to the court saying it was against article 21 <sup>4</sup>to punish him with death penalty, even Tho the punishment sustained this doctrine was introduced. the court had guidelines as to when the doctrine should be used like when:

Life imprisonment isn't enough, and the crime “shocks the collective conscience of society.”<sup>5</sup>(In other words, when society is so outraged by the crime that anything less than death would feel unjust.)

The main issue or the main controversy over here was about was collective conscience of society? Terms like “brutal crime” or “shocking society” sound aim but are subjective (based on opinion). What people find “shocking” or “unforgivable” often depends on cultural beliefs,

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<sup>2</sup> *Bachan Singh v. State of Punjab*, (1980) 2 SCR 1057 (India).

<sup>3</sup> *Id.*

<sup>4</sup> *India Const. art. 21.*

<sup>5</sup> *Bachan Singh*, supra note 2, at 1080–81.

media portrayal, and social norms — not necessarily on universal justice<sup>6</sup>. When a woman commits a crime, especially one that defies traditional roles (like being an obedient daughter, wife, or mother), society tends to judge her more harshly. She isn't just punished for the crime; she's also condemned for not being the kind of woman society expects her to be. For example, a woman who kills someone might be seen as a “monster” not just for murder, but for betraying her femininity <sup>7</sup>or motherhood. Judges' decisions are influenced by: Their personal beliefs, The way the media presents the case, and public emotions or fears<sup>8</sup>. The doctrine “rarest of rare” rule was supposed to prevent unfair death sentences, but when conducted in practice we could see the foul of practical system where a case was judged because of her role not seeing her emotions her vulnerability. Shabnam was a woman sentenced to death in India. Shabnam was a woman sentenced to death in India. The case focused heavily on how horrific the crime was, but ignored her personal background such as emotional pressure, gender vulnerability, and the fact that she was a mother.<sup>9</sup> Instead of seeing her as a complex human being, the legal system treated her as a warning a woman who broke moral and social boundaries<sup>10</sup>.

#### CASE STUDY: SHABNAM V. UNION OF INDIA

On the night of April 14, 2008, in Amroha, Uttar Pradesh, Shabnam, a well-educated woman from a respected family, committed a crime that stunned the country. With her partner Saleem, she killed seven members of her family, including a ten-month-old baby. Her family had opposed their relationship. The victims were first sedated, then attacked with an axe. <sup>11</sup>The trial court sentenced both to death. The Allahabad High Court upheld the decision in 2013, and in 2015, the Supreme Court rejected their appeals<sup>12</sup>. The judgment focused on the violence and betrayal. But it wasn't just about the crime—it was about who Shabnam was, and who she wasn't willing to be. She wasn't just punished for murder. She was punished for stepping outside the roles assigned to her: obedient daughter, nurturing mother, silent woman. Her identity as a mother was barely acknowledged. Even the fact that she gave birth in prison was brushed aside, treated as

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<sup>6</sup> *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).

<sup>7</sup> *Mohd. Arif v. Supreme Court of India*, (2014) 9 SCC 737 (India).

<sup>8</sup> *Shabnam v. Union of India*, (2015) SCC OnLine SC 484 (India).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Shabnam v. Union of India, Case Analysis, *LexQuest* (Aug. 2015), <https://www.lexquest.in/wp-content/uploads/2015/08/SHABNAM-V-UOI.pdf>.

<sup>12</sup> *Id.*

irrelevant. There was no real attempt to understand her emotional state, her vulnerability, or how Saleem may have influenced her decisions.

The Supreme Court said the crime shocked the collective conscience of society<sup>13</sup>. But what's more shocking is how quickly the system moved. Just six days after the judgment, the Sessions Judge issued death warrants—ignoring the 30-day window for filing a review petition, a right guaranteed under the Supreme Court Rules<sup>14</sup>. Most death penalty cases drag on for years. The Nirbhaya case took seven. Why was Shabnam's execution rushed? Was it because she defied the image of what a woman should be? This wasn't just a technical error. It was a violation of her rights. The Death Penalty Litigation Clinic at NLU Delhi stepped in, and the vacation bench of Justices A.K. Sikri and U.U. Lalit cancelled the warrants<sup>15</sup>. They reminded the court that Article 21—the right to life—applies even to those on death row. No one can be executed until every legal remedy has been exhausted. The court criticized the way the warrants were issued: no notice, no lawyer, no fixed date. This was against the rules set in Mohd. In the case of *Arif v. Supreme Court of India*<sup>16</sup>, the Court determined that in instances involving the death penalty, review petitions should be examined in open court by a panel of three judges, given the gravity and permanence of such a sentence<sup>17</sup>. However, the swift Shabnam's execution was carried out indicated that the focus was not merely on adhering to protocol it highlighted a societal mindset that hastily punishes women who deviate from conventional roles. In this situation, the legal system seemed to function more as a tool for vengeance rather than a protector of rights. Shabnam's gender, her defiance, and her refusal to adhere to conventional family norms seemed to make her an easy target for both legal and societal judgment<sup>18</sup>. Viewed in this light, the procedural errors were not merely minor mistakes they highlighted how the justice system can react more swiftly and severely when a woman's conduct challenges societal moral standards. Instead of functioning as a space for careful legal consideration, the courtroom shifted into a platform for moral scrutiny. This case demonstrates how gender influences both the judicial

<sup>13</sup> *Bachan Singh*, supra note 2, at 1080–81.

<sup>14</sup> *Supreme Court Rules*, Order XLVII, Rule 1 (2013) (India).

<sup>15</sup> *NLU Delhi, Grover, Ramachandran Get SC to Quash Death Penalty of Killing Couple*, *Legally India* (May 29, 2015), <https://www.legallyindia.com/the-bench-and-the-bar/nlu-delhi-grover-ramachandran-get-sc-to-quash-death-penalty-of-killing-couple-2-days-after-stay-20150529-6029>.

<sup>16</sup> *Mohd. Arif*, supra note 7.

<sup>17</sup> *Id.*

<sup>18</sup> *Death Penalty Litigation Clinic, NLU Delhi Intervention*, *Legally India* (May 29, 2015), <https://www.legallyindia.com/the-bench-and-the-bar/nlu-delhi-grover-ramachandran-get-sc-to-quash-death-penalty-of-killing-couple-2-days-after-stay-20150529-6029>.

process and societal perceptions. Shabnam faced punishment not only because of the crime she committed but also for going against her role in society. here the courtroom became a space where societal norms were maintained where her death sentence symbolized not only legal retribution but also the reinforcement of traditional moral and cultural values.

### COMPARATIVE CASE: LISA MONTO GERMY

Lisa was a child who had the most traumatic childhood was the first to given capital punishment after federal US<sup>19</sup>. When Lisa was 11 her stepfather used to sexually abuse her drag her to a corner of the vanity let his friends raper her, he would slap her head against the concrete causing trauma head injuries which could be seen in her MRI scans. The abuse was not only by her stepfather alone her mother was part of this, but she would also sell Lisa's body to plumber or electrician whenever odd jobs was to be done<sup>20</sup>. She was executed for a crime where when she was 36 yrs old, she went to a pregnancy class faked being pregnant and befriended 23-year-old Bobbie Jo Stinnett, Lisa came to her house tore bobbie's belly and took the surviving child and jo died of intense bleeding. She was arrested and after trump put an end to the 17-yr heinous punishment she was executed as well<sup>21</sup>. But many failed to see what Lisa side of the story, Janet Vogelsang, a clinical social worker, spent several long days talking to Montgomery in 2016. After many hours slowly gaining the prisoner's trust, and learning about her childhood trauma, Vogelsang began to have a sense of Deja vu with similar sessions she had had with military veterans traumatized by war<sup>22</sup>. Porterfield told the Guardian that in her one-to-one sessions with the prisoner, she quickly came to recognize symptoms of trauma and mental illness.<sup>23</sup> "When I met with her, she would become spacey," she said.

"She would not be able to keep her train of thought, and describe strange ways of thinking to describe her reality. She lives in a state of disassociation, going in and out all the time. When I

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<sup>19</sup> Lisa Montgomery – Cornell Center on the Death Penalty Worldwide, <https://dpw.lawschool.cornell.edu/advocacy/the-case-of-lisa-montgomery/>.

<sup>20</sup> Maurice Chammah & Keri Blakinger, *What Lisa Montgomery Has In Common With Many On Death Row: Extensive Trauma, The Marshall Project* (Jan. 8, 2021), <https://www.themarshallproject.org/2021/01/08/what-lisa-montgomery-has-in-common-with-many-on-death-row-extensive-trauma>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Sandra Babcock, *Lisa Montgomery: A Victim of Incest, Child Prostitution and Rape Faces Execution, Death Penalty Worldwide* (Oct. 2020), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2020/10/Lisa-Alice-Profile-PDF.pdf>.

asked about her childhood, she would display an inability to connect to her emotions – with a blank facial expression, blank voice, talking about herself in the third person.”<sup>24</sup>

Since Montgomery has received intensive psychiatric care and analysis in the prison system she has been variously diagnosed with bipolar disorder, PTSD, anxiety and depression, psychosis, mood swings, disassociation and memory loss. Exhaustive studies of her childhood and early adulthood suggest that she was grappling with many of these conditions before, and leading immediately up to, the committing of her crime.<sup>25</sup>

In the months leading up to the murder, she had several episodes in which she told those around her that she was pregnant – a claim that was palpably false as she was involuntarily sterilized after the birth of her fourth child. She also displayed all the symptoms of her mental illness, including disassociation, memory loss and profound depression<sup>26</sup>. But the court didn’t at her trauma. The echoes with Shabnam’s case are stark. Both women committed acts that defied social expectations of femininity and motherhood. Both were punished not only for violence but for violating the scripts society imposes on women—obedience, silence, and nurturing. Shabnam’s identity as a mother was erased; Lisa’s maternal instinct was grotesquely transformed into a weapon against her victim. In both cases, the courts sought simplicity rather than nuance. Trauma was sidelined. Context was dismissed. The woman became a cipher for societal anxieties.

These cases reveal a persistent pattern: when women transgress, particularly within the domestic sphere, the law functions not only as justice but as theatre. It performs social control. Courtrooms become stages where gender norms are reaffirmed, mercy is withheld, and the complexities of human suffering are eclipsed by the need for symbolic closure. The death penalty, in these instances, becomes more than punishment. It becomes a ritual designed to restore order, a

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<sup>24</sup> *Id.*

<sup>25</sup> Petition for Writ of Habeas Corpus at 1–3, *Montgomery v. Warden of USP Terre Haute*, No. 4:12-cv-80 GAF (S.D. Ind. Jan. 12, 2021), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2020/10/Petition-Arguing-Lisa-Montgomery-is-Mentally-Incompetent-to-be-Executed.pdf>.

<sup>26</sup> Tahir Rahman, *An Overvalued Desire for Motherhood Leads to Homicide*, *Psychology Today* (Oct. 1, 2024), <https://www.psychologytoday.com/us/blog/clinical-and-forensic-dimensions-of-psychiatry/202410/an-overvalued-desire-for-motherhood>

mechanism to eliminate the woman who has disrupted the fragile social equilibrium, and a stark warning about the cost of defiance.<sup>27</sup>

### CULTURAL ARTEFACTS & LEGAL IMAGINATION: WHEN LAW REFUSES TO LISTEN TO GRIEF

There are countless moments in a courtroom where the space where justice was to be delivered it replaced with silence especially a women's, her voice is muffled, her pain flattened and her difference is turn to a spectacle to understand this silencing, we must step outside the legal archive and into the cultural one. Shekhar Kapur's Bandit Queen<sup>28</sup> is not just a film—it's a scream. It tells the story of Phoolan Devi, a Dalit woman brutalized by caste and patriarchy, who retaliates with violence and is punished not only by the law but by the gaze of society. The film doesn't ask us to forgive her—it asks us to witness her. To see how the law failed to protect her and then punished her for surviving. Like Shabnam, Phoolan's story is framed through betrayal: not just of family, but of femininity itself. both the women here were seen as a threat to the society threat that it would affect their moral order, and both weren't given a right to be in their full complexity. Amrita Pritam's haunting poem *Ajj Aakhaan Waris Shah Nu*<sup>29</sup>echoes this grief. Written during the Partition, it calls upon the long-dead poet Waris Shah to rise and record the suffering of Punjab's daughters. "A million daughters cry out to you, Waris Shah," she writes, "speak from your grave."<sup>30</sup>The poem is not just about historical violence it's about the refusal of justice to hear women's pain. It's about the silence that follows screams. What does justice sound like when it listens to grief, not just guilt? It doesn't rush to punish. It pauses<sup>31</sup>. It asks what led to the act. the women here are not seen as a role model for society but rather it sees the women as a person of dignity Law, when stripped of empathy, becomes a tool of control. But when it listens to poems, to stories, to the quiet ache beneath defiance it begins to transform. It begins to feel.

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<sup>27</sup> M.K. Guru Prasath & T. Charumathi, *A Critical Analysis on Death Penalty and Gender Bias*, 4 *Int'l J. Advanced Legal Res.* (2023), <https://ijalr.in/wp-content/uploads/2023/11/A-CRITICAL-ANALYSIS-ON-DEATH-PENALTY-AND-GENDER-BIAS-Guruprasath-M-K.pdf>

<sup>28</sup> *Bandit Queen* (Kaleidoscope Ent. & Film Four Int'l 1994), based on *India's Bandit Queen: The True Story of Phoolan Devi* by Mala Sen.

<sup>29</sup> Amrita Pritam, *Ajj Aakhaan Waris Shah Nu* (1948), translated in *I Say Unto Waris Shah*, Univ. of Lucknow Translation PDF.

<sup>30</sup> Sudip Das Gupta, *Poem Analysis: I Say Unto Waris Shah*, PoemAnalysis.com, <https://poemanalysis.com/amrita-pritam/i-say-unto-waris-shah/>.

<sup>31</sup> *Id.*

### CONCLUSION: TOWARD A FEMINIST JURISPRUDENCE OF CLEMENCY

The death penalty is treated as a deterrent, to make people understand that if violent crime takes place, then there can be serious punishments. But in cases like Shabnam's, it becomes something more like a cultural judgment where the gender role plays. The courtroom doesn't just weigh evidence; it enforces expectations. Women who fought with violence who fought for something the loved wasn't just seen as criminals because of the crime they did but because of the role they didn't do, the role society assigned them to do. It's like blanket consent when you are a woman you are seen to be consented to the roles as a woman ahead. Shabnam's case shows how the law can erase context—trauma, coercion, motherhood—and replace it with symbolism. Her sentence wasn't just about justice; it was about restoring a social order she disrupted. To move forward to have a more humane justice system we need to focus on analysing the trauma and not just the guilt. We need gender audits that expose bias in judicial reasoning. Clemency must be grounded in compassion, not in public outrage.

