



India's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women

Suggested List of Issues Prior to Reporting Relating to the Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

and

The World Coalition Against the Death Penalty

**for the 94th Session of the Committee on the Elimination of All Forms of Discrimination Against Women (Pre-Sessional Working Group)
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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a membership-based global network committed to strengthening the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. The Committee last reviewed India's compliance with the Convention on the Elimination of All Forms of Discrimination against Women in 2014. This report addresses India's compliance with the Convention as it pertains to issues related to the death penalty, which the Committee did not specifically address in its 2014 Concluding Observations.
2. India has not abolished the death penalty, and it does not reserve the death penalty for only the most serious crimes. In recently enacted amendments to its penal code, India expanded the scope of offenses for which the death penalty may be imposed from 15 to 18, including for offenses not entailing an intentional killing.¹ As of December 2024, 17 women are on death row, with courts handing down eight death sentences for women during 2024 alone.² This trend demonstrates a sharp increase in the number of death sentences Indian courts have imposed on women since 2016.³
3. The Committee previously highlighted a number of issues concerning violence against women, gender-based discrimination, early and forced marriages, and lack of equality in marriage and family relations in India.⁴ Despite the Committee's recommendations to implement the Justice Verma Committee recommendations,⁵ which had rejected further application of the death penalty for sexual violence,⁶ India has proceeded instead to expand the scope of death penalty, including for crimes of sexual violence.⁷ Persistent discrimination against women also potentially leaves women vulnerable to adverse treatment in criminal proceedings and violations of fair trial rights.⁸
4. This report discusses India's continued use of the death penalty and the following issues regarding discrimination against women in the context of the imposition of death penalty, including India's failure to address gender-based violence, which increases women's risk of coming into conflict with the law and facing death penalty, persistent discriminatory practices and gender biases and stereotypes against women that increase vulnerabilities of women in the criminal legal system and adversely impact their rights in legal proceedings, and detention conditions for women that do not comply with international human rights standards.

¹ Project39A, National Law University, Delhi, Death Penalty in India - Annual Statistics Report 2024 (2025) at 6 (2024); *see also* Bharatiya Nyaya Sanhita, 2023.

² *Ibid.*

³ *Ibid.*

⁴ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fourth and fifth periodic reports of India*, UN Doc. No. CEDAW/C/IND/CO/4-5, ¶¶ 10, 38 (Jul. 24, 2014).

⁵ *Id.* ¶ 11.

⁶ Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairman), Report of the Committee on Amendments to Criminal Law (Jan. 23, 2013) at 245-2540, *available at* https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf.

⁷ Project39A, National Law University, Delhi, Death Penalty in India - Annual Statistics Report 2024 (2025) at 8, 19, 78.

⁸ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (September 2018), at 4, 7, *available at* <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

India fails to uphold its obligations under the Convention of the Elimination of All Forms of Discrimination Against Women

I. India is a retentionist state that continues to impose death sentences, including against women, for crimes that are not the “most serious” under international law.

5. India takes the position, as a procedural matter, that courts need “to provide special reasons to impose a death sentence,” and the Supreme Court of India laid out a framework for determining whether there are such special reasons in *Bachan Singh v. State of Punjab* (1980).⁹ The Court in *Bachan Singh* noted that courts should sentence people to death only “in the rarest of rare cases when the alternative option is unquestionably foreclosed.”¹⁰
6. Despite these legal and historical precedents, India has maintained the death penalty and courts continue to impose death sentences for a broad range of offenses. The scope of crimes for which courts may impose the death penalty includes murder, kidnapping with murder, armed robbery with murder, sexual offences, and terror offenses¹¹—which the Special Rapporteur on executions has observed to be “much wider than the one provided for under international law.”¹²
7. India has expanded the scope of the death penalty. In 2023, India replaced the Indian Penal Code, 1860 with the Bharatiya Nyaya Sanhita, expanding the number of capital offenses to include “organised crime, terrorist act, and murder committed by a life convict.”¹³
8. Courts have continued to hand down death sentences, resulting in “a continuing and unabated increase in the death row population.”¹⁴ Trial courts sentenced 139 people to death in 2024, and at the end of the year there were 564 people on death row.¹⁵ Courts imposed eight of these death sentences on women, marking a sharp increase in the number of women sentenced to death since 2016.¹⁶ At the end of 2024, 17 women were under sentence of death.¹⁷

⁹ Project39A, National Law University, Delhi, Death Penalty in India - Annual Statistics Report 2024 (2025) at 6.

¹⁰ *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 (May 9, 1980) ¶ 224, available at <https://indiankanoon.org/doc/1235094/>.

¹¹ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (September 2018), at 24, available at <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf> (observing that “[a] wide range of offenses are punishable by death, including murder, kidnapping with murder, armed robbery with murder, sexual offences, and terror offense.”).

¹² Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairman), *Report of the Committee on Amendments to Criminal Law* (Jan. 23, 2013) at 249-250, available at https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf (referring to a report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions with reference a 2012 mission to India).

¹³ Project39A, National Law University, Delhi, Death Penalty in India - Annual Statistics Report 2024 (2025) at 8, 77. Note that together with other laws that came into effect in 2024, this resulted in “four new offences which have been made punishable with death.” *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Ibid.*

¹⁶ *Id.* at 6.

¹⁷ *Ibid.*

9. Observers have noted that “India carries out few executions,”¹⁸ but the large number of death sentences means that a growing number of people—including women—are at risk of being executed.

II. India’s failure to comprehensively address gender-based violence has contributed to women coming into conflict with the law, placing them at risk of facing the death penalty (Concluding Observations Paragraphs 10–11, 22–23, 34–35, 38–41).

10. In its 2014 Concluding Observations, the Committee recognized “the State party’s efforts to enact a legal framework to prevent and respond to violence against women, including women from the marginalized castes and communities” and “the establishment in 2013 of the Justice Verma Committee on Amendments to Criminal Law to review existing normative gaps,” yet at the same time it expressed multiple concerns regarding continuing issues of violent crimes against women, including rape and abduction.¹⁹
11. In particular, the Committee noted: a significant increase in violent crimes against women; various issues that affect women in domestic circumstances including a high number of dowry-related deaths, the “persistence of so-called ‘honour crimes’ perpetrated by family members against women and girls,” and the continuing exemption from punishment for rape when the perpetrator is the victim’s husband if the victim is over 15 years of age; and the escalation of caste-based violence together with the “poor implementation” of laws meant to protect women in minority groups.²⁰ The Committee specifically noted concern with “the downplaying by key State officials of the grave criminal nature of sexual violence against women and girls.”²¹
12. The Committee therefore recommended that India implement specific laws to afford greater protection for women from violent crimes including “ensuring that marital rape is defined as a criminal offence, as requested by the Committee in its previous concluding observations,” improvements to law enforcement efficiency, accountability, and training, and the establishment of “one-stop crisis centres” for medical and legal aid as well as other support services.²² The Committee also recommended that India “implement the recommendations of the Justice Verma Committee regarding violence against women.”²³
13. The Committee also recognized the “high prevalence” of early and forced marriages despite a decline in the number of these cases after India adopted the Prohibition of Child Marriage Act, acknowledging that “victims of child marriage must file a petition with a court to void the marriage within two years after reaching the age of majority.”²⁴ The Committee recommended that India undertake several measures “to ensure equality between women and men in marriage and family relations.”²⁵

¹⁸ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (September 2018), at 24, *available at* <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

¹⁹ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fourth and fifth periodic reports of India*, UN Doc. No. CEDAW/C/IND/CO/4-5, ¶ 10 (Jul. 24, 2014).

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.* ¶ 11.

²³ *Ibid.*

²⁴ *Id.* ¶ 38.

²⁵ *Id.* ¶¶ 40–41.

14. India has demonstrated continued reliance on ratcheting up criminal penalties for sexual offenses—including the imposition of the death penalty for certain sexual crimes—while failing to address the structural causes of violence against women. For example, India has failed to implement the Justice Verma Committee’s recommendations regarding violence against women,²⁶ particularly its recommendations against authorizing the death penalty for crimes of sexual violence against women.²⁷
15. The Justice Verma Committee, formed after the Delhi gang rape case in December 2012 to assess potential modifications to criminal law regarding sexual violence against women,²⁸ categorically rejected the introduction of the death penalty for sexual violence including rape, emphasizing that harsh punishments do not act as deterrents.²⁹ Despite this conclusion, India’s comprehensive replacement to the Indian Penal Code, 1860—the Bharatiya Nyaya Sanhita, 2023—introduced the death penalty for three new offenses.³⁰ Furthermore, “[s]ince 2019, sexual offences have comprised the majority of death sentences imposed in India, accounting for over 50% of all death penalty cases at trial courts in each calendar year since then.”³¹ Notably, 2024 was the first year since 2019 in which sexual offenses actually did not result in the majority of death sentences, amounting to only 26.62% of the total sentences for that year.³²
16. Lawmakers continue to contemplate further expansion of the death penalty in reaction to sexual offenses against women. In 2024, following the rape and murder of a female doctor in Kolkata, the West Bengal State Legislative Assembly passed the Aparajita (Women and Child) Protection Bill, which “introduces the death penalty for a variety of sexual offences” as well as “a mandatory sentence of death for rape resulting in death or persistent vegetative state” under the applicable penal code provisions.³³ The governor of West Bengal recently returned the bill to lawmakers “for further consideration” based on concerns with respect to the death penalty provisions.³⁴ This legislative action reflects a tendency among elected officials to resort to expanding the scope of the death penalty for certain offenses against women in an effort to

²⁶ *Id.* ¶ 11.

²⁷ Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairman), Report of the Committee on Amendments to Criminal Law (Jan. 23, 2013) at 245-246, *available at* https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf; *see also Full text of Justice Verma's report (PDF)*, The Hindu (Dec. 4, 2021; 11:18 pm IST), <https://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece> (accessed Aug. 1, 2025).

²⁸ *Id.* at i; *see also Full text of Justice Verma's report (PDF)*, The Hindu (Dec. 4, 2021; 11:18 pm IST), <https://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece> (accessed Aug. 1, 2025).

²⁹ Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairman), Report of the Committee on Amendments to Criminal Law (Jan. 23, 2013) at 245-2540, *available at* https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf (observing that “seeking of death penalty would be a regressive step in the field of sentencing and reformation” and “there is considerable evidence that the deterrent effect of death penalty on serious crimes is actually a myth.”).

³⁰ Project39A, National Law University, Delhi, Death Penalty in India - Annual Statistics Report 2024 (2025) at 8, 77. Together with other laws that came into effect in 2024, this resulted in “four new offences which have been made punishable with death.” *Id.*

³¹ *Id.* at 19.

³² *Ibid.*

³³ *Id.* at 78.

³⁴ Shiv Sahay Singh, *West Bengal Governor returns Aparajita Bill to State govt. for reconsideration*, The Hindu (Jul. 25, 2025 08:25 pm IST), <https://www.thehindu.com/news/national/west-bengal/west-bengal-governor-returns-aparajita-bill-to-state-govt-for-reconsideration/article69855000.ece> (accessed Aug. 1, 2025).

seem “tough on violence against women,” while failing to address the root causes of such violence.³⁵

17. This approach is particularly concerning because Indian courts are handing down death sentences for rape and other forms of sexual assault at a high rate. In 2021, courts sentenced 48 people to death for rape, accounting for 33% of all death sentences that year.³⁶ These data reflect a regional trend, as reflected in a report called *A Deadly Distraction: Why the Death Penalty Is Not the Answer to Rape in South Asia* by Eleos Justice, Monash University, the Anti Death Penalty Asia Network (ADPAN), and the SAME Network.³⁷ The report found that the death penalty for rape deters victims from reporting crimes, fails to prevent sexual violence, diverts resources from addressing root causes, and ignores survivors’ real needs for support, justice, and societal change.³⁸
18. Impunity for gender-based violence, particularly for women belonging to marginalized groups, may create the perception that authorities will not protect women and that women who turn to authorities to seek justice may be placing themselves in danger. Last year between January and September, “[t]he media reported 33 incidents of sexual and physical violence against Dalit women,”³⁹ and in one incident, a young Dalit woman “was burned to death after filing a complaint [with the police] that she had been sexually harassed.” The perpetrator was the son of the man that was the subject of the woman’s complaint.⁴⁰
19. Gender-based violence and discrimination against women can also lead to women coming into conflict with the law. Certain women on death row were convicted of capital crimes that arose in part out of restrictive marriage practices and family pressures. In a groundbreaking 2018 report, the Cornell Center on the Death Penalty Worldwide observed that “[a]lthough officially banned, the caste system and its attendant marriage rules formed the background of at least three of the killings for which women received a death sentence” as the date of the study.⁴¹
20. Courts have on occasion “recognized ‘sustained provocation’ as a defense to murder,” recognizing that women have the right to self-defense when they murder an abusive family member, but courts do not have formal sentencing guidelines for women who have experienced protracted intimate-partner violence, leaving to the discretion of the court whether to consider any history of abuse and corresponding mitigating circumstances.⁴²
21. In addition, the 2023 revisions to the penal code do not fully criminalize marital rape, establishing an exception to the crime when the perpetrator is the victim’s husband as long as

³⁵ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fourth and fifth periodic reports of India*, UN Doc. No. CEDAW/C/IND/CO/4-5, ¶¶ 11, 40-41 (Jul. 24, 2014).

³⁶ Project 39A, *Death Penalty in India: Annual Statistics Report 2021* (Report, January 2022), at 19.

³⁷ Eleos Justice, Monash University, Anti Death Penalty Asia Network (ADPAN) and the SAME Network, *A Deadly Distraction: Why the Death Penalty is Not the Answer to Rape in South Asia* (2022), available at: adpan.org/wp-content/uploads/2022/05/A-deadly-Distraction-2.pdf.

³⁸ *Id.* at 8-9, 59-61.

³⁹ *The State of the World’s Human Rights*, Amnesty International (2025) at 194, available at <https://www.amnesty.org/en/documents/pol10/8515/2025/en/>.

⁴⁰ *Ibid.*

⁴¹ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (September 2018), at 25, available at <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁴² *Ibid.*

the victim is at least 18 years of age.⁴³ This exemption creates impunity for some of the most extreme forms of domestic violence. The Indian government even formally opposed petitions to the Supreme Court to criminalize marital rape, arguing that criminalizing marital rape can be “excessively harsh.”⁴⁴ As noted above, impunity for domestic violence can lead survivors of such violence into conflict with the law, risking that they will be charged with capital crimes. Moreover, this approach to marital rape fails to address some of the root causes of violence against women, all while lawmakers continue to pursue expansion of the death penalty for other crimes of violence against women.

III. Discrimination against women, including systemic and structural discriminatory practices, entrenched gender biases and gender stereotypes, violates women’s fair trial rights and increases their vulnerability to coercion and exploitation during investigations (Concluding Observations Paragraphs 20–21, 34–35 and 38–41).

22. In its 2014 Concluding Observations, the Committee expressed concern about the persistence of deep-seated, systemic discrimination against women. In particular, the Committee noted the “persistence of patriarchal attitudes and deep-rooted stereotypes entrenched in the social, cultural, economic and political institutions and structures of Indian society and in the media that discriminate against women,” “the persistence of harmful traditional practices” including “child marriage, the dowry system, so-called ‘honour killings’, sex-selective abortion, sati, devadasi and accusing women of witchcraft,” and that India had “not taken sufficient sustained and systematic action to modify or eliminate stereotypes and harmful practices.”⁴⁵ The Committee specifically recommended that India implement “a comprehensive national campaign and strategy, with specific goals and timelines, to eliminate patriarchal attitudes and stereotypes that discriminate against women.”⁴⁶
23. With respect to women who are members of minority groups, the Committee expressed concern that “Dalit women and women from scheduled tribes face multiple barriers in gaining access to justice, owing to legal illiteracy, lack of awareness of their rights and limited accessibility of legal aid,” and recommended that India “[m]onitor the availability and efficiency of the legal services authorities, implement legal literacy programmes, raise the awareness of Dalit women and women and girls from scheduled tribes of all legal remedies available to them and monitor the results of such efforts.”⁴⁷ With respect to marriage and family relations, the Committee expressed concern “about the coexistence of multiple legal systems” in India “applying to the various religious groups, which results in deep and persistent discrimination against women,” together with India’s “continuing reluctance to review its policy of non-interference in the personal affairs of communities without their initiative and consent.”⁴⁸

⁴³ The Bharatiya Nyaya Sanhita, 2023, ch. V, sec. 63.

⁴⁴ Arshad R. Rargar, *India’s government formally opposes bid to criminalize marital rape*, CBS NEWS (Oct. 24, 2024), <https://www.cbsnews.com/news/india-rape-in-marriage-government-opposes-update-law/>.

⁴⁵ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fourth and fifth periodic reports of India*, UN Doc. No. CEDAW/C/IND/CO/4-5, ¶ 20 (Jul. 24, 2014).

⁴⁶ *Id.* ¶ 21.

⁴⁷ *Id.* ¶¶ 34-35.

⁴⁸ *Id.* ¶ 40.

24. The Committee also expressed concern that India had “maintained its declarations regarding articles 5 (a) and 16 (1) and (2) of the Convention” and the Committee stated that “this is incompatible with the State party’s constitutional guarantees of equality and non-discrimination.”⁴⁹ These declarations appear to remain in place, including India’s “policy of non-interference in the personal affairs of any Community without its initiative and consent.”⁵⁰
25. Since 2014, women in conflict with the law continue to face discrimination arising out of gender biases and stereotypes in the criminal legal system. Trials in which a woman is at risk of being sentenced to death are often permeated with explicitly sexist language.⁵¹ For example, in a case involving a married woman who had engaged in an affair, in which both the woman and the person with whom she was having an affair were charged with killing with the woman’s husband, the court described the accused “as the ‘kind of woman’ who brings ‘shame’ upon her family, village, and society and who represents a threat to women and men alike,” and the court stated that “a lady of such character deserves no leniency.”⁵² Similarly, “[i]n a case involving a woman convicted of killing several members of her family, the Supreme Court . . . stated that as a daughter, she had violated her gender role as ‘the caregiver’ for her parents.”⁵³
26. Fair trial concerns for women charged with capital crimes are heightened by the fact that courts frequently hand down death sentences soon after handing down a conviction, with minimal additional time or consideration of mitigating circumstances, including gender-related mitigation. Trial courts routinely fail to undertake the procedural steps that the Supreme Court has promulgated. In 2024, “sentences were imposed on the same day, or within one day of conviction, in at least 31.87% of death penalty cases at the trial courts” and “59.10% (66 out of 139 death sentences) in 39 cases were imposed within 2–7 days from conviction.”⁵⁴ Also, “[i]n contravention of the Supreme Court’s decision in *Manoj v. State of Madhya Pradesh* (2022), trial courts failed to seek reports on both mental health evaluations and jail conduct of the accused in all but 6 out of the 66 death penalty cases (7.60%).”⁵⁵
27. The gender gap in literacy highlights persistent gender inequalities in access to education, and education can significantly affect women’s ability to understand and participate in their own defense, making them particularly vulnerable to coercion and the risk of false confession.⁵⁶ In 2015, six of the twelve women who were on death row at the time “had never attended school at all, and only two had advanced beyond secondary school.”⁵⁷ This information corresponds with the overall death row population—as of 2015, 23% of death row population had never

⁴⁹ *Id.* ¶ 20.

⁵⁰ United Nations Treaty Collection, Chapter IV, Human Rights, 8. Convention on the Elimination of All Forms of Discrimination against Women, UN, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&clang=_en#EndDec (Status as at Aug 1, 2025, 09:16:04 EDT).

⁵¹ Cornell Center on the Death Penalty Worldwide, Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty (September 2018), at 7, *available at* <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Project39A, National Law University, Delhi, Death Penalty in India - Annual Statistics Report 2024 (2025) at 22.

⁵⁵ *Id.* at 23.

⁵⁶ Cornell Center on the Death Penalty Worldwide, Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty (September 2018), at 18, *available at* <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵⁷ *Id.* at 25.

been to school at all, 9.6% had not finished their primary education, and 61.6% had not finished their secondary education.⁵⁸

28. In addition, women continue to be more likely than men to be economically vulnerable and dependent, which may restrict their access to quality legal representation and may leave them particularly susceptible to death sentences. According to the National Law University Delhi, all of the women who were on death row in 2015 were “economically vulnerable.”⁵⁹ Nine of the twelve were unemployed prior to arrest.⁶⁰

IV. Detention conditions for women on death row do not comply with international human rights standards.

29. Detention conditions for women reflect gender-based discrimination. These conditions are markedly different than conditions for men, and have been described as “muted,” “contained,” and “restrictive.”⁶¹ Detention facilities for women often have only “small clinics” as opposed to hospitals with operating rooms that are available in facilities where men are detained.⁶² Women who are imprisoned generally “do not have access to libraries or sports” and therefore, “unlike their male counterparts, [they] must rely upon prison wardens to retrieve books, and have fewer options for physical exercise.”⁶³ While male wards have access to physical labor and income-generating jobs such as factory work, women are limited to activities like embroidery and tailoring.⁶⁴
30. These conditions are contrary to principles of international law that provide for non-discrimination including on the basis of gender and the need for “substantial gender equality” in imprisonment.⁶⁵ In particular, detention facilities must provide at least one hour of “suitable exercise,” weather permitting, for any detained person “not employed in outdoor work,” and “[e]very prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular

⁵⁸ Centre on the Death Penalty National Law University, Delhi, Death Penalty India Report Summary (2016) at 20, 42, *available at* https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5b4ced7b1ae6cfe4db494040/1531768280079/Death+Penalty+India+Report_Summary.pdf.

⁵⁹ Cornell Center on the Death Penalty Worldwide, Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty (September 2018), at 25, *available at* <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁶⁰ *Ibid.*

⁶¹ National Law University Delhi Project 39A, Research Report to the Cornell Center on the Death Penalty, Nov. 8, 2017.

⁶² Cornell Center on the Death Penalty Worldwide, Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty (September 2018), at 25, *available at* <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Resolution adopted by the General Assembly on 21 December 2010— 65/229. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc. No. A/RES/65/229 (Mar. 16, 2011) at 8 (Rule 1 (*Basic principle*)), *available at* https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf; *see also* United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN (2015), at 2, *available at* https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf (Rule 2: “The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.”).

attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.”⁶⁶

31. Prison facilities remain overcrowded. The Tihar Jail, which houses women under sentence of death, is at double its official capacity.⁶⁷
32. The 2016 Model Prison Manual imposes traditional expectations upon women through gender-biased restrictions, including a requirement that all women in detention must wear traditional Indian attire for their gender.⁶⁸

V. Suggested questions for the Government of India

33. The coauthors suggest that the Committee pose the following questions to the Government of India:

- Provide comprehensive data about women sentenced to death during the reporting period, disaggregated by age and occupation at the time of arrest, religion and community affiliation, marital status, age at time of marriage (if applicable), highest level of educational attainment, crime of conviction, relationship to any codefendants or victims, status of any appeals or requests for pardon or clemency, and current sentence.
- Provide an update on any efforts to implement recommendations from the Justice Verma Committee.
- Describe any efforts to undertake a national dialogue about the death penalty and its alternatives, including examination of the possibility of a formal moratorium on executions.
- To what extent do courts take into consideration gender-specific defenses and gender-specific mitigation when women are tried for capital crimes, including gender discrimination and gender-based violence against women, coercive control, and dependency. What steps, if any, has the State Party taken to codify such gender-specific defenses and mitigation?
- What steps has the State Party taken to codify sentencing guidance for women who have experienced protracted intimate-partner violence in the context of “sustained provocation”?
- What measures has the State Party taken to address gender discriminatory practices involving social norms and caste systems?

⁶⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN (2015), at 7-8, *available at* https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf (Rule 23; Rule 24).

⁶⁷ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (September 2018), at 21, *available at* <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁶⁸ *Id.* at 25.

- What measures has the State Party taken to encourage women to file police reports about gender-based violence, including sexual assault and rape, and to protect complainants from retribution or other adverse consequences?
- What measures has the State Party implemented to ensure that all judges responsible for sentencing in capital cases receive comprehensive training on gender-based discrimination, domestic violence, and tactics of coercive control that may influence or prompt a woman to commit a death-eligible offense, and to ensure that women in conflict with the law do not face gender stereotypes from judges or prosecutors at trial or during sentencing?
- To what extent do law enforcement, prosecutors, or defense counsel in capital cases receive training on gender sensitivity as it intersects with criminal procedure and sentencing outcomes?
- What steps has the State Party taken to amend its penal code to ensure that marital rape is a criminal offense regardless of the victim's age?
- How do authorities ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in capital cases, that such women have access to counsel at all times, from the start of the investigation through any appeals, and that the defense team has sufficient funding to conduct a thorough investigation and to secure relevant expert witnesses, particularly regarding gender-specific defenses?
- What training does the Government provide to defense counsel who take on capital cases regarding gender-specific mitigation and how to raise issues relating to discrimination against women, when appropriate?
- What steps is the State Party taking to ensure that women in detention have access to recreation, exercise, reading material, and health care on an equal footing with men?
- What measures has the State Party implemented to ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the principles of international law including the Bangkok Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated?
- To what extent may women in detention facilities wear clothing that is appropriate for their own culture and religion?
- Can civil society organizations conduct unannounced, independent visits to all detention facilities where women under sentence of death are living to monitor detention conditions?