

Gender Bias in Imprisonment Decisions of Intentional Spousal Homicide in China

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Abstract. Spousal homicide has become one of China's most common forms of femicide. Therefore, the investigation of systematic gender bias and gender in-group bias in imprisonment decisions is conducted in this study to explore the fairness and impartiality of the Chinese judicial system. Fifty random intentional spousal homicide cases in China are analysed using the context analysis method. The study found a large similarity between the judicial decision made by female and male judges; however, male plaintiffs have a larger chance of receiving sentences of life imprisonment and the death penalty from judges of either gender. Moreover, excluding life imprisonment and the death penalty, plaintiffs of identical gender as the judge are more likely to receive slightly shorter sentences, suggesting a slight in-group gender bias in the judicial decision in China.

Keywords: Gender; Judge, China; Intentional homicide; Spouse.

1. Introduction

1.1 Background

According to United Nations Office on Drugs and Crime (UNODC)'s survey conducted in 2017, intimate partners contribute to 34% of all female homicides offenders [1]. Women and girls account for 82% of the intimate partner homicide victims, which suggests gender is an essential factor when analysing homicide committed by the spouse.

Armstrong argued that gender is generally considered a strong determining characteristic in criminal behaviour due to the difference in social stereotype image of females and males [2]. For instance, in the western culture context, women are portrayed as the passive and gentle gender. At the same time, men are perceived as dominant, aggressive, and lacking self-control. Gender stereotypes are constructed differently according to culture [3]. Therefore, significantly different sentencing patterns and courtroom outcomes can be resulted when the same criminal offence is committed by different gender [4].

Moreover, Cai et al.'s research on gender and divorce cases judicial decisions in China indicated gender in-group bias in judicial decisions [5]. They found that male judges show preferential treatment toward members of their gender group (i.e., male plaintiffs) and offer them higher lenience in judicial decisions.

The relation between gender and sentencing has been primarily researched in a western culture, while no previous study has investigated gender bias on sentencing with intentional spousal homicide in Chinese cultural background. Thus, in this study, whether gender influences the sentencing decisions of intentional spousal homicide in China is investigated. The gender of the judge and plaintiff are looked at in relation to sentencing to identify in-group bias.

Gender bias in the judicial system is significantly related to women's social status and stereotypes; consequently, biased judicial decisions could further deteriorate women's status in the family and society [5]. Therefore, this study attempts to maintain fairness and impartiality of the imprisonment decisions and provide policy solutions. Since implicit gender bias and gender in-group bias could make a significant difference in judicial decisions unconsciously, identifying gender bias is essential for improving the legal system.

Gender bias of imprisonment sentencing decisions is investigated using context analysis; the sentencing is compared in dimensions of judge gender and offender gender; the life imprisonment

and death penalty probability are also compared between groups with same judge and plaintiff gender in order to determine in-group gender bias.

1.2 Literature Review

1.2.1. Judge Gender and Sentencing Decision

Although the gender ratio of the judiciary has improved over the past few decades, the judicial system is still described as “pale and male” [6]. Gilligan discussed that the difference in understanding of self and morality between genders would lead to different judicial decisions since females and males are diverse biologically (concerning reproduction functions) and socially (regarding domestic labour distribution and social status) [7]. Empirical analysis has proved that the difference in the judge’s gender leads to different judicial decisions, especially in cases that involve gender issues, including domestic violence and gender assault [8].

Gilligan argued that when making judicial decisions, female judges place more emphasis on resolving disputes amicably and maintaining relationships, demonstrating that their gender-based socialisation has taught them to be more compassionate and tolerant of others' plights; in contrast, men place a higher priority on abstract rules, hierarchy, and personal liberty [7, 9]. On the other hand, MacKinnon suggested that males define the social and political concepts of objectivity and fairness [10]. Furthermore, the language and logic of law are based on the ideals and experiences of affluent, educated men, as does the legal system. [11]. Therefore, although the female and male judges can make different judicial decisions based on their different socialisation experiences, because of their legal training and the law's roots in the male perspective, female judges might render judgements that are comparable to those of men. Likewise, the earlier study on Chinese sentencing and gender discovered striking parallels between male and female judges' choices when making criminal judgements [12]. The study also explored how institutional mechanisms could potentially neutralise the differences between male and female judges by moulding judges' views in a similar direction. Nonetheless, it ought to be noted that Wei and Xiong's study considered judicial decisions in a wide range of crimes instead of focusing on specific gender ratio skewed crimes like spousal homicide [12].

1.2.2. Theory of Plaintiff Gender and Sentencing

Previous (western) studies suggested three major theories of offender gender and sentencing: paternalism/chivalry theory, the evil women theory, and the family-based system of gender justice [3].

The paternalism/chivalry theory argues that female offenders receive more lenient imprisonment due to paternalism and chivalry [3]. Paternalism emphasises the superior male status and default masculinity and considers women as a defenceless group with low responsibility, while chivalry assumes a protective attitude towards females [13]. The theory results from sex roles and social norms for different gender [14].

In contrast, the evil women theory indicates that female offenders that commit crimes violate the stereotypical gender expectation of gentle, weak, and passive women [2]. Such women offenders are frequently labelled as “evil women” and tend to receive more punitive punishment than male offenders who commit the same crime [3]. The evil women theory generally predicts the sentencing of violent crimes like spousal homicide investigated in this study.

On the other hand, the family-based system of gender justice explains that the courts tend to make judicial decisions by family-based gender roles [15]. This theory emphasises family-based ideals and regards the traditional family as a social institution. Therefore, the sentencing depends on the offenders’ gender and their corresponding familial circumstances [3].

These theories are developed in a western social context, and the gender norms demonstrated in the theories vary according to cultural context. Thus, to interpret these gender-sentencing relation theories, the Chinese gender culture should also be discussed.

1.2.3. Chinese Gender Culture

Since the economic reform in 1978, the social status of women in China has become increasingly important in political, economic, social, and legal systems. The participation of women in the Chinese judicial system has significantly increased [3]. Women are considered equal with men in law. Nevertheless, empirical research demonstrates that in the modern, privatised economy, women are still exposed to structural discriminations in hiring and social care. [16]. Moreover, the feudal traditions remain to influence contemporary Chinese culture. Due to the traditional conception of women as subjection to their male family members, there are disproportionately high incidences of female infanticide, abortion, and extremely skewed sex ratios nationwide. [17].

All three main hypotheses on women and crime in China have been found to exist in previous studies. The application of theories varies according to gender status and development of the court location [3].

Meanwhile, with an estimated 20,000 deaths, Asia had the highest female population murdered by intimate partners or family members globally in 2017 [1]. As spouses and family are still institutions with significant gender stereotypes, the sentencing decision may vary according to the judge and the plaintiff's gender.

1.2.4. Gender In-group Bias

The preferential treatment of group members is known as in-group bias. The existence and extent of in-group bias in court could be culture and context-specific [18]. Laboratory experiments show that subjects are more inclined to receive rewards from in-group members for good behaviour [19]. On the other hand, for punishment, some research suggests that in-group members receive weaker punishment when violating social norms of cooperation. Other research reveals that in-group members can face harsher penalties for defection. For instance, studies indicate that female judges in US courts gave female convicts heavier penalties [20]. According to Schanzenbach, this might result from the paternalistic biases of male judges or the unfavourable treatment of female defendants by female judges [21].

Besides, empirical studies indicate that women are more likely to show automatic in-group bias as they strongly prefer the female gender over the male. In contrast, males typically show neutral gender attitudes [22].

2. Method

2.1 Data

The data were collected from online transcripts of judicial decisions published by the Supreme People's Court of China [23]. The random assignment strategy of cases to judge by the Supreme People's Court improves the validity of results [5].

330 randomly selected intentional homicide cases were filtered. The subjects without complete gender information or judge information were excluded. As the transcripts only included the name of the judges, the gender of the judges was obtained from local court websites, news reports, or trial recordings from the China Court Trial Online website [24]. Therefore, the cases were also excluded if the gender of the judge could not be identified through the above procedures.

Finally, 50 intentional homicides by spouse cases evaluated in 2018-2022 by 47 courts in 42 locations across China were applicable for this study. The 50 intentional spousal homicide cases were separated into 32 homicide cases, and 18 attempted homicide cases due to their different sentences.

Gender was treated as a binary variable, including male and female. All participants were considered cisgender. Intentional spousal homicide committed by the plaintiff with mental disorders was excluded. The plaintiff's nationality was also controlled to be Chinese due to the difference in law between nations. Additionally, since ethnic minority group only accounts for 8.89% in China, ethnicity-related factors are neglected in this study [25].

2.2 Content Analysis

The data from both types of cases were extracted using quantitative content analysis based on the method proposed by Cai et al. [5]. Statistical information of the court, judge's gender, plaintiff's gender, cause of the homicide, date of the judicial decision, trial method (including the single judge and collegial panel), the educational background of the plaintiff, and the sentencing result were exported from the transcript documents. For the collegial panel, only the gender of the presiding judge was considered.

From the extracted data, the gender ratio of judge and plaintiff in all applicable cases was calculated. The sentence for intentional spouse homicide and attempted intentional spouse homicide were compared based on the gender of the judge and the plaintiff. The ratios of life imprisonment and the death penalty were plotted as histogram concerning the female judge with the female plaintiff, the female judge with the male plaintiff, the male judge with the female plaintiff, and the male judge with the male plaintiff. The average sentence excluding life imprisonment and the death penalty was plotted by gender for intentional spousal homicide and attempted intentional spousal homicide. Additionally, the educational background and cause of spousal homicide were also analysed based on their fraction in order to provide suggestions for judicial improvement.

3. Results

3.1 General Statistics

The ratio of female judges in the applicable cases is determined to be 28%. The balance of female plaintiffs is 24%. Moreover, among the studied patients, 39% of plaintiffs have their highest educational background as middle school, 37% have their highest educational background as primary school, and 13% have not accepted any education.

For the cause of intentional spousal homicide, 37% of the homicide cases are caused by argument, 26% caused by divorce, 24% caused by suspecting their spouses were cheating, and 15% caused by unbearable long-term domestic violence. All the homicide cases due to suspecting cheating are committed by the male plaintiff, and 45% of homicides committed by female plaintiffs are due to the experience of long-term domestic violence by their husbands.

3.2 Ratio of Life Imprison and the Death Penalty for Intentional Spousal Homicide

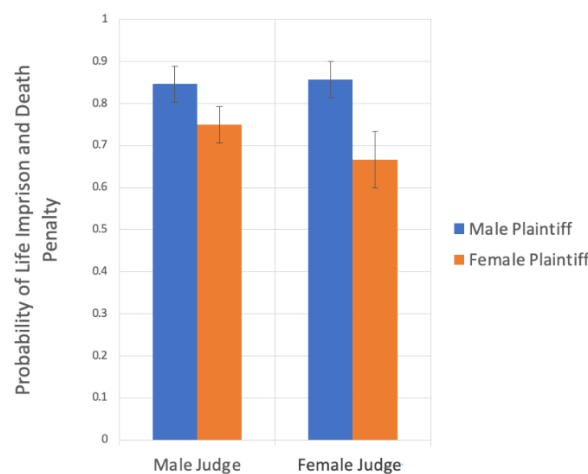


Fig. 1 Probability of receiving a sentence of life imprisonment and the death penalty for different gender

The percentage of life imprisonment sentences and death penalty due to intentional spousal homicide is shown in Figure 1. by gender. When the judge is male, the probability of receiving life

imprisonment is 84.6% for the male plaintiff while 75.0% for the female plaintiff, which results in a 9.6-percentage-point difference. Consequently, when the judge is female, the probability of receiving a sentence of life imprisonment is 85.7% for the male plaintiff and 66.7% for the female plaintiff, which results in a 19-percentage-point difference. The result reveals a significant difference in the rate of life imprisonment and death penalty across female and male plaintiffs for both female and male judges. (Supplementally, since the female judge female plaintiff cases are relatively rare in the data set, the uncertainty is more prominent than in other sets of data. Therefore, the female judge female plaintiff cases could take up a similar probability of receiving a life imprisonment sentence and the death penalty as the male judge female plaintiff cases.

When the judge is male, the likelihood of receiving life imprisonment is 84.6% for the male plaintiff, while 75.0% for the female plaintiff. Consequently, when the judge is female, the probability of receiving a sentence of life imprisonment is 85.7% for the male plaintiff and 66.7% for female plaintiffs.

3.3 Average Sentence for Intentional Spousal Homicide

The average sentence excluding life imprisonment and the death penalty for intentional spousal homicide is shown in Figure 2 by gender. When the judge is male, the average sentence is 11.5 years for a male plaintiff and 15 years for a female plaintiff, while for a female judge, the average sentence is 15 years for a male plaintiff and 13 years for a female plaintiff. For both sets of data, same-gender cases have a shorter sentence than different gender cases.

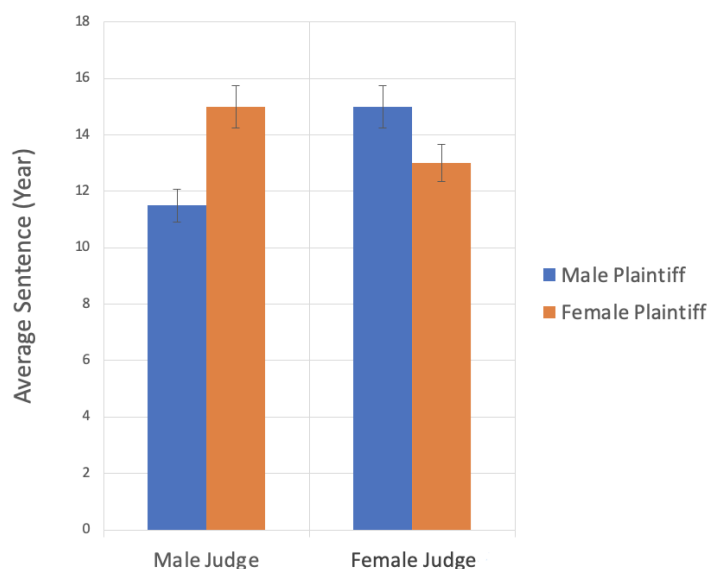


Fig. 2 Average sentencing (excluding life imprisonment and the death penalty) by gender

When the judge is male, the average sentence is 11.5 years for a male plaintiff and 15 years for a female plaintiff, while for a female judge, the average sentence is 15 years for a male plaintiff and 13 years for a female plaintiff.

3.4 Average Sentence for Attempted Intentional Spousal Homicide

The average sentence for attempted intentional spousal homicide is shown in Figure 3 by gender. Due to the limitation of the data set, only cases with male plaintiffs are investigated. The average sentence for the male plaintiff is 5.2 years with the male judge and 4.4 years with the female judge. Since the data variation for attempted intentional spousal homicide is relatively large, the standard deviations for male and female judges are calculated to be 2.3 and 2.4, respectively (as shown in the error bars shown in the figure). The average sentence determined by a male plaintiff is 0.8 years longer than a female plaintiff. However, the sentence difference is only 33% of the standard deviation, which indicates that the result might not be reliable. Moreover, from the significant standard deviation

and variation of data, the sentence difference is more likely to result from the difference between the cases.

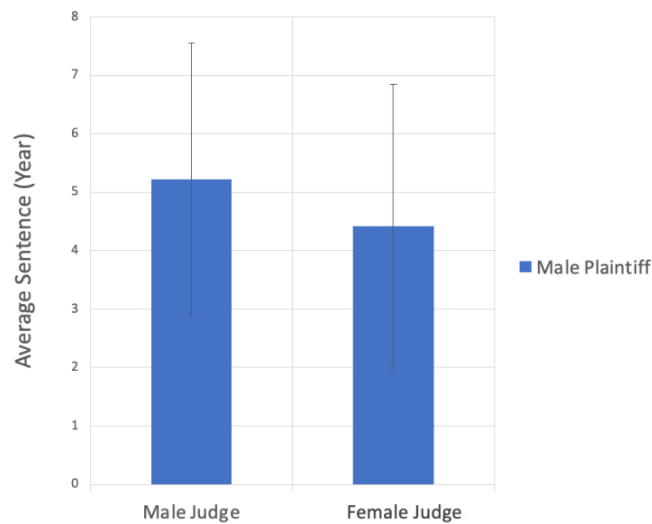


Fig. 3 Average sentence for attempted intentional spousal homicide by gender

The average ruling for male plaintiffs is 5.2 years with the male judge and 4.4 years with the female judge. Since the data variation for attempted intentional spousal homicide is relatively large, the standard deviations for male and female judges are calculated to be 2.3 and 2.4, respectively (as shown in the error bars shown in Figure 3).

4. Discussion

4.1 Result Analysis

From Figure 1, female and male judges have similar probability of making life imprisonment or death penalty decisions. The result matches with Wei and Xiong's study, which indicates that there are more similarities than differences between legal decisions attributed by female and male judges [12].

Nevertheless, the obtained result suggests that male plaintiffs have a larger probability of receiving life imprisonment and the death penalty sentences while both male and female judges make judicial decisions. Therefore, the result matches the paternalism/chivalry theory, which predicts that female plaintiffs receive shorter imprisonment due to gender stereotypes. As the spousal homicide cases collected are mainly located in less developed areas in China, the local background suggests more feudal traditions and gender stereotypes.

Besides, a female offender has an 8.3% lower probability of receiving life imprisonment and the death penalty; this may indicate that there is gender in-group bias between the female judge and the female plaintiff. The result matches Rudman and Goodwin's argument that women are more likely to show automatic in-group bias [22]. However, since the sample size of cases with female judges and female offenders is relatively small, the uncertainty of this result is large.

Excluding life imprisonment and the death penalty, plaintiffs of the same gender as the judge are more likely to receive slightly shorter sentences, according to Figure 2, which suggests that there is a slight in-group gender bias in the judicial decision in China, which matches the study on Chinese divorce cases conducted by Cai et al. [5].

Additionally, for attempted intentional spousal homicide, male offenders receive an 0.8-year longer average imprisonment than female offenders. Since the cases are attempted homicide and have no reference group (i.e., the female offender data), the sentencing may vary widely according to the situation of each case. A larger data set is required for gender-sentencing relation analysis.

5. Suggestions

As gender bias is found in the judicial system, according to the result of this study, several methods can avoid gender bias while judging: increasing the exposure to stereotype-incongruent models to reduce the presence of unconscious biases; testing the judges with IAT or other devices to identify if they harbour implicit biases and provide relevant training; building up a database that analyses the plaintiff's gender, the judge's gender, and sentencing information to identify the implicit gender bias; alternating the courtroom practices by creating diversity on appellate panels and appointing more female judges; considering the opposite opinion by imagining and explaining the basis for alternate outcomes; and using opinion writing method to note down the judging reason since the process of writing challenges the judge to assess a decision more carefully, logically, and deductively [26].

6. Further Study

To further investigate the direct link between gender and judicial sentences, a more extensive data set is required to compare intentional spousal homicide cases using heterogenous analysis by region and gender. The regional gender equality level can be simulated using sex ratio.

7. Conclusion

This study analyses 50 random intentional spousal homicide cases in China using the context analysis method. The study found a large similarity between the judicial decision made by female and male judges; however, male plaintiffs are more inclined to receive sentences of life imprisonment and the death penalty from judges of either gender. Moreover, excluding life imprisonment and the death penalty, plaintiffs of identical gender as the judge are more likely to receive slightly shorter sentences, suggesting a slight in-group gender bias in the judicial decision in China.

To maintain fairness and impartiality of the imprisonment decisions, improvements, including exposing to stereotype-incongruent models, gender bias testing and training, building up a gender profile database, alternating the courtroom practices, considering the opposite opinion, and opinion writing, are discussed.

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