

WOMEN, CRIME AND THE INDIAN JUSTICE SYSTEM

Sarika Baloda*

ABSTRACT

This article aims to bring light to the most omitted and left-out aspect of criminology and how with time it became an established and key issue. The economic and social developments across the globe had an impact on female criminality. Criminologists with the emerging issue of female delinquency tried to come up with different approaches and theories but no theory stands definite and completely relevant. Gender disparity and discrimination have their effects even in the criminal justice system, perhaps, it is because the system is still oblivious of this interpretation and therefore sometimes it has misogynistic remarks in its judgments. It is time that courts try to take into account female criminality with the flourished perspectives rather than social or patriarchal perspectives. Further developments in the subject will bring progress in understanding the factors behind female offending and will be a help in framing appropriate reformatory policies.

Keywords: *Female Criminality; Gender Disparity; Criminology.*

* Student, Amity Law School, Jaipur, Email: sarikabaloda@gmail.com.

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Introduction

For over the centuries criminal justice system engrossed only in the evaluation of male offenders neglecting the female delinquents. No doubt gender has been the object of ill-treatment across the globe for ages facing discrimination, oppression and violence at the hands of civilization. The theories of criminology too failed to take into account the role of women as both victims and offenders. It was the acknowledgement brought by the feminist school of criminology, developed in the late 1960s and into the 1970s¹, bringing up a need for understanding female criminality.

Preponderantly the conventional theories of criminality are based on men delinquency and victimization. The female view is so minimal and stereotypical that it has been considered against the circumstances of orthodoxical views regarding women's nature and part. The prevailing "sexism" in criminology added the question as to whether these mainstream theories can be applied to women also, the alleged "generalizability problem"². The key issue till date remains "crime against women" and still ignoring the flip side, "crime by women".

Looking over history it can be speculated that women are more likely to carry out minor offences over and above than owning a marginal portion of the offender population. Notwithstanding, the trend is upgrading whilst women are now the offenders of serious offences too. It was in the late 20th century when the rates of female incarceration shoot up, emphasising the attention towards study and research of women, crime and criminal justice. The subject being male-dominated science with male delinquents as the key concern, failed to understand the female criminal behaviour and the required reforms for this behaviour. In Professor Beth Richie's words, "the key to better understand and retort to women as the offender is analysing their status as crime victims"³.

As claimed by the third edition of the World Female Imprisonment List the number of females in prison has increased worldwide by around 50% since the year 2000, while the male prisoner

¹Tripathi, Bibha, Feminist Criminology: Some Reflections, 9 (1), *The Journal of Legal Awareness* 1,1-6, (2014).

²Irwin, K. and Chesney-Lind, Girls' Violence: Beyond Dangerous Masculinity 2(3) *Sociology Compass*, 2(3) 837, 839 (2008).

³Richie, B., 2018. *Compelled to Crime*.

population has increased only 20%⁴. There could be numerous probable determinants for this escalating trend in female delinquency covering both social and economic factors. To set off this increasing female criminality the understanding of female criminal behaviour is crucial.

Research Problem

This article abridges the consequences developed as the result of the neglected yet crucial issue of criminology. Women have always been pictured as the foundation stone of a family, where she is expected to be the saviour of social norms, morality and family solidarity. The main concern arises here because “she” being the foundation stone of a family, with the main task of nurturing and preserving humanity, has now gone off the rails and entered criminality and the lack of understanding of female criminality often results in despaired judgements and poor reformation policies. This will begin with the veracious exploration of the link between offence against women and offence by women.

Research Questions

- The criminal justice system witnesses gender sentencing disparities, there are significantly harsher sentences on male offenders and also the higher male conviction rate. Whether justice should promote such unblemished equity by being blind to circumstances in which offence was committed and the gravity of the offence?
- Analysing the sentencing environment, gender is taken as a relevant factor while determining the quantum of sentences. Does the obligation end here itself? Shouldn't the reformation theories be different for the genders as well as it are for different age groups?
- What it is that drives women to be criminals? Whether race and the socioeconomic status of the female offender which also step in at the intersection of transgression and exploitation are required to be fully inspected?

Scope and Objectives

Research on women and crime is still an undergoing process, and the developments are highly demanded. At times when the interconnection is based on misinterpretation, the results damage the criminal justice system. Further, this isn't a single perspective but a collection of

⁴Prisonstudies.org,

https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_third_edition_0.pdf (Accessed 30 January 2022).

perspectives perceived after analysing and performing studies on the criminal behaviour of women rather than defining it as an unexpected behaviour. More importantly, in a country like India, which considers gender as a relevant factor in deciding the quantum of punishment, this approach will not only assist in pronouncements of judgements but also in framing reformation guidelines for female offenders.

Hypotheses

Lack of understanding and developments of theories of criminology failed to take into account the role of women, as both victims and offender. Which has now resulted in a disparity for suitable reformation of female offenders.

Research Methodology

The purpose of the paper is to emphasise the need for study in the overlooked field of criminology. For this, the author has collected information from both primary and secondary sources, and the research method used is of doctrine type in which qualitative and comparative methods are used.

History of Feminist Criminology

This school of criminology developed in the late 1960s as a result of ignorance of females in the traditional study of crimes. The reason why feminism is an emerging and requiring topic in criminology is to understand the criminal justice systems response to women and women's issues. The study aspires to explore the causes, trends and consequences of female delinquency by focusing on women perpetrators, women victims and women in the criminal justice system. The preliminary theories had their focus mainly on psychological traits while completely disregarding the social and economic traits. Since most of these theories were advocated by male criminologists and their assumptions being on the "nature of women" they were steadily condemned⁵. These theories failed to understand that there might be core differences in the male and female avenue to set foot into criminality.

The feminist notion incorporates wider ideologies and feminist thinking rather than homogeneous theory. They regard females persecuted by gender discrepancy and class discrepancy with the ultimate aim to interpret female criminality. The liberal feminist contends that women face discrimination based on their gender and the propaganda behind this could be

⁵Lorraine Gelsthorpe, *Feminist Perspectives on Gender and Crime: making women count*, 53(1), *Criminal Justice Matters*, 8-9 (2003).

the denial of equal opportunities. As claimed by criminologists Freda Adler⁶ and Rita Simon⁷, female delinquency can be best elaborated by considering the sociological factors than the traditional physiological factors. Further, the liberal approach claim that the more women get liberated, the more will be their involvement in the crimes, similar to those carried out by men. However, the liberal feminist failed to include the dimension of multicultural identity.

Criticism to Feminist Criminology

The Radical Feminist

This approach of the feminist liberal theory contends that the male competence and privileges given to them are the root factors behind the gender inequality, socialisation and crime emergence. The male control over the female labour-power and sexuality depicts the existing patriarchal relationship and the root that holds this relationship is the visible threat of violence and rape. The main focus of the entire theory remains on the victimization of female's at the hands of a male. Whatever being the ideology on the different approaches, they do not direct to push men out but rather draw women into societal relations with equal space.

The Socialist Feminists

It brought up the idea of equality by comparing female oppression with the other oppressions prevailing in society. They believe that female equality must be pursued in coexistence with social and economic justice for all people. However, this approach too gained criticism on failure to analyse the gender relations and origin of female oppression explicitly and how they influence criminality⁸.

The recently developed theory, postmodern feminist theory⁹, aims to evaluate the factors that led to inequality and further attempt to aid gender equality by criticising logocentrism, supporting multiple discourses, deconstructing texts and inviting to advocate subjectivity.

The female indulgence in criminality was more dominantly seen as a breach of gender norms calling it a "mental defectiveness". The scientific entry into criminology spread the idea of feeble mindedness in the penal sphere and in the case of females, the psychology was very well personated by gynaecology. The female prisoners' population remained less because they were

⁶ Freda Adler, *Sisters in Crime: The Rise of the New Female Criminal*, *International Journal of Offender Therapy and Comparative Criminology*, 2 (3), 233–234, 2016.

⁷Rita Simon, *Women and Crime*, 1975.

⁸Messerschmidt, J., 1986. *Capitalism, patriarchy, and crime*. Totowa, NJ: Rowman & Littlefield.

⁹ Roberta Sands and Kathleen Nuccio, Postmodern Feminist Theory and Social Work, *Social Work*, 37(6), 489, 490-492(1992).

difficult to handle and their safety maintainability required extra resources. Cesare Lombroso, the advocate of born criminology theory, in his clear words “the criminal and not the crime must be studied¹⁰” highlighted the anthropological dimension for criminology. He later did investigate the riddles about female offenders in his 1893 publication, *La donna delinquente, la prostituta e la donna normale*, which for decades remained the only study on female crime causation. His theory in the book linked the genetic components of female offenders with criminality. The criminal woman was seen as less womanlike than the normal woman and consequently the former being more probable to be a criminal¹¹. He tried demonstrating that criminality has the biological element that is consistent and found in the female offenders that share common physical abnormalities. The *double exception*¹² citation construing criminal women as monsters for criminals are the exceptions amidst civilised men and women are exceptions amidst criminals.

American Sociologist *W.I. Thomas* put forward the connection between gender, sexuality, class and crime. According to him, women choose sexual deviance particularly prostitution to get what they desire by controlling men’s sexual desires¹³. Sigmund Freud termed female criminality as a result of the “masculinity complex” originating from penis envy¹⁴. As per his contention, all females experience penis envy and there are few who adapt it in a healthy way while the rest choose to act in criminal ways. This is the urge for manhood that brings out their criminal behaviour by acting out rebelliously.

Robert Agnew with his notable General strain theory aimed to analyse the discrepancies in the male and female crime rates. The theory depicts the reasons for the high male crime rate in three ways:

1. Both the genders go through different strain types wherein the male strains lead to grave and property crimes and females respond to the strain with self-destructive crimes;
2. Each reacts differently to these strains.
3. The major reasons for males reacting aggressively are differences in social support, social governing and psychology¹⁵.

¹⁰Quote from an article published in 1895 in *Forum*.

¹¹ Cesare Lombroso, Guglielmo Ferrero, *Criminal Woman, the Prostitute, and the Normal Woman*, Durham: Duke University Press 2004.

¹²Cesare Lombroso & Guglielmo Ferrero, *The Offender* 152 (1895).

¹³ W.I. Thomas, *The Unadjusted Girl, With Cases and Standpoint for Behavior Analysis*, 256 (Good press 2019).

¹⁴Klein, Dorie, *The Etiology of Female Crime: A Review of the Literature*, *Issues in Criminology*, 8 (2),19, 3–0 (1973).

¹⁵Broidy, Lisa; Agnew, Robert, "Gender and Crime: A General Strain Theory Perspective". *Journal of Research in Crime and Delinquency*. 34 (3) 275–306 (1997).

Sutherland and Ceressy expounded the differential association theory pronouncing that criminal behaviour is something that is learned and women being defined by social norms and expectations their role remains uninfluenced by criminality. Talcott Parson in the late 1940s propounded the Masculinity theory. The theory is featured on two basic ideas: crime is suggestively masculine and masculinity provides a motive for the crime. Masculinity was incorporated during adolescence and this is why male delinquency is higher than female delinquency. Pollack's Double standard theory characterises crimes by women based on deceit and double standards. As her physical weakness turns her to deceit, her physical charm empowers her to draw her victim. A false accusation against men also makes her a perpetrator and adds to her criminality¹⁶.

Following the historic studies, it may be concluded that female delinquency was principally regarded as "mad" rather than "bad". Professor and Sociologist Otto Pollack in his most controversial book *The Criminality of Women* sharply asserts that crimes by men and women are undoubtedly equal, it is just that the crime by the latter is most easily concealed¹⁷. As per his explanation, the reason for female delinquency was the natural output of their hidden sexual desires. He further claims the criminal justice system to be biased by presumptions about women and inequality in the sentences awarded to men and women. British Sociologist Frances Mary Heidensohn criticises the ignorance in studies of female criminology and being regarded in a stereotypical manner calling for the need for more research in the area¹⁸. Heidensohn illustrates the Control theory¹⁹ to assert the lower women criminality rate. As per the theory, females are left with lesser crime opportunities as they are majorly controlled by males. This control and social expectations keep them under the supervision and therefore leaving less chance to commit a crime.

Interpreting Female Criminality: Indian Approach

The Indian patriarchal society expects women to be a protector of social norms and the foundation of the family. Despite several constitutional advancements this section of the society still struggles to stand evenly with men. Perhaps, it is these social norms and patriarchy that gets rid of the opportunities the law gives them. This further is also one of the reasons for

¹⁶Ram Ahuja, *Criminology*, Rawat Publications, Jaipur, 142 (2000).

¹⁷George Mohr, *The Criminality of Women: By Otto Pollak*, Philadelphia: University of Pennsylvania Press, Psychoanalytic Quarterly, 21, 262, 262-264 (1952).

¹⁸Heidensohn Frances, *The Deviance of Women: A Critique and an Enquiry*, *The British Journal of Sociology*, 19 (2), 160-175 (1968).

¹⁹Heidensohn F. (1996) Women and social control. In: Women and Crime. Women in Society. Palgrave, London. https://doi.org/10.1007/978-1-349-24445-4_9.

their less involvement in criminality. Deprivation of rights and economic frustration has been the core cause of criminality irrespective of gender and these being the trending challenges to women in the competitive world are drawing them to criminality. As per the Crime in India, 2019 NCRB out of the total convictions made under the Indian Penal Code women convicts comprise 6.15 per cent.

No doubt women have been subject to victimisation since time immemorial and this continuous victimisation is now turning them into victimisers. The case of *Phoolan Devi's* is a clear understanding behind the theory, the victim of domestic violence, rape and public humiliation turned into a dacoit for seeking revenge to her victimisation. Psychologist studies on the bandit queen suggest that the desire for socio and economic independence are the engrossing factors for women's criminal conduct. In an analysis, it was concluded that crime amongst women grew out of sexual immorality and violence faced by women at the matrimonial house. Majorly it is found out that the victims of women's crimes are her known ones and the motives are previous victimisation and revenge²⁰. Shantadevi Patkar the infamous drug dealer was a victim of an abusive husband and poverty. The idea of earning by drug dealing easily paved through her mind and brought her to criminality. Thus, again poverty and abuse history playing an important role, somehow, the Indian social environment contributes to making a woman criminal.

Undermining Criminal Liability

The limitation to studying the extent of female criminality in India is brought by the fact that crimes by women are largely underreported. The Indian society does not support the idea of women facing the process of law and handling the male-dominated justice system. Every one out of three females in India is a victim of sexual, physical and mental abuse. The biological theory would be less applicable in the Indian scenario because the major factors for women criminality are found to be social and economic. However, the psychological and sociological theories are relevant to a great extent. Increasing urbanisation, westernisation, and modernisation motivates women to achieve higher goals and seek greater ambitions. On the other hand, the patriarchal and social norms are hindering them to achieve those motives causing frustration. This frustration when not healthily adjusted leads them to criminality.

²⁰Ram Ahuja, *Female murderers in India- A Sociological Study*, IJSW ONLINE, <http://ijsw.tiss.edu/greenstone/cgi-bin/linux/library.cgi?e=d-01000-00---off-0ijsw--00-1---0-10-0---0---0direct-10---4-----0-11--11-en-50---20-help---00-3-1-00-00--4--0-0-11-10-0utfZz-8-00&a=d&c=ijsw&cl=CL1.1&d=HASH89a1509733f1b91ca825ab>.

Domestic abuse, gender oppression, household expectations, communication with delinquent males, financial demands, marital abuse, addiction problems and dowry issues are also found to be the potential reasons for female criminality in India²¹. The social and economic structure of Indian society depicts the dependency of women on men. This dependency leads to oppression and inequality. Hence, lack of access to financial resources and independency few women choose money-generating crimes like prostitution, shoplifting, pimping, trafficking, drug dealing etc.

Indian Justice System: Understanding the Female Offender Conviction Patterns of the Indian Judiciary

The judicial system across the globe shows leniency in sentencing female offenders considering the social and cultural biases. In India, gender is the major factor considered while deciding the quantum of punishment. Women being considered the foundation of the family and their duty towards household is ought to be pious and moral. This ideology is mostly the reason for underreported female crimes and mitigated sentences. The discretionary sentencing power bestowed by the statute to the judiciary is quite wide and while exercising this power the judiciary is also obliged to maintain the balance between conviction and prison overcrowding. Indian penal system follows the reformatory theory of punishment that believes in abhorring the crime and not the criminal. The judges are expected to estimate the equilibrium of both aggravating and mitigating factors while sentencing an offender²². The sentencing methodology of Indian courts while sentencing female offenders can be better understood by analysing the landmark cases wherein the courts have given *obiter dictum* in this regard.

K.D. Kempamma²³, convicted for several murder cases became the first woman to be awarded a death sentence in Independent India which was later commuted to a life sentence. Her crimes were purely motivated by financial greed and material luxury. The Karnataka high court on criminal appeal against the death sentence imposed by the trial court commuted the sentence to life imprisonment wherein it considered the fact that the accused is a lady and this cannot be put against her rather it is a mitigating factor in her favour.

²¹Cherukuri, S., Britton, D. and Subramaniam, *Between Life and Death women in an Indian State Prison, Feminist Criminology*, 4(3), 252-274.

²²Soman v. the State of Kerala, (2013) 11 SC 382.

²³The Registrar General v/s Mallika alias Lakshmi, 2012 SCC Online Kar 8798.

One of the Supreme Court²⁴ cases received huge condemnation from the public for being gender-biased. The accused with her co-accused assaulted and robbed a man, to which the trial court sentenced her to two years of imprisonment and later the high court taking another step to leniency erased the imprisonment part and just imposed a fine of thirty thousand to be paid to the victim. The reason behind leniency as stated by the trial court and high court was that she was the mother of three minor children, two of them being unsound mind, and had to look after her family duties. The Supreme Court stressed how gender is considered a relevant factor in determining the quantum of punishment and this leniency cannot be that sharp to appear as discriminatory.

The Bombay High court in its recent order commuted the death sentence of the two notorious sisters citing that the unjustified delay in dealing with their mercy petition resulted in the violation of their fundamental right. After the Supreme Court confirmed the death sentence numerous censures were received stating that the execution of women is exceptionally rare and this execution will be against a humanized nation²⁵. The women were convicted for kidnapping thirteen children and killing nine of them unforgivingly. The Supreme Court while considering the petition stated that they find no mitigating factors in this case except that they are women. But also added that the nature of crime depicts the depravity of the mind and they think they are not likely to have a probability of reformation²⁶.

On the other hand, there are instances where though not directly but indirectly courts have considered gender as an aggravating factor in this aspect. Considering the gender roles and societal expectations the courts have at times reflected gender disparities in their judgements. A mother-in-law burned alive her daughter-in-law, which the Supreme Court found strange as the convict herself being a woman resorted to killing another woman and also the “mother” in her did not make her feel. The court regarded sympathy in this case as unfit for justice though the applicant had already spent a decade in jail²⁷. Being a female cannot be a mitigating or aggravating factor in sentencing by implying it a weaker gender or a duty-bound gender.

Conclusion

The study of female criminology has still not been accomplished to draw conclusive statements in this respect. The criminal justice system is supposed to be the unbiased and non-

²⁴ State of Himachal Pradesh v. Nirmala Devi, (2017) 7 SCC 262.

²⁵ Renuka and Another V. Union of India 2022 SCC OnLine Bom 111.

²⁶ Renuka Bai alias Rinku and Another v. State of Maharashtra (2006) 7 SCC 442.

²⁷ Paniben v. State of Gujarat 1992 SCR (2) 197.

discriminatory authority to which the public has entrusted its faith and gender-based pronouncements might erupt the public disapproval. The current standards demand gender equality by addressing the challenges of both men and women equally. The increasing women criminality and victimisation call for convenient measures which will be achieved solely by bringing progressing understandings on the subject. This development will bring a preferable and unbiased perception in the sentencing policies comparatively to ancient stereotypical and customary based rationale.