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Gender Bias in the Criminal Justice System: Analyzing the Treatment of Female Offenders in India

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ABSTRACT

This report looks into the impact of gender prejudice within the criminal justice system in India, focusing on the police, courts, and the prisons, as well as the rehabilitation process for female offenders. This discrimination, which stems from deeply ingrained societal stereotypes and patriarchal culture, results into treatment inequality, violating the constitutional promise of equality. The most important findings indicate the existence of “masculine subculture” in policing with its attendant victimization of women and severe underrepresentation of women and insensitivity toward gender issues further inflaming the situation. In the judiciary, the complexity of sentencing bears dual manifestation: fulfillment of the “chivalry hypothesis” invites some release for women, as long as they comply to traditional roles, but marginal and deviant women are far more likely to be subjected to harsher sentencing. This practice worsens due to the absence of clear guidelines on structured sentencing policies. Such disproportional representation causes an overwhelming number of women held as undertrial prisoners to highlight the absence of systemic refinement alongside unyielding systemic flaws and inequitable access to proper legal services.

I. INTRODUCTION

Gender discrimination within the criminal justice system is an increasing concern, especially in a diverse and changing society such as India. This discrimination has its roots in deeply ingrained gender stereotypes and societally constructed notions about gender roles and manifests as differential treatment of people according to their gender. This unequal treatment influences how laws are applied, how crimes are prosecuted, and how sentences are ultimately passed. For instance, women are often viewed as passive or non-threatening and hence may receive lighter sentences in some cases, whereas men are stereotypically associated with being aggressive or violent and might thus receive harsher sentences regardless of the particular facts of a case. These inequalities not only compromise the very premises of justice, fairness,

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impartiality, and accountability, but also perpetuate damaging stereotypes, thus confirming societal hierarchies and public doubts about the justice system's integrity.

II. GENDER BIAS IN THE CRIMINAL JUSTICE SYSTEM: ANALYSING THE TREATMENT OF FEMALE OFFENDERS IN INDIA

1. Executive Summary

The Indian criminal justice system fails at upholding equality, enforcing deep-rooted discrimination against women that heavily impacts female offenders. The scope of this report analyzes stereotypes associated with gender biases in the Indian system concerning enforcement agencies, judiciary branches, imprisonment, and rehabilitation. Additionally, the prosecution of offenses and sentencing patriarchal biases impact almost all dimensions of the legal system. Even though legislations promoting gender equity do exist in India, they are countered by a dominating subculture of masculinity within policing, judicialistic chauvinism, and a neglect of gender-sensitive programming within correctional facilities. The fractured balance between advancement of legal development fosters a paradox where equality remains unachieved and public trust in the authority becomes systematically eroded. The research demonstrates that there are no women in police forces or that women are subjected to castration (conditional softening or aggravation of sentence based on gender role compliance) sentencing which embodies lethal gender dynamics. Also, there are insufficient female prison wards for the high volume of pre-sentenced female prisoners. Additionally there are no appropriate female prison wards for the male dominated structure of treatment and rehabilitation programs.

Tackling these complex issues requires an all encompassing and enduring reform strategy that includes policy modifications, comprehensive gender training, heightened female participation, and the infusion of gendered approaches into all levels of the justice system.

2. Introduction: Contextualizing Gender Bias in India's Criminal Justice System Defining Gender Bias and its Pervasive Influence

Gender bias in the criminal justice system is a steadily increasing issue in a multicultural and dynamically changing society such as India. This bias is a product of very entrenched stereotypes and gender construct of gender roles, expressed as differential treatment of people on the basis of gender. Such disparity affects the way laws are implemented, crimes are prosecuted, and the sentencing is finally decided. For instance, women are often seen as passive or harmless, which in some cases may result in lighter sentences, whereas men are

stereotyped as aggressive or violent and thus may be handed severer penalties regardless of the particular circumstances of an individual case. Such inequalities not only belittle the basic principles of justice, neutrality, equality, and accountability but also fuel negative stereotypes, thus reinforcing social hierarchies and diminishing public trust in the integrity of the justice system.

Historical, Colonial, and Socio-Cultural Roots of Gender Roles and Patriarchal Norm

The socio-cultural context of India further aggravates the criminal justice system's issue of gender bias. This context is steeped in centuries of patriarchal values, which continue to define strict expectations about gender roles, tending to reserve women and marginalized genders to second-rate roles. These cultural constructs are not limited to social attitudes but seep and impact institutional systems at all levels of the justice system. The path to justice for women in India is often obstructed by a multifaceted interaction of tradition, caste, religion, and culture. One striking example of it is the widespread practice of the "compromise" witnessed in courts, even in extreme instances like rape, that symbolizes entrenched social attitudes that place more emphasis on social harmony at the expense of individual justice.

Constitutional Guarantees of Equality and Persistent Disparities

In spite of strong constitutional assurances of equality in Articles 14, 15, and 21, along with progressive legislations such as the Protection of Women from Domestic Violence Act, 2005, institutionalized gender biases are profoundly entrenched in the Indian criminal justice system. The Indian Constitution spells out equality on a gender basis in terms of several articles, such as Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), and 42. The provisions in these articles ensure that gender equality is practiced in real terms but are often neglected by socio-legal barriers. The Government of India has continued to reaffirm its dedication towards upholding gender equality and eradicating every type of discrimination against women.

III. GENDER BIAS IN LAW ENFORCEMENT AND POLICING

A. Legal Provisions and Rights for Female Offenders during Arrest and Detention

Detained women are entitled to a number of basic rights. These consist Indian law has certain provisions intended to safeguard women from the time of arrest and detention, with the intent to preserve their dignity and safety during the justice process.

Specific Guidelines for Arrest

Under Section 46(4) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), a woman may not be arrested between sunset and sunrise except in exceptional cases. In case of extraordinary

reasons, a female police officer has to take written orders from a first-class judicial magistrate of the area where the offense has taken place or the arrest is being made. In addition, Section 46(1) of the BNSS assumes that an accused woman has submitted to detention after she has been orally informed of arrest, and physical contact for the arrest process should in general be made by a woman police officer only in exceptional cases.

Rights During Detention

of a right to free legal assistance, protected by Article 39A of the Constitution and additionally reinforced by Section 304 of the BNSS, which directs State Legal Services Authorities to provide reimbursement for legal expenses. They also have the right to be informed about the reasons for their arrest and bail, as outlined by Section 50(1) and 50(2) of the BNSS. Protection from manhandling and handcuffing is also a right. The period of detention is limited to 24 hours (excluding transit time) without judicial order, and women should be detained in lockups separated from men, with the custody arrangements conducted with the highest decorum to preserve their modesty. Besides, arrested women also possess the right to silence, access to legal representation, to notify a relative or friend, to be produced before a magistrate, to be subjected to a medical examination (according to Section 54 of the CrPC/BNSS), and to be treated humbly.

B. Challenges in Implementation and Systemic Biases

Indian law has precise protections that are intended to safeguard women while they are being arrested and detained, and their dignity and safety maintained during the course of law.

Specific Arrest Guidelines

Under Section 46(4) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), a woman may not be arrested between sunset and dawn except in exceptional situations where the need arises. In such remarkable circumstances, a female police officer has to take written permission from a first-class judicial magistrate in the place where the offense is committed or the arrest has to be made. In addition, Section 46(1) of the BNSS assumes that a woman accused has been subjected to detention after oral arrest notification, and physical contact for the arrest process should ideally only be initiated by a female police officer, except in extreme cases.

Rights During Detention

As much as there are such safeguarding legal provisions, there exist great obstacles in the effective application of the same, primarily because of entrenched systemic biases and a dominant organizational culture.

Underrepresentation of Women in Police Forces and its Impact on Gender Sensitivity

Women represent a disproportionately small percentage of the overall police strength in India at a meager 11.75% as of 2022. The percentage is far short of the policy suggestion of at least 33% female presence in the majority of states. The shortage of female police officers partly accounts for the difficulty in providing protection to women and significantly affects the effectiveness of policing and the dispensation of justice, especially against women and children.

The statistics clearly attest to a chronic underrepresentation of women in the Indian police force, far short of policy goals. This numerical imbalance is clearly attributed to worsening problems of women's safety and effective policing. At the same time, the sweeping "masculinity subculture" of the police creates gender insensitivity and gives rise to victim-blaming culture and ineffective response to such crimes against women. The shortages of qualified officers and uneven training exacerbate these problems. Women's low numbers create a system where masculine norms and stereotypes are reinforced, restraining pressure for change from within. This, in turn, results in an appearance of, and often an actuality of, a police department that is insensitive or hostile to women, deterring them from reporting crime or entering a career in law enforcement. This generates a self-reinforcing negative feedback loop: insensitivity is spurred by underrepresentation, and this discourages women, perpetuating the status quo and undermining attempts at a gender-sensitive police force.

C. Challenges in Effective Implementation of Protective Legislation

The effective implementation of protective legislation, such as the Protection of Women from Domestic Violence Act, 2005 (PWDVA), faces considerable hurdles. Communication gaps and unclear role definitions among police, protection officers, and non-governmental organizations (NGOs) often impede a coordinated response. Inconsistency in gender sensitivity training programs further contributes to varying levels of enforcement across different regions. Moreover, a notable lack of skilled officers with adequate training for investigations hampers the proper handling of cases and the meticulous preparation of chargesheets.

The police serve as the primary "gatekeepers" to the criminal justice system. When this initial point of contact is characterized by widespread gender insensitivity, victim-blaming stereotypes, and inadequate responses to gender-based violence, it creates a significant barrier. This leads to severe underreporting of crimes by women, and women often remain ignorant of their legal rights or struggle to access free legal aid. The systemic issues at the policing stage

have profound ripple effects throughout the entire justice pipeline. If women cannot trust or effectively engage with law enforcement, their fundamental rights to equality, protection, and justice are compromised from the outset. This erosion of trust not only perpetuates cycles of violence and inequality but also undermines the legitimacy and effectiveness of the entire criminal justice system, rendering it an inaccessible rather than a protective institution for many women

IV. GENDER BIAS IN THE JUDICIAL PROCESS

A. Sentencing Disparities and the "Chivalry Hypothesis"

The meaningful application of protective laws, including the Protection of Women from Domestic Violence Act, 2005 (PWDVA), is significantly hampered. Information gaps and ill-defined role assignments between police, protection officers, and non-governmental organizations (NGOs) usually hinder coordinated action. Discrepancy in gender sensitivity training schemes also adds to unequal enforcement at different places. Additionally, the dismal shortage of qualified officers trained professionally to conduct investigations is crippling proper case handling and scrupulous preparation of chargesheets.

Gender prejudices profoundly come to the fore in judges' sentencing behaviors, driven by established patriarchal conventions and cultural attitudes toward women offending.

Analysis of Judicial Leniency towards Women Adhering to Conventional Norms Compared with More Severe Penalties to Those Violating Them

Legal experts have pointed to the "chivalry hypothesis," which holds that women would get more lenient sentences because society views them as vulnerable and morally superior. But this leniency is tentative and largely reserved for women who are seen to fit into traditional gender roles. Women who commit violent offenses, take part in political activism, or defy patriarchal norms tend to receive more severe sentences than their male counterparts. This difference is further intensified for marginalized women, i.e., Dalit and Muslim women, who cannot avail themselves of judicial leniency in the same manner as upper-caste Hindu women.

The study explicitly formulates the "chivalry hypothesis" in which women can be given more lenient sentences. It instantly nuances this by asserting that this leniency will only happen if traditional gender norms are followed. Women who disobey these norms, particularly in aggravated or violent offenses, or in marginalized groups, usually get tougher sentences. This indicates that "judicial chivalry" is not a general protective force but instead a tool that supports patriarchal societal norms. It rewards conformity with traditional female roles (e.g.,

passive, vulnerable, good mother) and punishes deviation. This generates a discriminatory system in which the degree of leniency (or severity) depends upon a woman's perceived conformity to societal standards, as opposed to the merits of the case, that erodes the principle of equal justice

B. Bail Procedures and Gendered Treatment

Socio-economic Conditions and Insufficient Access to Legal Assistance Impacts Bail Decisions for Women

Indian women are generally more vulnerable to pre-trial detention than men. The vulnerability is many times the result of socio-economic conditions, lack of access to proper legal representation, and societal biases. Low-income women, in special cases, suffer greatly from the lack of free legal assistance and consequently experience unduly delayed outcomes in granting bail and getting justice. Most of the female prisoners are illiterate and come from poor socio-economic backgrounds, making them and their relatives well-off unaware of the free legal aid available. Also, counsel may be reluctant to accept cases involving meager honorariums and pay a rare visit to the jails and spread no awareness among the female prisoners about their rights. Adding to these problems are the abandonment of families for social stigma after an arrest, so that they do not want to pay for bail nor support.

C. Trial Proceedings and Judicial Stereotyping

Socio-economic Imperatives and Inadequate Legal Representation Influencing Bail Determinations for Women

Judicial stereotyping and gender prejudice impose an immense shadow on trial processes, short-changing the journey to an equal society. Expressions of Obsolete Ideas of Consent, Blame towards Victims, and Moral Examination in Court Judges can unconsciously have preconceived thoughts and biases that affect their views concerning credibility, behavior, and roles along gender lines. These ingrained biases seep into legal interpretation, leading to decisions that discriminate against women through biased concepts of consent, victim-blaming, and imposition of social gender roles. The ripple effects of gender bias are inherently embedded in the tapestry of legal interpretation, culminating in unjust outcomes and sustaining bias within the legal system.

V. REFORM INITIATIVES, ADVOCACY, AND THE PATH FORWARD

A. Government Policies and Legislative Reforms

Overview of Constitutional Provisions and Primary Legislation Directed to Safeguard Women

India's Constitution, which promises equality (Articles 14, 15, 21, 39A), serves as the strong foundation for women's rights in the criminal justice system. Major legislations are the Protection of Women from Domestic Violence Act, 2005 (PWDVA), the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), and the Dowry Prohibition Act, 1961. More recent legislative changes include the Bharatiya Nyaya Sanhita (BNS), 2023, the Bharatiya Nagarika Suraksha Sanhita (BNSS), 2023, and the Bharatiya Sakshya Adhinyam (BSA), 2023, which have substituted traditional codes. Of particular note is that the BNS particularly prioritizes offenses against women and children, legalizes strict punishments for sexual crimes, and includes new crimes such as sexual intercourse on false promise to marry. The BSA 2023 also seeks gender-sensitive judgment, preventing re-victimization in trials, and the production of digital records as primary evidence.

B. Gender Sensitization Training and its Evaluation

Present Training Programs for Judiciary and Police

Sensing a desire for attitudinal change, gender sensitization training is not only an urgent need for police officers and is embedded in training modules of national police academies (Sardar Vallabhbhai Patel National Police Academy, North Eastern Police Academy) and outreach centers of Bureau of Police Research & Development (BPR&D). The modules address several gender issues in policing, investigation practice, case laws, and right handling of victims. The Supreme Court has also made gender sensitivity training a mandatory part of legal professional academies and examinations. BPR&D has also suggested policy-level measures in their totality, such as a required budget for gender sensitivity training, incentives for obtaining certification, and intra-organizational Human Resource Development (HRD) initiatives.

VI. CONCLUSION

The study of gender bias in the Indian criminal justice system shows a complex scenario in which constitutional principles of equality are often at loggerheads with strongly rooted patriarchal values and structural inequalities. In every phase of contact with the police, in judicial procedures, in imprisonment, and in rehabilitation, female offenders tend to receive differential treatment that negates fairness and reinforces societal inequalities.

The insidious "masculinity subculture" in policing, and the extreme underrepresentation of women in the police force, provide a setting in which gender insensitivity and victim-blaming mindsets are insidious. This damages public confidence and is a major deterrent to women accessing justice. In the courtroom, the "chivalry hypothesis" Ironically offers conditional

leniency to conformist women in traditional gender roles, but those that resist these stereotypes, particularly in the case of serious offenses or marginalization, are more likely to receive tougher punishments. The lack of formalized sentencing guidelines also comes into play, enabling personal judicial prejudices to result in capricious and irregular outcomes. The imbalance between women undertrial prisoners and others testifies to the way structural injustices reinforce gender prejudice so that women are kept in custody longer than they should be, and often unfairly so.

Inside prisons, there exists a deep "gendered neglect." The limited number of women's prisons requires most women inmates into male-planned jails which do not suit their specific needs, resulting in overcrowding, cleanliness, privacy, and poor healthcare, including gynecological and mental health care. This turns imprisonment into a mechanism that exacerbates prior trauma and mental anguish, greatly undermining true rehabilitation. Though non-governmental organizations serve an irreplaceable role in bridging such important service gaps, their work, while crucial, highlights the failure of the state to perform its basic duty.

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