

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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Women and Criminal Justice System: Is there a need for Gender Neutrality?

EKTA CHANDRAKAR¹

ABSTRACT

Criminal justice delivery system is an umbrella term altogether. When it comes to women, it can be understood that their involvement in the criminal justice delivery system is very trivial as compared to that of men. There is usually a preconceived notion that women tend to commit offences of lesser gravity; and the involvement of women with crimes is like a far fledged idea. The general idea is that, if at all women commit offences, it would be of a minor nature. This perception has been so stuck in the minds of people, that once a commission of a crime by a woman is reported, they tend to see it as something which is unnatural.² However, as compared to the earlier times, the women's involvement in committing crimes, and the number of women offenders have increased in a large scale.³

Keywords: *Criminal justice; women; criminalization; violence; imprisonment.*

I. INTRODUCTION

An interesting fact is that, the women inmate's number in the jails have increased considerably than the rate at which the male inmates have increased over the years. Similarly, the rate at which women are being subjected to criminal treatment is also no less. However, even in these prevailing circumstances, the laws intending to punish the wrong doers are still framed based on the characteristics of the men who would be possibly committing the crime. Very less, or in fact, no account is given to the female characteristics or features in deciding the conviction and punishment. These are all examples of this differential treatment.⁴

Apart from playing the role of offenders, in most cases, women are majorly the victims of crimes. The submissive role played by women in most societies is one of the primary reasons for such victimization. Hence, when it comes to victimization, since women become the victim

¹ Author is a LLM student at Symbiosis Law School, Nagpur, India.

² Richie, Beth E., Tsenin, Kay & Widom, Cathy Spatz, "Research on Women and Girls in the Justice System", Vol. 3, Plenary Papers of the 1999.

³ Greenfeld, Lawrence A. & Snell, Tracy L., "Women Offenders", Bureau of Justice Statistics Special Report, (1999); Belknap, Joanne, "Access to Programs and Health Care for Incarcerated Women", (1996) Federal Probation.

⁴ Covington, Stephanie S. & Bloom, Barbara E., "Gendered Justice: Women in the Criminal Justice System", (2004), Review of Policy Research.

in most cases, here again, the gender neutrality fails to be obeyed. Therefore, one important analogy that can be made out from involvement of women in criminal justice is that, they are often the subject of criminalization as well as victimization.⁵

In this paper, the author would be briefly analyzing the aspects of involvement of females in commission of crimes, and the possible reasons for the same. The author would also make an attempt to study how the imprisonment of females who have are negatively impacts in the family and societal life. Lastly, the author discusses the need and importance of having special legislations to protect women from exploitation and for providing them with speedy and fair justice when they are subjected to criminalization.

II. THEORETICAL BACKGROUND

(A) Involvement of women in the commission of crimes

Compared to the fashion seen in the previous years, nowadays women are also seen highly associated with different crimes and offences that warrant imprisonment or other punishments of similar nature. One such area where women offenders have been on the rise is drug related offences. The interesting fact here is that, in most cases, it is often women who are more associated with offences of this nature than men.⁶ According to the author, one of the main reasons for such association would be that the society does not generally perceive women to be involved in such offences.

Therefore, this gender bias would act as mask, and thereby, would make it easier to evade conviction where the tasks of drug trafficking and allied activities are done by women.⁷ Further, another major reason for such involvement would be that, if at all women are convicted for offences; the present legal framework does not call for a very efficient mechanism to deal with women offenders.⁸ Therefore, it is high time that the justice delivery mechanism as well the functioning of correctional measures be adjusted in such a way so that conviction of women is also covered in their realm without any confusion.⁹

Another argument that is made out with regard to conviction of women offenders is that, even when the rate of participation of women in crimes is lesser, sometimes, the chances of

⁵ Kalra, Gurbinder & Bhugra, Dinesh, "Sexual Violence Against Women: Understanding Cross-Cultural Intersections" (2013) *Indian Journal of Psychiatry*.

⁶European Legal Database on Drugs, "The Role Of The Quantity In The Prosecution Of Drug Offences", April, 2003.

⁷Penal Reform, *Global Report Reveals Gender Discrimination In Sentencing For Drug Offences*, March, 2020.

⁸"Women, Drug Policies, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean", available at <https://www.oas.org/en/cim/docs/womendrugsincarceration-en.pdf>.

⁹"Women in the Criminal Justice System", *The Sentencing Project: Research and Advocacy for Freedom*, (2007).

conviction and being subject to punishment is greater for women offenders as compared to their male counterparts.¹⁰ There are statistics also which support this statement.¹¹ Some of the reasons for this trend could be better financial stability of men, or even other social factors including political contacts, or the like.¹² Further, an association of women with a crime would attract more social stigma, and societal avoidance than what men are likely to face. Therefore, a proper analysis has to be made out to identify the reasons and objectives behind women's involvement in crimes as well as their incrimination for the same.

(B) Possible reasons for female involvement in crimes: as victims and perpetrators

When it comes to involvement in crimes, it shall include both being convicts and victims of crime. Firstly, the author would be looking into how women are often being victims of criminal offences, mostly sexual offences.¹³ The primary reason behind the increase in violence against women is because of the thought process of an abuser who thinks that there is nothing wrong in inflicting violence against a woman. In most cases, the perpetrator would be a man. This is again because of the social construct where women are regarded secondary to men; and are considered as a weaker section in all respects.¹⁴ Further, because of this sexist approach, most often men are charged with the right to control *his* women. The author has deliberately used the term 'his' because, mostly women are considered as mere object or property owned by men.

The society condemns the men when it comes to indecent behavior of their women. Here again, what amounts to indecent behavior is totally up to the people who create such norms. So, in such situations, the men are in fact forced to control their women, which would sometimes end up in violence.¹⁵ Marriage is again a transfer of ownership when it comes to women. In her own home, she would be under the control of her parents, and when it comes to marriage, it is the husband. This superiority complex in the minds of the husbands are mostly the reason for marital offences against women including marital rape, domestic violence etc. there are also various reported cases of dowry death, suicides, and what not. The list still continues.

The superiority mindset of the perpetrator can be best explained with the help of the deadly

¹⁰ Allard, Patricia, "Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses", The Sentencing Project, 2002; Mauer, Marc, Potler, Cathy & Wolf, Richard, "Gender and Justice: Women, Drugs, and Sentencing Policy", The Sentencing Project, 1999.

¹¹ Snell, Tracy L., "Women in Prison", Bureau of Justice Statistics, 1994.

¹² Lapidus, Lenora, et. al., "Caught in the Net: The Impact of Drug Policies on Women and Families", ACLU, 2005.

¹³ Violence Against Women, World Health Organisation, 9 March 2021.

¹⁴ Preventing Intimate Partner And Sexual Violence Against Women Taking Action And Generating Evidence, World Health Organization, 2010.

¹⁵ Krug, Etienne et.al., Sexual Violence, World Report On Violence And Health, 2002.

Delhi Gang rape of 2016. Here, the facts of the case show that the perpetrators had a feeling that the girl going out with a male friend of hers late at night is not agreeable, and she ought not to interact in a friendly manner with him.¹⁶ Apparently, this triggered the perpetrators, and then they went on to later harass her and rape her.¹⁷ This is one of the deadliest and most scary rapes that have ever taken place. Even when the culprits were caught red handed, and they confessed of the offense, they are said to have no guilt at all. This shows their mentality that a woman is anyways subordinate to them, and it is not a wrongful act in doing harm to her.¹⁸

Various statistics also prove the fact that women face more physical and sexual violence from their partners or husbands.¹⁹ Further, in most cases because of the societal norms', women are restricted from educational opportunities as well as employment opportunities. Therefore, there are very less chances for their empowerment. To a certain extent the lack of access to opportunities make the women themselves believe that is their fate to be subjected to such violence. Hence, they restrain themselves from coming forward and raising complaints for the violence they have suffered.²⁰ All these are reasons why women are mostly the victims of criminal offences.

Now, the other side of female involvement in criminalization is of course, as perpetrators. Nowadays, women are equally seen as offenders of various crimes, including minor as well as grave crimes. Their involvement can now be seen in drug dealings, human trafficking, sex trafficking, and so on. There are also instances of women being perpetrators of murder and other physical offences as well. According to the author, most important reason why a woman may end up doing a criminal activity would be for economic reasons. Most often women are barely able to maintain themselves.²¹ As already mentioned, the lack of educational and employment opportunities leads them to such a situation where they do not have any means of income. For those women who belong to very well-off families, the rate of involvement in crimes would be lesser. However, for those women who could not even manage to earn enough for food, are more likely to involve in illegal activities like drug trade, trafficking etc to make a living.²²

(C) Impact of criminalization on women offenders

When women are subjected to criminalization for offenses, more than the societal and personal

¹⁶ Sunipun, "Nirbhaya Gang Rape: A Case Study", ipleaders, 22 February 2017.

¹⁷ "Profiles: Who Were The Delhi Gang Rape Convicts?", *BBC News*, 20 March 2020.

¹⁸ "2012 Delhi Gang Rape Case: What Happened On December 16", *India News*, 20 March 2020.

¹⁹ Jahan, S., "Violence Against Women, a Cause And Consequence Of Inequality", UNDP, 2018.

²⁰ *Id.*

²¹ Campaniello N., "Women In Crime", IZA World of Labour, 2019.

²² Selmini R., "Women in Organized Crime", The University of Chicago Press Journals, May 2020.

issues faced by women, more impact happens to her near and dear ones. This is because, our societies are construed in such a manner that women take up a major role as home makers, or those who take care of the family.²³ In a general setup, women are expected to make food, take care of the children and do the household chores. When women are criminalized and punished for commission of any offense, it negatively affects her whole family as well.²⁴ The author does not have the opinion that these kind gender roles are still to be followed. However, in the existing social setup, where men generally do not involve as much as their female counterparts in child rearing, household chores, etc. it becomes all the more difficult for the whole family to cop up with such a situation.²⁵

Among all the different roles that a woman plays in a society, the role of a mother is something which is irreplaceable. Therefore, when it comes imprisonment of mother offenders, the children suffer the most out of such a situation. The main issue faced here is the protection and fostering of the children. In most cases the children would be left with the husband of the female offender or maybe with the grandparents of the children.²⁶ In most other situations the children are sent to Foster homes.

Other challenges that are faced by female offenders in this regard is in maintaining their family relations.²⁷ In most cases the female offenders are sent to prisons which are very far away from their permanent residence, which makes it very difficult for them to have a visit or even talk with their children once they are imprisoned.²⁸ Further, there is another issue of losing of parental rights over their children forever. Certain laws provide that, once the children are admitted to foster homes, and even after the lapse of a certain time frame no communication is made from parents, it shall result in permanent termination of parental rights.

Some other laws provide that, children shall not be permitted to live in these kinds of foster homes forever. Hence, taking the welfare aspects of the children into consideration, they shall be given out for adoption.²⁹ Therefore, in most cases when mother offenders are punished with imprisonment, it shall negatively affect the significant part of the child's life where they are to be treated with utmost love and care.³⁰ This would thereby affect their development aspects, and there are high chances that these children may also grow up to be criminals or such other

²³Chhibber V. et.al., "Crime Against Women and its Impact on Them, July 2019.

²⁴"Women, Gender And Victimization: Rape And Sexual Assault", SAGE Publications, 2019.

²⁵Takkar Prateek, "Crimes Against Women", Legal Service India E-Journal.

²⁶Mumola, Christopher J., "Incarcerated Parents and Their Children". Bureau of Justice Statistics Special Report, January 2000.

²⁷Poehlmann J., et. al., "Children's Contact With Their Incarcerated Parents", Am Psychol(2010).

²⁸Women in Prison Project: Correctional Association of New York, Imprisonment and Families Fact Sheet, 2007.

²⁹The Adoption and Safe Families Act, 1997.

³⁰Smith P. Scharff&Gampell, L., "Children Of Imprisoned Parents", The Danish Institute for Human Rights, 2011.

categories of a like nature, posing a threat to the society as a whole.³¹

Most females who have undergone a term of imprisonment in prisons often find it difficult to come back to a normal life.³² This occurs mainly due to the unacceptance of her community where she used to live before.³³ Some women face neglect from her own families, thereby wanting her to find a home and a job all by herself. However, in reality, these are all very difficult to do without any external support.³⁴ As mentioned earlier when her family itself distances away from her, it becomes very difficult for her to find a house to live in as in most cases, finding a proper house would require sustainable income and a good reputation in the society. Moreover, once a person is convicted for a drug related activity, she would be imposed a ban on receiving any grants or assistance from the government.³⁵ Further she would also be restricted from attaining an employment soon after her release from prison.

Therefore, there are chances that the woman may go back to committing the same offence that she did before for which she has already undergone the imprisonment. Further there are various laws which prohibit offenders from holding public housings, and which allows the tenants to evict people from their land who are once convicted for a serious crime.³⁶

(D) Need for a gender specific legislation to support women

From the above discussion it is clear that in various instances women are at a disadvantaged position as compared to men. This is mainly because of their economic instability as well as societal submissiveness. Because of these reasons, in order to bring about uniformity in criminal justice system for men and women, there needs to be a special legislation in place, particularly to support women. Special legislations are enacted mainly to support a particular class of persons who are otherwise in the lower strata, and are at a vulnerable position. When it comes to criminal justice, the author argues that there is a need for special legislation primarily because; most often the general law applicable to all persons does not give adequate consideration to women. For instance, the Convention on Elimination of All Forms of Discrimination Against Women (“CEDAW”) was adopted by the United Nations General Assembly keeping in mind the need to bring women to the fore front. Many nations have adopted this Convention and have enacted domestic laws to bring this Convention into

³¹Prayas: Social Work in Criminal Justice, “Forced Separation: Children Of Imprisoned Mothers: an Exploration in Two Indian Cities, 2002.

³² Jarrett, Christian, “How Prison Changes People”, BBC Future, May 2018.

³³“Prisons: Prisons for Women. Problems And Unmet Needs In The Contemporary Women's Prison”.

³⁴United Nations: Office of Drugs and Crime, “Handbook For Prison Managers And Policymakers On Women And Imprisonment”, United Nations Publications, 2008.

³⁵S. 115, Personal Responsibility and Work Opportunity Reconciliation Act, 1996.

³⁶ Anti-Drug Abuse Act, 1988; Housing Opportunity Program Extension Act, 1996.

application.³⁷

Further women are more vulnerable in the society and are hence victims of various offences including sexual offences like rape.³⁸ Women are also more often, subject to violence in their marital homes, and instances of dowry death, domestic violence, and marital rape are all prevalent.³⁹ However, most of them go unreported.⁴⁰ These offences demand urgent involvement by the state so as to protect the victim and Convict the wrongdoer. Moreover, in such cases the judiciary is also duty bound to provide fair and speedy justice. Taking the example of India, there are different legislations such as Immoral traffic Prevention Act, 1956; Dowry Prohibition Act, 1961; Protection of Women from Domestic Violence Act, 2005; the Indecent Representation of Women (Prohibition) Act, 1986; Sexual Harassment of Women at Workplace (Prevention, Prohibition, And Redressal) Act, 2013; Protection of Child Marriage Act, 2006 etc. which provide assistance to women.⁴¹

III. CONCLUSION AND RECOMMENDATIONS

In the last few years a drastic change has been seen as regards to the manner in which women are being subjected to the criminal justice system. Mostly there is a link between women who are subjected to violence and their resultant involvement in illegal activities. In most instances of Murder, grievous hurt, etc. the convicted women would have been the subject of violence of any manner by the person they have later on assaulted. Therefore, involvement of women in criminal justice system is an umbrella terminology which includes within its realm, the victimization in criminal offences as well as commission of criminal offences. As the author has already stated earlier, in most cases there is a link between the two.

In this project, the author has made a detailed analysis of women's involvement in the criminal justice system. In the initial part more emphasis was given to women who involves in illegal activities like drug trade, bodily offences etc. Thereafter an attempt was made by the author to analyze the possible reasons for involvement of women in crimes; and the resultant impact that it would create on women generally. The impacts mentioned in the paper range from family issues to that of societal and communal issues.

³⁷Rastogi, Suyash, "Women In Criminal Justice With Reference To Special Legislation", Legal Service India E-Journal, 2020.

³⁸U.S. Department of Justice, "The Criminal Justice and Community Response to Rape", National Institute of Justice-Issues and Practices, May 1994.

³⁹Kumar, Ankur, "Domestic Violence In India: Causes, Consequences And Remedies", YouthkiAwaaj, February 2010.

⁴⁰Bhardwaj, Urmila., "Domestic Violence Against Women Causes And Cure". Legal Service India.

⁴¹Bhartiya Stree Sakti- Ministry of Women and Child Development, "Tackling Violence Against Women: A Study of State Intervention Measures", March 2017.

It is a fact known beyond doubt that our societies are very much sexist in nature. Therefore, gender neutrality is most often perceived as being male oriented. The male gender is considered as *normal* and female gender is considered as what is not normal. Hence most laws and regulations are coined taking into consideration characteristics of the male community alone. In this juncture the author would like to substantiate that equality in treatment is most often found only with regard to criminalization, and little consideration is given when it comes to women being subjected to criminal acts. Therefore, the author makes the argument that gender-neutral laws does not per se exist. The laws which are currently in practice are in fact laws which are linked to men. So, rather than concentrating more on criminalization aspects, weightage should be had to laying down mechanisms to protect women who are being subjected to criminal and illegal acts.

After analyzing all the above-mentioned aspects of criminalization, the author brings the paper to a concluding note that in most countries' women are in a more vulnerable position as compared to men. Hence it is pertinent that adequate laws are implemented to specially focus on the Welfare of women. The author has taken the example of India and few of the legislations that are enacted in India as welfare legislations to support women.
