



ROLE OF GENDER IN THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

It is sometimes said that the prosperity of a country may be evaluated by how the women of that society are treated and valued. Patriarchy is a societal ill that has been in our society from the beginning of time and continues to exist now. The prevalence of incidents such as female feticides, sati, and underrepresentation of women in virtually every sphere demonstrate this point. Whenever it comes to criminal justice, there is always the issue of whether everyone should be treated equally or if women should be treated more leniently because of the criteria listed above. It is the purpose of this article to analyse how women are handled in the criminal justice system, whether they are victims or perpetrators of crimes. Furthermore, it is stated how judges all over the globe are often observed adopting a liberal attitude when choosing the quantity of punishment to be meted out to female criminal defendants.

Keywords: Gender, Leniency, Criminal, Justice System.

BACKGROUND

The institution of patriarchy has always been deeply ingrained in Indian culture. In today's society, discrimination based on gender is not an unfamiliar notion.¹ The oppression and violence against women have been a long-standing problem throughout the history of mankind. Because of societal and cultural standards, the criminal justice system in India punishes male and female criminals differently from one another. It is possible to catch a glimpse of this disparity in the Indian judiciary, where Judges are fully aware of the prejudice that women endure and are therefore generally lenient when sentencing female criminals. Even in nations such as the United Kingdom, women who commit crimes are often handled more leniently than males. As a result, gender has always played a significant role in deciding the severity of punishment.² While reading through the

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¹ Mary Becker, 'Patriarchy and Inequality: Towards a Substantive Feminism' [1999] PL 23.

² 'Crime Prevention & Criminal Justice Module 9 Key Issues: Topic 1 - Gender-Based Discrimination And Women In Conflict With The Law' (Unodc.org, 2019) < <https://www.unodc.org/e4j/en/crime-prevention-criminal->

article, we will see how gender is taken into account while dealing with criminal defendants not just in India, but around the globe, thanks to the use of statistical evidence and analysis. Since the past, women who are held guilty have been at the edges of the criminal equity framework. Theories of criminal conduct, just as investigations of arrest, pre-trial, prosecution, and sentencing results, have been derived from the examples of guiltiness got from concentrating on male wrongdoers.' This doesn't mirror an absence of interest in female offenders, but instead the exact truth that by far most criminal offenders, particularly fierce criminal wrongdoers, have been male. In other words, the customary preoccupation of scholars, scientists, and criminal justice experts with male wrongdoers get from the gender-based demographics of criminal conduct.³

Seeing the cases in the Supreme Court, there is a light thrown over the way that it has been conceptualizing and allotting roles based on gender in a general public where a woman is viewed as the establishment of a family. She is relied upon to follow every one of the social practices, customs, and standards, be agreeable, passive, and caring just to keep up the family together. This has likewise been utilized to alleviate a woman's risk of wrongdoing and legitimize the low female criminality rate when contrasted with men.⁴ There are different reasons to clarify the rationale behind this pattern. One can be that the court is by and large excessively gallant and has adhered to a generalization that depicts that women need security.

LAWS & FLAWS IN THE INDIAN CRIMINAL JUSTICE SYSTEM

In India, most of the government institutions are dominated by men. If we analyze figures, one will notice that in the year 2013-14, only 5% of women have worked in government departments. Moreover, some figures suggest such discrimination is prevalent in the parliament, state legislatures, and judiciary. Firstly, in the parliament, there are merely 62 out of 543 (only 11.42%) members of parliament who are women. Secondly, in the state legislature, out of 4120 members of the legislature, merely 359 (only 8.71%) are women. Thirdly, in the judiciary, if we look at the apex court, there is only one female judge, and never has India seen a female Chief Justice. In the high courts, only 82 out of 1079 judges are female. Furthermore, in the Bar, out of a total of

[justice/module-9/key-issues/1--gender-based-discrimination-and-women-in-conflict-with-the-law.html](#) > accessed 8 December 2021.

³ Luis M. Rivera and Bonita M. Veysey, 'Criminal Justice System Involvement and Gender Stereotypes : Consequences and Implications for Women's Implicit and Explicit Identities' [2015] PL 1109.

⁴ Rachit Garg, 'Gender Disparity In The Criminal Justice System Of India - Ipleaders' (*iPleaders*, 2021) < <https://blog.ipleaders.in/gender-disparity-criminal-justice-system-india/> > accessed 8 December 2021.

9,55,013 advocates enrolled in Bar Councils, only 98,556 are women.⁵ Such a massive difference in numbers is one of the major reasons that gender disparity is still on the rise. These numbers are extremely worrying and just portray, how deep-rooted the issue of patriarchy is, in our Indian society.

One of the most debated laws in the country is the rape law. The rape law in India is women-centric and is not gender-neutral. This means the law recognizes only a man can rape a woman. On one hand, people say that this rape law must be made gender-neutral, but on the other hand, we notice that the number of crimes against women is still rising significantly. The rise in criminal offences against women combined with the underrepresentation of women in almost all the government institutions is a warning sign for our country and this compels us to believe that maybe, the women-centric laws in our country are justified.

Notably, even the prison population in India is mostly dominated by men, and women criminals only form a handful of the prison population. For instance, according to the National Crime Records Bureau of India (NCRB), in 2019, approximately 18,86,092 inmates were admitted to the Indian prisons. Out of these, only 80,079 were females.⁶

It is widely believed in our society that males are more likely than women to commit crimes, particularly horrific crimes, which is one of the reasons why men's prisons are more suited in terms of circumstances than women's prisons. The reasoning behind this was that jails are built for men, by men, and that they should be as such. Women often have tremendous problems as a result of this, which might occur throughout their pregnancies and menstrual cycles, for example. The fact that female criminals are generally given light sentences is one of the many reasons why laws and courts are often liberal in their treatment of them.

A cursory review of the Indian Penal Code (IPC), 1860,⁷ demonstrates unequivocally that the legislation of our nation grants judges leeway in determining the severity of punishments meted out to criminal defendants. When dealing with a female criminal, the above-mentioned situations, as well as the conventions of the community that women are frequently the ones who take care of the family and raise children, are among the most significant elements that judges take into consideration. The case of *State of Himachal Pradesh v. Nirmala Devi*⁸ is considered to be one of the most important on this subject. Specifically, a lady and her male accomplices were accused

⁵ Poojasri Ganesan, 'Only 2 Woman Judges In SC And 82 Of 1,079 Judges In Hcs — Judiciary Has A Gender Problem' (*The Print*, 2020) < <https://theprint.in/judiciary/only-2-woman-judges-in-sc-and-82-of-1079-judges-in-hcs-judiciary-has-a-gender-problem/557564/> > accessed 8 December 2021.

⁶ Prison Statistics India, NCRB (2019).

⁷ The Indian Penal Code, 1860 (Act 45 of 1860).

⁸ *State of Himachal Pradesh v. Nirmala Devi* (2017) CrI. Appeal No. 667/2017.

of drugging and robbing a person in the present instance. In such a circumstance, the sentence is harsh imprisonment for up to 10 years. The lady, on the other hand, was sentenced to just two years in jail by the trial court. Since the accused lady was a mother of two little children, the Supreme Court of India adopted a liberal stance in this case, and the accused woman was found not guilty. While acknowledging that gender plays an important and critical role in determining the quantum of punishment, the court also stated that there is no straight-jacket formula for this and that each case must be evaluated on its own merits. This meant that gender is not the only factor to be considered and that all of the facts of the case must be taken into account.

GENDER AND CRIMINAL JUSTICE: INTERNATIONAL PERSPECTIVE

Gender plays an important part in the Criminal Justice System in several nations, including India. Take, for example, the case of two of the world's most industrialized countries. For example, in the United Kingdom, the Equal Treatment Bench Book, published in 2013, outlines the various considerations that must be taken into consideration when sentencing.⁹ The concept of fair treatment is covered in detail in the guidelines. Fair treatment, according to this definition, does not imply treating everyone equally; rather, it entails treating those who are in comparable circumstances similarly. It is simple to conclude that gender is a crucial consideration for determining the severity of punishment in the United Kingdom, especially when taking into consideration that patriarchy still prevails.

The situation is likewise similar in the United States of America. In 2014, research conducted by Harvard University demonstrated unequivocally that federal courts in the United States are more forgiving towards female defendants than male defendants. Aside from that, women are given shorter sentences and have a lower chance of being incarcerated than males. This analysis was further supported in 2015 when a total of 3593 criminal cases were investigated. It was determined that women were 46 percent less likely to be detained when compared to their male counterparts and that women were 58 percent less likely to be sentenced to incarceration. When bail bond was taken into consideration, the findings remained the same as before. As previously said, it was shown that women paid 54 percent less for bail bonds as compared to male bail bond holders.

These results demonstrate that the gender imbalance in the criminal justice system exists not just in India, but also in many industrialised countries such as the United States and the United Kingdom, as seen by the data presented below. Judges all around the globe are increasingly taking

⁹ Equal Treatment Bench Book (2013).

the gender of the criminal into account when determining the appropriate level of punishment to impose.

CONCLUSION

Women have been the victims of a wide range of crimes and types of discrimination throughout history. Male dominance is one of the primary causes for this, and it can be seen in every sector of Indian society, from families to government organisations to courts. As a result of keeping this in mind, we may infer that until and until there is equality in the larger community, there will be no gender-neutral criminal justice system possible. The achievement of this aim will be impossible until women have equal participation in institutions such as parliament and the judiciary. The education of girls would be a necessary first step in achieving this goal.¹⁰

The low criminality pace of women isn't the issue however the sex-based conduct isolation is. Judges ought not to matter their comprehension of a women's part in the public eye however utilize a more nonpartisan premise while thinking about different perspectives which drive women to perpetrate wrongdoing. Nonetheless, there can't be a uniform criminal equity framework for both male and female guilty parties as it would be simply shallow reasonableness when at present both are as yet not on an equivalent balance. Guilty parties with a family ought to be given some concession in any case alongside them their family suffers as well. Nonetheless, this ought to be controlled so it doesn't cross its limits to become unjust treatment. A few ideas considering sharpening the issue of women criminals would be the disentanglement of bail strategies for women under trials, the foundation of all the more family courts for rapid removal of cases, and enlisting more female judges to hear cases identified with women wrongdoers guaranteeing a better comprehension of the conditions.

Aside from that, we as a society must constantly respect the rights of women and treat them on an equal basis. Furthermore, legislators and judges must exercise caution and abstain from making statements that may be seen as reflecting the patriarchal character of the culture in which they live. When it comes to developing and being successful as a country, this is vitally crucial to consider.

To summarise, it would not be incorrect to state that the way future is equal representation of women in all sectors of life, education of girls, and sensitization towards a society in which everyone is treated equally and with respect is the way forward.

¹⁰Department of Economic and Social Affairs, 'Achieving Gender Equality, Women's Empowerment and Strengthening Development Cooperation' [2010] PL 5.