
FEMALE CRIMINALS AND STEREOTYPICAL EXPECTATIONS

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ABSTRACT

Men and Women face inequality in many spheres. One of the major areas of discrimination is crimes and punishments. Female criminals are treated differently from men offenders even if they have committed the same crime. To support this, society keeps on finding different reasons. In midst of the discrimination, women have been sympathized, insulted, pointed out and dominated by society for centuries to find the acceptable excuse to compromise gender equality. The male perspective has made the female gender look weaker than men. Women are said to be biologically defected if they commit a crime or are said to be not adhering to the responsibilities they are expected to perform. The Judicial system blindly believes the stereotypes which result in judgments corrupted by societal norms. If these reasons are somehow rejected, women are said to be a weaker gender who are incapable of committing a crime. These notions lead to the failure of gender equality and instead bring forward an era of female offenders who are tagged as victims of the crime they had committed.

Introduction

“Criminal law is, from top to bottom, preoccupied with male concerns and male perspectives.”¹ Women have been ignored and neglected in the research study of criminology for years. Though with time, the reasons for sidelining women and considering female as a weaker sex, keeps changing but the ideology remains the same. Women are not seen as equal to men in any sphere, not even in crime. They are judged by their socio-economic class, caste, nature, and values they are supposed to follow because they belong to a society where stereotypes are given prime significance. These stereotypical expectations and societal norms have put a full stop to gender blind assumptions. The Judiciary and criminal law are not only following the societal footsteps but also building a barrier that hinders the growth of feminist view and female criminology.

Deplorable theories of earlier centuries

For decades, the male perspective has been incapable to provide a fair reason for not including women in the criminology study or accepting that women can also be perpetrators. The reasoning in the earlier centuries was that the rate of crimes committed by women is increasing because of the emancipation and liberation they have achieved. Lombroso and Adler study about it with a similar thesis as it said, “in the same way women are demanding equal opportunity in the fields of legitimate endeavor, a similar number of determined women are forcing their way into the world of major crimes.”² For this, they reasoned that those previously law-abiding women and girls are becoming women perpetrators because they are emulating men as men are the epitome of male endeavor and female criminals have turned masculine which infers that they have biologically defected and that is why women are becoming perpetrators according to Lombroso.² This theory was finally rejected after a long time but then the Indian courts found another reason to cease the idea of gender-neutral criminology and condone women perpetrators based on stereotypes. in the same way women are demanding equal opportunity in the fields of legitimate endeavor, a similar number of determined women are forcing their way into the world of major crimes.”³ For this, they reasoned that those previously law-abiding women and girls are becoming women perpetrators because they are emulating men as men are epitome of male endeavor and female criminals

¹ Mehak Bajpai, *Feminist Criminology & Psychiatry: The Leniency of Law for the 'Ideal' Woman*, FEMINISM INDIA (September 8, 2018), <https://feminisminindia.com/2018/09/18/feminist-criminology-leniency-women/>.

² Id.

³ Carol Smart, *The new female criminal: reality or myth?*, 19 BRIT J CRIMNOL, 55-59, (1979).

have turned masculine which infers that they are biologically defected and that is why women are becoming perpetrators according to Lombroso.⁴ This theory was finally rejected after a long time but then the Indian courts found another reason to cease the idea of gender-neutral criminology and condone women perpetrators based on stereotypes.

Characterization of women as a weaker gender

According to society and the way we all perceive it, Women are the caretakers. They are expected to feed, nourish, and love their husband and children. Women are supposed to be passive, soft, delicate and most of all “homemade.” Women are the foundation of the family and this whole society, and she is the only cohesive bond that keeps all the relationships intact.⁵ Even though she is the mother of this society, she is told how to bow in front of the male expectations by this same society. Society has framed a positive and delicate picture of women that even the idea of women offenders seems far-fetched to them. India has seen and heard about female criminals since the mythology. Wicked women like Taraka, Holika, Kaikeyi, are the female characters that had committed heinous crimes. In our Indian history, there are a lot of women offenders involved in serious crimes like kidnapping, murder etc. For example, Archana Balmukund Sharma, Shobha Iyer, Bela Aunty, Samaira Jumani etc. But the matters involving these criminals are passed over as if this never happened and again, the sweet pretty picture of women is framed by this society because violence is not a characteristic of women and if a woman is found to be a perpetrator, she is considered defected or not belonging from this society which in fact is formed by that woman, they are disregarding. For Criminology, Criminal law, or people for that matter, crime has always been associated with masculinity-crime is male, whilst conformity is female.^[6] This is another reason for not considering female criminology and the feminist perspective that women can also commit a crime.

The sympathy façade

Even though in the last 30 years, female criminology has grown as a common viewpoint, Judiciary has mitigated the punishments for female criminals. To reason their judgments, they propose the sympathy card that women have been suffering for a long time and have been an object of ill-treatment for ages. They have faced oppression, torture, discrimination, and

⁵ Madhav Thaker, *Feminist Criminology- Emergence of a New Branch in Modern Criminology*, *JLSR*, (April 19, 2021), <https://www.jlsrjournal.in/feminist-criminology-the-acknowledgement-of-new-ideology-by-kohelica-nag/>.

violence in a patriarchal society. The social and cultural biases are considered unconsciously when the guilty are punished which leads to unequal treatment of male and female offenders. This leniency is shown because of the awareness that women have been fighting gender inequality for decades now and condoning female criminals might be a way to end this deep-rooted bias. Gender has been a significant circumstance while deciding the punishment but in fact, it is the substantial reason to disregard feminist view on female criminology. Different punishments for the same crime to males and females do not justify the past acts of women struggle. It only pushes criminal law far away from equality and makes it a “system of rules conceived and enforced by men, for men and against men.”⁶

Judicial decisions blinded by stereotypes

The case of *Nirmala Devi v. State of Himachal Pradesh*⁷ states how gender affects the punishment and how female offenders are condoned. In this, the female accused, and her male accomplice drugged and robbed a man but upon conviction, the man was convicted for 10 years imprisonment in jail while the woman was convicted for only two years so that she could take care of her family as a mother. This weightage given to assumed gender roles burns the bridge of fairness. When the female offenders are not condoned, they are given harsher punishment because they committed a heinous crime, which according to the stereotypical society, only men are capable of and therefore, the women who show masculine traits should be punished as a man would be. In the case of *Lichhamadevi v State of Rajasthan*⁸ where the female accused was convicted for the murder of her daughter-in-law and was sentenced to death. One of the major reasons was the seriousness of the crime and the masculine nature of the convict. In the case of *Lichhamadevi v State of Rajasthan* where the female accused was convicted for the murder of her daughter-in-law and was sentenced to death. One of the major reasons was the seriousness of crime and the masculine nature of the convict.

Not just this, but the stereotypical characteristics and notions that segregate males from females, also impairs the judicial decisions by societal biases where only women are seen as passive victims and men as the offenders. This is due to the idea that has been laid out for a long time in society that men are strong, aggressive, and violent and women are delicate, passive, and compassionate. By these features, society differentiates the ability of males and

⁶ Stephen J. Schulhofer, *The Feminist Challenge in criminal law*, 143 UNIV PA LAW REV (1995).

⁷ *Nirmala Devi v State of Himachal Pradesh*, (2020) SCC OnLine HP 31.

⁸ *Smt. Lichhamadevi Vs. State of Rajasthan*, (1988) 4 SCC 456.

females to commit crimes. In the case of *R v Ahluwalia*,⁹ Kiranjit Ahluwalia killed her husband after suffering years of torture from her husband who was also in an adulterous relationship with someone else. She left her husband and career and had fulfilled all the societal expectations but after years of torture, in rage, she killed her husband. Repeated, unpredictable and unavoidable abuse by their partner results in battered women becoming increasingly passive and developing several characteristics including low self-esteem, anxiety and depression as well as blaming themselves for the violence they suffer. This sense of helplessness traps battered women 'into a situation from which psychologically unable to escape.' This shows that Kiranjit was a passive victim of her circumstances. To empathize with her, the court had to familiarize her in terms of what women are expected to do because criminality is against the feminine ethos, there must be exceptional circumstances that make her behave like a criminal.¹⁰ Here, the judgement was solely based on founding the exceptional circumstance like battered women syndrome because of the stereotypical thinking that women cannot be a perpetrator by going against societal values or by committing a crime by losing control. Kiranjit was given a harsher punishment because she did not abide by the feminine ethos and approached violence¹¹ ininity and hence, not acceptable by society. This shows that Kiranjit was a passive victim of her circumstances. To empathize with her, the court had to familiarize with her in terms of women are expected to do. Because criminality is against the feminine ethos, there must be exceptional circumstances that make her behave like a criminal. Here, the judgement was solely based on founding the exceptional circumstance like battered women syndrome because of the stereotypical thinking that women cannot be a perpetrator by going against the societal values or by committing a crime by losing control. Kiranjit was given a harsher punishment because she did not abide with the feminine ethos and approached violence that is considered masculine femininity and hence, not acceptable by society.

In the case of *K.M. Nanavati*¹², losing control after hearing the news of her wife's affair and shooting Prem Ahuja was justified on the basis that it was the instinct of a man to be angry and violent after hearing something like that. His behavior was considered normal with respect to a betrayed man. Though it was not legally justified it was normalized. But in the *Ahluwalia* case, Kiranjit was considered the passive victim and was reminded about her duties as a woman

⁹ *R v. Ahluwalia*, (1992) 4 All ER 889

¹⁰ Bajpai, *supra* note 1.

¹¹ Hilaire Barnett, *Introduction to Feminist Jurisprudence*, London: CAVENDISH PUBLISHING LIMITED, 271 (1998).

¹² *K.M. Nanavati v State of Maharashtra*, (1962) AIR 1962 SC 605.

even though she was tortured for years. “These norms reinforce the idea that male violence is normal, and stereotypes men as being the perpetrators while maintaining the idea that women are passive victims of their circumstances, or just of their ‘disturbed’ minds even while committing crimes.”¹³ the idea that male-violence is normal, and stereotypes men as being the perpetrators while maintaining the idea that women are passive victims of their circumstances, or just of their ‘disturbed’ minds even while committing crimes.”

Conclusion

Society and the system do not show equality between men and women. It either is too ‘chivalrous’ with females, because it deems them in need of protection (considered dysfunctional, not capable of forming the mental requirements of a crime, especially heinous ones); or the system is patriarchal and more punitive since it deems female offenders too ‘masculine’ or the system propagates a stereotypical image of women in society. Therefore, society needs to change its gender-specific perspective and open room for possibilities that people are not limited to the gender roles prescribed to them by the stereotypes. It is unfair for both genders to get different punishments for the same crime. There should be a uniform system of punishment for the offenders and not just a policy of superficial fairness that is biased and prejudiced by archaic stereotypes.

¹³ Bajpai, supra note 1.