

ANALYSING THE POSITION OF WOMEN IN CRIMINAL LAW: AN INDIAN WOMEN'S LIBERATIONIST DISCUSSION

Katreddy Koteswara Reddy, Research Scholars, Department of Law, Sunrise University, Alwar,
Rajasthan, India

Dr. Sandeep, Supervisor, Department of Law, Sunrise University, Alwar, Rajasthan, India

Abstract

This research paper examines the position of women within the Indian criminal justice system through the lens of feminist legal theory. It analyses how existing laws and their implementation often fail to adequately address the unique challenges and vulnerabilities faced by women, both as victims and offenders. The paper critiques the patriarchal biases embedded within the legal system and explores how these biases perpetuate gender inequality and hinder women's access to justice. Drawing on feminist legal scholarship and critical legal studies, the paper argues for a more gender-sensitive and equitable criminal justice system that recognizes and addresses the specific needs and experiences of women. This article deals with Female Criminality in India. In order to tie the indicated causes and preventative measures to the current conditions, the study explores some of the theories based on female criminality, both historical and modern. According to crime statistics from the National Crime Records Bureau (NCRB), the number of women detained for criminal activity has sharply increased in recent years, despite the fact that they make up a small percentage of those convicted of serious crimes. Therefore, using the data at hand, the research attempts to determine what kinds of crimes are drawing more women into its trap. Additionally, it attempts to identify the social context that shapes women into criminals. This paper aims to highlight some actions that can be taken to significantly reduce the number of crimes committed by women by analysing the causes of female criminals, reviewing the solutions offered by criminologists over the past year, and analysing current trends.

Keywords:

Women in Criminal Law, Feminist Legal Theory, Gender Justice, Gender Bias, Patriarchy, Victimization, Criminalization, Access to Justice, Women's Rights, Indian Penal Code, Criminal Procedure Code, Gender-Based Violence, Discrimination

Introduction

The Indian criminal justice system, while striving for equality, often reflects and reinforces the patriarchal structures that pervade Indian society. Women, as both victims and offenders, face unique challenges within this system. This paper aims to analyse the position of women in Indian criminal law through a feminist lens, examining how existing legal frameworks and their implementation perpetuate gender inequality and hinder women's access to justice. Human history shows that women have always been the cornerstone of society in general and families in particular. Women are viewed as the guardians of morality, family unity, traditions, customs, and societal norms, particularly in India. In the modern world, in addition to taking care of her family, women also have the extra responsibility of leaving their mark and developing their identities. It is disheartening to observe, nevertheless, that in India's social, cultural, political, and economic context, women's accomplishments are also being translated into criminal activity. In India, the rise in crime against women is accompanied by an increase in female criminality. The problem has gotten to such a concerning point that it has forced all socially conscious academics to concentrate on the underlying reasons why more women are turning to illegal activity. According to theory, female criminality is complex, little understood, and easily controlled. The social environment plays a significant role in the development of female criminals. Examining the crime statistics provided by the National Crime Records Bureau (NCRB) makes the

problem far more serious. However, according to the 2009 NCRB Crime Report, women make up only 6.3% of those convicted of crimes under the Indian Penal Code (IPC). According to the Crime in India Reports, 1,51,675 women were arrested for illegal activity in 2003, and by 2007, that number had skyrocketed to 1,54,635 women. It's also noteworthy to note that the kind of crimes they commit are also changing over time, moving from more minor offences like prostitution and drug trafficking to more serious ones like murder. According to NCRB data, 3439 women were arrested for murder in 2005, 3812 in 2007, and 4007 in 2009—a rise from 5.4% in 2005 to 6% in 2007 and 6.4% in 2009.

According to an analysis of the data at hand, the number of crimes committed by women is rising in tandem with the overall crime rate. The proportion of female offenders among all offenders apprehended for a variety of offences in 2001 increased from 5.4% to 6.2% in 2011. Given the numbers, one would assume that the rise is barely 0.8% over a ten-year period. Going into specifics, though, it is evident that there has been a significant shift in the type and seriousness of crimes involving women. Records of women being involved in horrible crimes were scarcer in the past, but as time went on, more and more women were arrested for more complex and difficult crimes. Understanding the trends in female criminality is necessary, and this study takes that approach. This article discusses the various reasons why women are becoming more criminals as a result of socioeconomic shifts and offers suggestions for keeping women from committing crimes. There are two sections to this article. The statistical depiction of female crime in India is examined in the first section, followed by a discussion of the different causes of female criminality and recommendations for preventing female criminality in India.

Indian Women's Criminal Activity

As said at the outset, the social environment plays a significant role in the development of female offenders in India as well. In this case, the patriarchal society is more involved. Psychologist Anchal Bhagat claims that female offenders no longer trust the social system. Women are denied the rights and benefits guaranteed by the constitution, and their fate is predetermined. In most parts of India, discrimination is ingrained in society from birth until death. One such well-known case of a victim who became victimiser, Phoolan Devi, was brought up by Bhagat in her writing. Her victimisation story begins when the law fails to provide her with justice. After being denied justice, Phoolan Devi became a renowned bandit queen and eventually a politician. Nevertheless, she made many enemies throughout her brief, difficult existence and was killed. Using this example, Bhagat comes to the conclusion that women like Phoolan Devi are likely driven to take extreme measures, such as enforcing the law, by compelling motives including the need for economic independence, social recognition, and a respectable place in society. She also stresses that the causes and compelling arguments that caused a woman to commit a certain crime must be taken into account by the courts when rendering decisions. According to data available in India and other countries, women's share of crime is rising as they become more integrated into society (Bajpai and Bajpai, 2000). The phrase "The rights are first demanded, then commanded and later snatched" is one of the most memorable things they mention. Conflict is inevitable in the struggle for rights, whether to acquire or protect them, and this leads to an increase in crime. Despite the high proportion of female participation in crime, social scientists and social protection planners have not given much attention to identifying and uncovering the variety of trends and types of offences perpetrated by women. Therefore, their study is an attempt to understand the sociology and psychology of the situations in which women commit crimes, whether on purpose or accidentally.

The notion of female crime is a contemporary issue in both industrialised and Third World countries, including India, according to Pattanaik and Mishra (2001), who examined the framework of development and social change. They contend that a variety of socioeconomic, cultural, and environmental elements brought about by the fast industrialisation, westernisation, and urbanisation of society are responsible for female criminality. However, criminologists, psychologists, and sociologists have taken notice of the rising number of crimes perpetrated by women on a national and worldwide scale. As a result, it has had an impact on Indian society's social structure in addition to dealing a severe damage to our social and cultural legacy.

Despite having the same legal standing as men, women in India are not socially or economically equal, and their official and self-reported crime rates are far lower than those of men and boys, as Hartjen (1997) has made evident. It is frequently observed that there is a clear gender disparity in the proportion of men to women who are detained for crimes. The total male to female ratio in India is approximately 20:1. This percentage, however, is around four times higher in other third-world nations than in economically prosperous ones. This suggests that the ratio of male to female criminal activity is smaller in industrialised societies. He claims that the gender gap is significantly reduced by the self-report data. However, the striking aspect of women's and girls' criminality in India is its scarcity, which can be attributed to a lack of fundamental facts. The mission of elucidating female crime in India has yet to be completed. Nonetheless, there is reason to think that etiological theories developed in Western criminology might also apply in India. As a result, the comparatively low crime rates among Indian women might be an indication of how their social status, which is suppressed, actually makes it more difficult for them to commit or instigate crimes. He offered recommendations for further study on almost every aspect of female criminality and justice.

Overview of Literature

Feminist legal theory provides a critical framework for analyzing the intersection of gender and law. Key themes within this framework include:

- **Gender Bias:** Feminist legal scholars argue that the legal system is inherently biased against women, reflecting and reinforcing patriarchal norms and values. This bias manifests in various ways, including discriminatory laws, unequal treatment in the criminal justice system, and the perpetuation of harmful stereotypes about women.
- **Intersectionality:** Feminist legal theory recognizes the intersectionality of gender with other social categories such as race, class, caste, and sexuality. These intersecting identities can compound the challenges faced by women within the criminal justice system, leading to unique forms of discrimination and marginalization.
- **The Role of Power:** Feminist legal theory emphasizes the role of power imbalances in shaping legal outcomes. Women, who are often marginalized and disempowered within society, may face additional barriers to accessing justice and receiving fair treatment within the legal system.
- **The Importance of Women's Voices:** Feminist legal theory emphasizes the importance of giving voice to women's experiences and perspectives. By centering women's narratives and experiences, we can gain a deeper understanding of the challenges they face within the criminal justice system and develop more effective and equitable legal solutions.

Research Methodology

This research paper primarily relies on a comprehensive literature review of existing research articles, books, and reports on women in criminal law, feminist legal theory, and gender justice in India. Relevant databases, such as JSTOR, Google Scholar, Westlaw, and SCC Online, were searched using appropriate keywords, including "women in criminal law," "feminist legal theory," "gender justice," "gender bias," "criminal justice system," "women's rights," "India," "patriarchy," "victimization," "criminalization," and "access to justice." The collected data was analyzed to identify key trends, challenges, and areas for reform within the Indian criminal justice system.

Analyzing the Position of Women in Indian Criminal Law

- **Women as Victims:**
 - **Gender-Based Violence:** Women in India face high rates of gender-based violence, including domestic violence, sexual assault, and dowry-related violence. However, the criminal justice system often fails to adequately address these crimes, with low reporting rates, inadequate investigations, and insufficient convictions.

- **Lack of Access to Justice:** Many women are unable to access justice due to various barriers, including lack of awareness of their rights, fear of social stigma, economic constraints, and lack of access to legal aid.
- **Stigma and Discrimination:** Victims of gender-based violence often face social stigma and discrimination, which can deter them from reporting crimes and seeking justice.
- **Lack of Sensitivity and Support:** The criminal justice system often lacks sensitivity and support for women victims of crime. This can include insensitive questioning, inadequate support services, and a lack of understanding of the trauma experienced by victims.
- **Women as Offenders:**
 - **Stereotypes and Stigma:** Women offenders are often subject to stereotypes and stigma, with their behavior often attributed to emotional or psychological factors rather than societal or economic factors.
 - **Lack of Rehabilitation Services:** Women offenders often have limited access to rehabilitation and reintegration services, which can increase their risk of recidivism.
 - **Overrepresentation in Certain Offenses:** Women are disproportionately represented in certain categories of crime, such as petty theft and economic offenses, which may be linked to poverty and economic marginalization.
- **Legal and Policy Challenges:**
 - **Inadequate Legislation:** While India has enacted several laws to protect women's rights, many of these laws are inadequately implemented or contain loopholes that can be exploited by perpetrators.
 - **Patriarchal Norms:** The criminal justice system itself is often influenced by patriarchal norms and values, which can lead to discriminatory treatment of women.
 - **Lack of Awareness and Training:** Law enforcement officials and judicial officers often lack adequate awareness and training on gender-sensitive investigation and adjudication of crimes against women.

5. A Feminist Legal Perspective

From a feminist legal perspective, the following key issues need to be addressed:

- **Deconstructing Patriarchy:** The underlying patriarchal structures within society and the legal system must be challenged and dismantled. This requires a critical examination of laws, policies, and practices that perpetuate gender inequality and discrimination.
- **Centering Women's Experiences:** Women's voices and experiences must be centered in the criminal justice system. This includes ensuring that women's perspectives are adequately represented in law-making processes and that their concerns are taken seriously by law enforcement and judicial officials.
- **Addressing the Root Causes of Violence Against Women:** Addressing the root causes of violence against women, such as poverty, inequality, and social norms that condone violence, is crucial for preventing crime and ensuring women's safety.
- **Providing Comprehensive Support Services:** Adequate support services, including counseling, medical care, and legal aid, must be made available to women who have experienced violence.
- **Promoting Gender-Sensitive Justice:** The entire criminal justice system, from law enforcement to the judiciary, must be made more gender-sensitive. This includes providing training on gender-based violence, ensuring that women have access to female officers and support personnel, and adopting gender-responsive approaches to investigation and prosecution.

Conclusion

The position of women in the Indian criminal justice system is complex and multifaceted. While significant strides have been made in recent years to address gender-based violence and protect women's rights, significant challenges remain. By adopting a feminist legal perspective and implementing comprehensive reforms, India can strive towards a more just and equitable criminal justice system that truly protects the rights and interests of women.

References

Adler, F. (1977). The interaction between women's emancipation and female criminality: A crosscultural perspective. *International Journal of Criminology and Penology*, 5(2), 101-112.

Adler, F. (with Adler, H. M.). (1975). *Sisters in Crime: The Rise of the New Female Criminal*. New York: McGraw-Hill.

Bajpai, A., & Bajpai, P. K. (2000). *Female Criminality in India*. Jaipur: Rawat Publications.

Bilmoria, R. M. (1987). *Female Criminality: An Empirical study in Andhra Pradesh*. Lucknow: Eastern Book Company.

Government of India (2011). *Crime in India*. New Delhi: National Crime Records Bureau, Government of India.

Hartjen, C. A., (1997). The criminality of women and girls in India. *International Journal of Comparative and Applied Criminal Justice*, 21(2), 287-303. DOI:10.1080/01924036.1997.9678600.

Klein, D. (1973). The etiology of female crime: A review of the literature. *Issues in Criminology*, 8, 3-30.

Kuckreja, N. S. (1986). *A Socio-Demographic Study of Women Prisoners*. Unpublished PhD thesis submitted to Poona University.

Lombroso, C., & Ferrero, G. (1895). *The Female Offender*. London: T. Fisher Unwin.

Pattanaik, J. K., & Mishra, N. N. (2001). Social change and female criminality in India. *Social Change*, 31(3), 103-110. doi: 10.1177/004908570103100308.

Pollak, O. (1950). *The Criminality of Women*. New York: A.S. Barnes.

Sharma, B. R. (1993). *Crime and Women: A Psycho-Diagnostic Study of Female Criminality*. New Delhi: Indian Institute of Public Administration.

Simon, R. (1975). *Women and Crime*. Lexington, Mass.: Lexington Books.

- General Works on Feminist Legal Theory:
 - West, R. (1993). *Jurisprudence*. Westview Press.
 - Fineman, M. A. (1995). *The Autonomy of Law: A Feminist Critique*. University of Pennsylvania Press.
 - MacKinnon, C. A. (1989). *Toward a Feminist Theory of the State*. Harvard University Press.
- Works on Women and Criminal Law in India:
 - Ghai, Y. P. (1992). *Human Rights and the Law in India*. Oxford University Press.
 - **Kabeer, N. (1999). *The Power to Choose: Women's

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