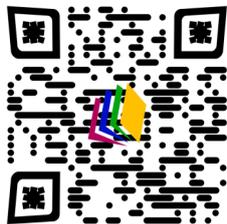




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Understanding Female Offending in the context of Criminal Justice System: A Gender Perspective

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ABSTRACT:

The study of criminal offending has long been excluding women behaviour from theory and research. Women offenders have been ignored and seen as abnormal as they not only violate the laws but also the gender norms. To add, the criminal justice system developed keeping male offender as the yardstick. Although as per reports, women offenders are less in number compared to males; the number of incarcerated women continues to increase today. While much has changed, much has remained the same; even today female prisoners are viewed as a doubly deviant woman and thereby face multiple marginality. Also, the institutions like Police are masculine in nature and the Prison which are supposed to reform the offenders are found to be inadequate in terms of specific women needs. Also, women in general who tend to face gender violence throughout their lives, often end up becoming subjects of disproportionate violence compounded with issues like groping while body searches, sexual assault, etc, when in prison.

Apart from these, the existing rehabilitative courses for women prisoners tend to remain outdated and monotonous and lacks innovations. In recent years, however, there has been raising awareness about the women's experience with the criminal justice system. The profile and background of women in prison differ significantly from those of men, as well as their experiences. Thus, it is important that the criminal justice system considers the different needs of the women prisoners by employing a gender perspective to look into female offending, its context and pattern thereby evaluating the criminal justice system and its treatment of men and women as criminal offenders. Therefore, the objectives of the paper are firstly, to study the female offending, its patterns and characteristics of the crimes committed. Secondly the paper will delineate the problems of women prisoners inside the prison. The paper would also try to address the continuum of violence that women come across within the criminal justice system. Also, it will suggest necessary measures to rehabilitate women prisoners by developing gender-specific programming for women. Thus, understanding the nuances of the female offending and the problems faced by women prisoners while interacting with the justice system would make the justice system inclusive and thus, serve the purpose of gender sensitivity.

KEY WORDS: Women Prisoners, Criminal Justice System, Female Offending

Introduction

Although there has been a growing body of work on criminal offending but there seems to be a dearth of scholarly research when it comes to involving women's behaviour and pathways to crime. Traditional theoretical research with regard to offending has been criticized by the feminists since they failed to consider the unique experiences of women as offenders. As cited in the book "Gender and Crime in Modern Europe" by Margaret L. Arnot and Cornelia Osborne, women's experiences received less scholarly importance due to two major factors; firstly because women were presumed to be more law abiding in comparison to men and secondly because of the preponderance of the male theorists in the field, as mentioned by the criminologist Doris Klein. Since, male prisoners form majority of the population when it comes to offending, their needs and experiences are treated at the forefront by the criminal justice system and in the process women's experiences are compellingly attempted to fit into the male purview and not adhered special concern. However, despite the overrepresentation of men, one has to accept the fact that women still form a significant number of offenders and as reported by crime statistics their number tend to keep increasing over the years. Thereby, it is important to address the specific needs of women and more resources should be invested for a proper understanding of their experiences, offending patterns and treatment within the criminal justice system. However, not all criminological research has ignored women, but all too often, pre-1970s research on female offenders and victims of crime fell prey to unreflecting sexism and, in its more extreme form, misogyny. Females who deviated from expected roles were viewed as morally corrupt, hysterical, diseased, manipulative, and devious (Glueck and Glueck, 1934). Also, the doubly deviant argument put forwarded by Heidensohn which says "not only have the females broken the law but they have also offended the "more fundamental norms which govern sex-role behaviour" (Heidensohn 1970: 134 in Heidensohn 1985: 47), reflects a similar front.

One of the earliest criminological theorists, Cesare Lombroso is said to have contributed to the early works on women criminality. According to him, female deviance was rooted in the biological

makeup or as inherent feature of the female species. According to Lombroso, the small majority of female criminals whom he referred to as 'born criminal' type represented greater criminal propensities and perversities from the psychological and behavioural standpoint than the male born criminal type. According to Otta Pollak, one of the important factors causing female offending is hormonal changes experienced during menstruation, pregnancy, menopause etc. However, in the present era, such basic theories and explanations are widely rejected since they lack the multifarious factors responsible towards offending and lack adequacy in addressing the unique discrepancies with regard to the nature of crime committed in the present times.

It is interesting to note that the mainstream criminological literature has been mostly androcentric; it was only in the 1960s and early 1970s that feminist's perspective in the field of criminology developed and female crime was given due importance. With the publication of Simon's *Women and Crime* and F. Adler's *Sisters in Crime* (1975), the idea of a "new" female offender developed (white collar and/or male like), which generated a tremendous interest in female crime.

Female Offending Pattern

There are both similarities and differences in patterns of offending by men and women. Both are more heavily involved in minor property and substance abuse offenses than in serious crimes like robbery or murder. However, men offend at higher rates- usually much higher – than women for all crime categories except prostitution. There are variations in understanding the causes of women offending as may be the varying number of crimes in the world. In India also, like in any other part of the world the social environment contributes a lot to the making of women offenders. Also, the changing social norms and values as well as the impact of other cultural patterns culminating in the complexity of life are largely responsible for this change. With regard to that, since women now are exposed to the outer world and experiences, it has facilitated reporting of female crimes. Some of the underlying factors that lead women to commit crime in case of India are economic insecurity, social deprivation and emotional disturbances. According to S. K. Prasad's findings majority of

women offenders end up committing crimes due to past histories of frustrated conjugal life, maladjusted sexual relations, jealousy due to husband's illicit relationship with other women, low income, etc. According to studies conducted by eminent scholars like Ram Ahuja, Sanyal, Rani, women end up committing crimes due to maladjustment in the families, economic compulsion, etc. According to Mishra and Gautam (1982), criminality among females increases as the level of education decreases. Also, they were of the opinion that a shift in the tradition from old values to adapting themselves to modern values also facilitates in the making of women offenders. According to Maniyar(2009), homicides constitutes one of the major crimes committed by women and in most of the cases it involves murder of their husbands and other male family members due to harassment or abuse inflicted upon them. Although a lot of significant works has been done on women offending, yet, there is a need to further probe into the causes and pattern of crime, with regard to their socio economic background and their role in the Indian society.

Women Prisoners and the Prison System

Once, a woman comes in conflict with the law, it is important to study the interactions of her as an offender with the key components of the criminal justice system and here prison plays an important role in order to study her experiences throughout the term of her incarceration. 'Prison' as a component of the criminal justice system is primarily male centric and is designed to fulfill the male needs since they compose the majority of the prison population. Prison population as per reports generally comprises of the underprivileged sections of the society with regard to rights and facilities and the problem intensifies when the prisoner is a woman. Since the last two decades, the number of incarcerated women has skyrocketed. However, there is a shortage of women prisons and in most of the cases they are accommodated in a general prison in female enclosures. According to a report 'Women in Prison', only 17% of the total women prisoners in India live in exclusive female prisons. As per international law and also under the Indian constitutional provision, there exists number of rules and regulations and provisions to

facilitate the basic amenities to women offenders. However, such laws and provisions are yet to be implemented in the truest sense. Women often suffer from conditions like inadequate clothing and accommodation besides minimum facilities necessary to maintain their personal needs keeping in view their particular gender needs. According to Kiran Bedi, "Women prisoners are subjected to the most humiliating experiences, which robs them even of what little dignity and self respect they had reached the prison with". Most of the prisons fail to adequately cater to the specific needs of the women in prisons since women prisoners constitutes a minority within the jail premises, there arises a question as to whether to allocate more resources for their maintenance or not. Women offenders have needs that are different from those of men, stemming in partly from their disproportionate victimization from sexual and physical abuse and their responsibility for children. There are instances where the pregnancy and reproductive health facilities of women were neglected despite the fact that a separate diet and care has to be adopted for pregnant women and mothers residing in the prison.

Besides, as per reports, it is estimated that women are already diagnosed with poor health conditions before entering the prison system: the problems intensifies when they enter into prisons due to high risk pregnancies, HIV/AIDS, hepatitis C and human papillomavirus infection, a risk factor for cervical cancer. Also, women have unique sanitary needs thereby which it is important to provide satisfactory sanitary measures with regard to menstruation, pregnancy and menopause. Also, the Bangkok Rules, Rule 5, states that "the accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating". However, there still exists an innumerable instance of unavailability of adequate resources and measures which in a way harms their individual dignity as a human being. Also, as per studies conducted, it has been estimated that women are more likely to suffer from mental illness, trauma and anxiety issues than their male counterparts; however, measures to deal with mental

health largely seem to be neglected and scarce on the part of the prison department. There are reports of irregular mental health check-ups in the prison. Also, women tend to be in a vulnerable position when lodged in a male centric prison system; there are reports of custodial torture and abuse which further aggregates the suffering of the women prisoners. Without giving due importance to the already existing issues faces by women prisoners during incarceration, women are often released from prison unprepared to manage their pre-existing problems as well as those created by their imprisonment.

Rehabilitative Measures

Although most of the problems faced by women offenders upon their release are similar to that of men, however, the intensity and multiplicity of women's post release experiences and needs can be very different. Thereby it is important to train the women prisoners with proper and contemporary rehabilitative measures to help them to survive once they are out of the prison. In a country like India, due to the perceived stigma that women with criminal history tend to breach the established role models for their sex, often suffer from high risk of losing their accommodation or jobs. It is thereby important that a reformative rehabilitative programme is formulated in order to emancipate the women prisoners thereby empowering them to earn an independent and dignified in the society. But it is often seen that the existing rehabilitative schemes tend to be outdated and don't fulfil the needs of the contemporary times. For instance, vocational training provided to the women inmates mainly comprise of weaving, tailoring, etc, which of course might address to the issue of livelihood of the inmates once they are outside the prison; but in order to earn a full fledged dignified life, the prison department tend to come up with new avenues such as initiating computer courses or beauty courses which is also in tune with the demand of the current job market. Also, the prison Department can come up with ideas such as engaging the inmates in music events in their leisure times which would go beyond the stereotypical gender norms and would open up new avenues for them. Women face multiple hindrances during their re-entry into the society, therefore, it's important that an effective

rehabilitative programme be adopted in order to enhance their livelihood opportunity and to reflect the creative and productive side of the women inmates which would induce their development.

Conclusion

There is a need to reform the present prison culture and make it more gender sensitive. No doubt, there has been a plethora of recommendations from various law bodies and commissions, however, it is important to look into the situational reality of these recommendations and implement them more effectively. There should be regular visits from different NGOs, National Human Rights Commission, National Commission for Women to look into the conditions of women inmates inside the prison. Also, most importantly, there should be the provision of special grievance redressal mechanism for the women inmates to voice their opinions and needs. Also the Prison Department in collaboration with the Government can take up new policies to open up avenues to make these women self reliant and reduce recidivism. Lastly but not the least the researchers and policy makers should further endeavour to study women offending and their causes and adopt measures for the proper treatment of the women offenders within the criminal justice system.

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