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# **GENDER DISPARITY IN THE CRIMINAL JUSTICE SYSTEM: ANALYZING THE CAUSES, CONSEQUENCES, AND POTENTIAL REFORMS**

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## **Abstract**

Gender disparity in criminal justice is deeply rooted and can be seen at every stage of criminal justice system. This disparity results from societal norms, gender biases, and lack of proper representations of other genders in the functioning of society; this discrimination results in injustice with minority genders. This paper focuses on the various causes of gender disparity in criminal justice system, various barriers like deep seated cultural norms, gender based violence, cultural and religious factors. Impact of gender disparity in criminal justice system on the minority gender(s) and the potential reform which can be made to remove the gender disparity and improve the efficacy of criminal justice system.

**Keyword-** criminal justice, gender disparity, minority gender, culture, religious factor

## **Statement of Problem**

Since ancient times, Indian society has been dominated by males in every field of life, whether it is policy making, education, administration, making of laws, or enforcement of laws. As time has progressed and the concept of equality and equal protection of the law has gained strength, equal representation and equal treatment have become a new norm and are now recognized by most countries of the world as basic fundamental rights. Still, the concept of gender equality is seen to be a far-reaching concept. Gender Disparity can be seen in all the spheres of the criminal justice system.

## **Hypothesis**

Gender disparity in the criminal justice system can be reduced by encouraging the participation of all genders in the policy-making and criminal justice system.

## Research Methodology

Research done using a mix of methods and data from various governmental sites has been taken to determine the level of gender disparity at various stages of the criminal justice system. Reports of law commissions and international organizations have been deeply analyzed, and various essays and research documents written by human rights and gender rights activists have been deeply read to find the causes and solutions of the gender disparity problem in the criminal justice system.

## Introduction

Right to equality embodied under Article 14<sup>1</sup> of the constitution of India 1950. It is the most important fundamental right, and it has a wide scope of application. Seventy-five years have passed since we adopted the constitution of India, but still, the application of the principle of equality in every sphere of administration seems to be a far-fetched dream. Disparity still persists in the administration of justice. Equality before the law and equal protection of the law is still not available to all the sections of society. Discrimination on the basis of religion, race, caste, sex, and gender still persists in the criminal justice system. Disparity on the basis of gender is one of the major impediments in achieving justice and fairness in society. Gender-based disparity in the criminal justice system creates significant obstacles to achieving access to justice for all. This problem disproportionately affects women, who still face significant barriers in accessing justice, whether they are victims, witnesses, alleged offenders or prisoners. Criminal justice systems tend to focus on the needs of a predominantly male population of offenders and prisoners, although the global number of women in prison is growing at a faster rate<sup>2</sup>.

The criminal justice system is divided into three major components: police, judiciary, and correctional system (Prisons). This research paper will analyze the various ways in which discrimination happens with the minority gender at various stages of the criminal justice system, the causes of discrimination and will also talk about the reforms that could be done in the criminal justice system in order to avoid such discrimination in future so the efficiency of the criminal justice system could be improved. The criminal justice system was made by male

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<sup>1</sup> The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>2</sup> United Nations Office on Drugs and Crime, *Gender in the Criminal Justice System*, <https://www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-gender.html> (last visited Oct. 28, 2024).

members of society for the males to punish and correct male members of the society who were not following the norms of society and were violating them, causing a threat to other peaceful members of society. Traditionally, when the criminal justice system was made, the concept of female offenders and third gender was not in existence in society. As society has grown slowly, the number of female offenders has also increased, and at the same pace, crime against women has also increased. Crime against the third gender has also increased significantly. It become extremely important to make changes in the criminal justice system so that it can cater for the needs of the growing society. Such that every individual, irrespective of any caste or gender, can feel safe.

Gender disparity in the criminal justice system refers to unequal treatment and representation of minority genders, especially women in the criminal justice system. It manifests itself in many ways, such as biases in law enforcement practice, lack of representation in the judiciary, and gender biases based on gender-specific stereotypes. Gender sensitization, equitable representation, and fair treatment across all justice systems can remove gender disparity. Gender Disparity in criminal justice system is mainly because of the deep - rooted patriarchal nature of the society. Gender stereotypes special related to women and other gender is another main cause of the disparity. Mindset of the society needs to be changed and this change could only be brought by the women's in the society. Encouraged participation of women in the criminal justice and gender sensitization is the only way to bring gender equality in criminal justice system . The creation of additional family courts to expedite the resolution of cases, the simplification of bail procedures for women undergoing trials, and the appointment of more female judges to hear cases involving female offenders to ensure a better understanding of the circumstances are some recommendations in light of raising awareness of the issue of female criminals.

### **GENDER DISPARITY IN POLICE SYSTEM**

Police force is organization of government for enforcement of law and order, protection of civilian, catching the wrongdoer, preventing happening of any crime and providing assistance during emergency. In today's time police has a multifaceted role and need to perform various function for doing its job and meeting the expectation of peoples of the country police force needs to be gender inclusive and neutral. Women need to be the part of the police system at levels.

The Ministry of Home Affairs has advised states to ensure that 33% of Police forces are women. But still, “women presently constitute 10.30% of the Police Force<sup>3</sup>. As we can see, the participation of women is increasing in every sphere, whether it is policy-making or administrative field. For good governance of the country and for removing gender disparity in the police system, it is imperative to increase the participation of women in the police force. Numerous public forums have noted that, according to research, the underrepresentation of women in police forces creates an insurmountable psychological barrier that prevents women from approaching police stations when a crime is committed against them. Since women engage in a variety of activities outside of their homes, the increased presence of women in law enforcement in metropolitan areas will provide a sense of safety in public areas that they frequently use. Women joining the police will unavoidably boost the force's reputation, turn the station into a gender-sensitive grievance resolution facility, and serve as a catalyst for the removal of gender disparity in the criminal justice system.

Women often faces discrimination in reporting crime against them at police station. At the police station, officers who are in charge of registering FIRs generally do not register complaints because of their patriarchal mindset. In reporting sexual crime, women are not able to report the crime properly to male reporting officers; this adds to their trauma and exacerbates their suffering. Chances are that because of improper reporting, criminals may escape from the hands of law. In order to facilitate reporting of any woman-related crime, each police station should preferably about one-third of its staff as women. Women police personnel are very effective due to minimal usage of brawn and better communication with the general populace. However, each station must have sufficient infrastructure, particularly separate toilets and restrooms for women. This will not only make stations more approachable for a common woman but will also make a traditionally patriarchal police force more sensitive towards women's problems<sup>4</sup>.

The police force is for the safety of the people. A gender-inclusive and sensitive police force will best serve the citizens. The old concept of colonial times should be changed; police are for

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<sup>3</sup> Ministry of Home Affairs, Government of India, *Advisory on Increasing Representation of Women in Police*, No. 15011/21/2020-SC/ST-W, [https://www.mha.gov.in/sites/default/files/AdvisoriesonincreaseofWomeninpolice\\_30062021.pdf](https://www.mha.gov.in/sites/default/files/AdvisoriesonincreaseofWomeninpolice_30062021.pdf) (last visited Oct. 28, 2024).

<sup>4</sup> Sudha Ramachandran, *Why We Need More Women in Police Force*, **The New Indian Express** (Oct. 7, 2019), <https://www.newindianexpress.com/opinions/2019/Oct/07/why-we-need-more-women-in-police-force-2044600.html>.

helping the people, not for threatening them. The establishment of women's police stations is a major appreciated reform by the Indian government in reducing the gender disparity in the criminal justice system. Places with women's police stations have shown an increase in crime reporting by women. The opening of women's police stations increased reported crime against women by 22 per cent; in areas with a WPS, there was a 21.4% rise in the rates of violence committed against women, a city-level analysis revealed. At the state-level, too, the results were consistent, posting a 22.5% jump.<sup>5</sup> Previous studies have demonstrated that a greater number of women in the workforce resulted in a decrease in corruption. Additionally, compared to men, women are more patient and sensitive towards the victim. One woman complains of police apathy every two hours, where they are either discouraged, turned away or harassed further when trying to lodge a complaint<sup>6</sup>. The recording and subsequent filing of FIRs increased in WPS, and officers are less likely to display skewed gender norms regarding the roles of women or tolerance of violence committed against them. Thus how we can reduce gender disparity in police system.

## GENDER-BASED DISPARITY IN JUDICIARY

As far as the data is concerned, as of January 2024, only 13.4% of judges in the High Court and 9.3% of judges in the Supreme Court are women<sup>7</sup>. Inclusive judiciary is the need of the hour. A gender inclusive court can strengthen the believe of people in judiciary it not only help in reducing the gender disparity but will also make the overall system of judiciary gender sensitive. As per 2023 the data of 15 States provided by the Bar Council of India indicates that there are 2,84,507 women lawyers. They account for only 15.31% of the totally enrolled 15,42,855 lawyers<sup>8</sup>. The data above shows the gender disparity in the judicial component of the criminal justice system.

The representation of women in bars and benches shows the patriarchal mindset of the criminal justice system, which often leads to injustice with the minority section. The judiciary, being the guardians of fundamental rights, has a duty to strike a balance between genders by removing

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<sup>5</sup> *India's All-Female Police Stations are Better at Keeping Women Safe*, World Econ. F. (Nov. 27, 2018), <https://www.weforum.org/agenda/2018/11/india-s-all-female-police-stations-are-better-at-keeping-women-safe/>.

<sup>6</sup> *India's All-Female Police Stations are Better at Keeping Women Safe*, World Econ. F. (Nov. 27, 2018), <https://www.weforum.org/agenda/2018/11/india-s-all-female-police-stations-are-better-at-keeping-women-safe/>.

<sup>7</sup> *The under-representation of women in the judiciary*, The Hindu (Oct. 28, 2024), <https://www.thehindu.com/opinion/lead/the-under-representation-of-women-in-the-judiciary/article68807637.ece>.

<sup>8</sup> *Justice Hima Kohli on Women in Law*, livelaw.in (Oct.28,2024), <https://www.livelaw.in/top-stories/justice-hima-kohli-women-in-law-100-years-to-legal-practitioners-women-act-273748>

various types of gender-based stereotypes. Gender disparity is an old age form of discrimination that hampers the process of justice and delivers prejudice to the rights of gender minorities (women and transgender). Supreme Court, in order to break the paradigms, had often set examples through its various gender-neutral judgements. Like in the case of **Vishaka Vs State of Rajasthan**<sup>9</sup> Supreme Court commissioned the Vishaka guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women. It is a deep-rooted stereotype regarding women that after marriage and children, women are not able to work with efficiency as compare to men and also families do not allow women to work many organization make arbitrary rules which prejudice the rights of the women to work supreme court in order to counter these stereotypes in its famous case of **Air India vs Nergesh Mishra (1981)** strike down Air India's policy of forcing air hostesses to resign upon marriage reaffirmed the principle that marriage should not be a ground for discrimination in employment. Thus how judiciary gave a strong message that no kind of discrimination is permitted in employment ,and had tried to remove discrimination against women .

Justice system comprises not only of Supreme court of India but it also consists of 25 High Courts and 672 district courts in India<sup>10</sup>. Gender stereotypes are often steep through the judgement of lower courts and High Courts. This ultimately affects the efficiency of the criminal justice system. A woman filed a complaint on March 30, 2024, alleging that a court [magistrate in Hindaun](#), Rajasthan asked her to undress to see her injuries. Mina Meena, the Deputy SP (ST-SC) cell, stated that the survivor refused to comply with the magistrate's request. After recording her statement in court on March 30, she registered a complaint against the magistrate for outraging her modesty. The case was lodged at the Kotwali Police Station and the magistrate was booked under Section 345 of the Indian Penal Code and the SC/ST Act<sup>11</sup>. In addition to undermining the concepts of justice and impartiality, the judges' callous comments and patriarchal views serve as a sobering reminder of the profoundly ingrained misogyny that penetrates society's institutions.

<sup>9</sup> Vishaka & Ors vs State Of Rajasthan & Ors AIR 1997 SUPREME COURT 3011

<sup>10</sup> *Critical Analysis of District Court Situation in India*, Legal Serv. India , <https://www.legalserviceindia.com/legal/article-9225-critical-analysis-of-district-court-situation-in-india.html>

<sup>11</sup> Rahul Yadav, *Case of Karauli: The Struggle for Gender Justice in Indian Judiciary*, *Feminism in India* (Apr. 5, 2024), <https://feminisminindia.com/2024/04/05/case-of-karauli-the-struggle-for-gender-justice-in-indian-judiciary/>.

A diversified approach is needed to address the structural issues in the Indian judiciary and promote a genuinely feminist viewpoint. Above all, a determined effort must be made to enhance the representation of women in the judiciary at all levels. This can be accomplished by implementing work-life balance-promoting policies and activities that are family-friendly, as well as by having fair and transparent nomination and promotion procedures. Second, all members of the judiciary, from judges to support personnel, must participate in thorough and continuous gender sensitization training. Deconstructing deeply ingrained biases, contesting patriarchal narratives, and fostering an awareness of the particular difficulties and experiences encountered by marginalized communities—especially survivors of gender-based violence—should be the goals of these programs.

Although it will take time and effort, India's court must become authentically feminist in order to advance gender justice and equality. India may get closer to establishing a society in which everyone's rights and dignity are respected, irrespective of gender, caste, or any other social construct, by tackling the patriarchal attitudes and biases that still exist within the legal system.

### **GENDER DISPARITY IN CORRECTIONAL SYSTEM**

The difficulties women experience in prison are no different from those in the outside world. Since criminality is viewed as a departure from womanhood, the stigma associated with being a woman is really considerably greater for female prisoners. As a result, women who are convicted or suspected of crimes are viewed as abnormal, malevolent, and even unwomanly. The potential of women being reintegrated into society is eliminated since they are held accountable not just for breaking the law but also for violating social norms. Many criminal law theorists have attempted to explain female criminality using preset psychological and biological hypotheses in response to these prejudices about women.

As per NCRB [data](#), women constitute merely 4.16 percent of the prison population<sup>12</sup>. Because there are so few women in custody, the requirements of men unavoidably dominate custodial society. The demands and interests of male inmates are frequently taken into consideration while designing prison programs and activities.

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<sup>12</sup> *Indian Prisons Need Gender-Sensitive Reform as Women Inmates Face Double Marginalisation*, Firstpost (Date), <https://www.firstpost.com/opinion/indian-prisons-need-gender-sensitive-reform-as-women-inmates-face-double-marginalisation-10837981.html>.

In Indian prisons, there are very few female supervising officers and jail employees. The percentage of female jail employees and officers was only 8.28% as of 2015. As a result, male staff members and officials frequently take charge of the affairs of female inmates, which is unpleasant and leaves them more open to abuse and harassment. Furthermore, jail officials and employees lack the awareness and training necessary to address the unique requirements of women.

### Conclusion

Gender Disparity in criminal justice system is mainly because of the deep - rooted patriarchal nature of the society. Gender stereotypes special related to women and other gender is another main cause of the disparity. Mindset of the society needs to be changed and this change could only be brought by the women's in the society. Encouraged participation of women in the criminal justice and gender sensitization is the only way to bring gender equality in criminal justice system . The creation of additional family courts to expedite the resolution of cases, the simplification of bail procedures for women undergoing trials, and the appointment of more female judges to hear cases involving female offenders to ensure a better understanding of the circumstances are some recommendations in light of raising awareness of the issue of female criminals.

Promoting gender-responsive non-custodial measures to reduce the unnecessary imprisonment of women through legal reform, capacity building training and awareness-raising Strengthening women's access to legal aid through legal and policy advice, capacity building for legal aid institutions and service providers, as well as legal empowerment for women in the community; Supporting prison administrations to provide for the distinctive needs of women in prison, in order to eliminate discrimination and achieve substantive gender equality, through policy reform, training and social reintegration programmes; Promoting the equal representation of women in criminal justice institutions, particularly in positions of authority, through policy advice and mentoring.<sup>13</sup>

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<sup>13</sup> United Nations Office on Drugs and Crime, **Gender in the Criminal Justice System**, *Justice and Prison Reform*, <https://www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-gender.html> (last visited Nov. 5, 2024).