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# **FEMALE OFFENDERS AND PRISONERS THROUGH THE EYES OF FEMINIST CRIMINOLOGY**

AUTHORED BY - NAIR ANUBHA MOHANKUMAR

## **Abstract**

As criminology has always been dominated by men, feminists contend that all traditional conceptions of criminality are judged in the context of men's experience. According to feminist theory, sex-based subordination of women in patriarchal societies results in criminality. They contend that patriarchy must cease, or at the very least, significant adjustments to gendered institutions and social relations in society must be made. The objective would be to lessen gender-based disparities and inequities in society, particularly in the judicial system. This defence seems to be most applicable to India, where a large number of women are arrested and convicted of murder and dowry-related offences. There are fewer female prisoners in Indian prisons than there are male ones. It can be the reason that the rights of female convicts are disregarded. This research paper's major goals are to draw attention to issues facing female offenders and prisoners through the eyes of feminist criminology, demonstrate how their human rights are being violated, and make recommendations for amendments to the Indian Prisons Act of 1894.

**Keywords:** *Female offenders, Prisoners, Feminist Criminology, Constitutional Rights, Human Rights*

## **Introduction**

Nelson Mandela famously stated "It has been said that no one completely understands a country until they have spent time in its prisons." The lowest residents of a country, not its highest, should be used to measure its behaviour. The Goddess, who has the highest place in Indian culture, is how women are portrayed. In addition to nurturing a family, women are the ones who give birth to new life.<sup>1</sup> She is treated like an object in a world where men desire to rule, exploiting her despite the fact that she is locked up and under the protection of the government. Even if her case has not yet been proven, a woman who is imprisoned, for whatever cause, can witness the destruction of her entire existence before her eyes. She does not only not have to contend with

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<sup>1</sup> Bajpai, and Bajpai, *Female Criminality in India*, Rawat, Jaipur, 2000.

this society's orthodoxy, but also with other injustices occurring inside the penitentiary.<sup>2</sup>

## Theories

### STRAIN THEORY

It claims that stress or pressure leads to criminal behaviour. Aspirations to accomplish particular goals are encouraged, but they are also met with difficulties, which is the basis of this tension. People who are frustrated may turn to crime as a way to let off steam or as a shortcut to their objectives. This hypothesis was developed by Robert Merton and Albert Cohen, who mostly utilised it to explain male delinquency.<sup>3</sup> Cohen did add, though, that women tend to focus on a small number of relationships with the sex opposite. They are marginalised because they are passive, unambitious, uncreative, indolent, and afraid. Only the girls in his narrative who are unable to find satisfying relationships through socially acceptable dating and marriage will turn to promiscuity for its fast rewards. He claims that because women do not experience the same demands to achieve as men do, they do not commit the whole spectrum of crimes. Later, under the name differential opportunities thesis, Cloward and Ohlin presented an alternative interpretation of strain theory.

They argued that because women are not involved in the pursuit of material achievement, they are not eligible for either legal or illegal awards. Women are not given a destructive outlet for their frustrations or pressured to meet society's key success goals. The family is the extent of the female's world. In the 1960s, Ruth Morris switched the emphasis of strain theory to the juvenile female. She argued that preventing girls from using legal means of obtaining culturally defined success goals causes delinquency, making challenges to maintaining healthy interpersonal relationships more likely to result in girls being delinquent. She asserted that delinquent girls tended to originate from dysfunctional families or homes with plenty of conflict and unhappy families.

### DIFFERENTIAL ASSOCIATION THEORY

Also known as learning crime theory, was given by Sutherland and Cressey who said that crime behaviour is learned. Women do not mix in criminal circles because their gender role defines them as wives and mothers and restricts their sphere of influence and experience to the home.

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<sup>2</sup> Carlen and Tchaikovsky, 'Women in Prison', in Carlen, Pat (ed), *Criminal Women*, Polity Press, Cambridge, 1985.

<sup>3</sup> *ibid*

Girls are taught to be nice and do not have freedom of males hence they do not get a chance to learn criminal behaviour. Ruth Morris claimed that there is a relative absence of deviant subculture for female delinquents and also absence of cultural support for them. Giordano asserted that those girls will offend more who thought that their female friends approved of a crime.<sup>4</sup>

## MASCULINITY THEORY

It consists of two ideas: that crime is symbolically masculine and that a lot of crime is motivated by masculinity. Male qualities like aggression, toughness, and daring are all required of the criminal. Talcott Parson outlined it in 1947. Based on the structure and function of the American nuclear family, he provided an explanation for why guys commit more crimes than girls. He argued that males are expected to work outside the home to support the family financially while women are primarily responsible for raising children and fostering their socialisation in the home.<sup>5</sup> Boys and girls are affected differently by this sex-based division of labour, which accounts for the greater male rebelliousness. He steals as a potential breadwinner, whereas the girl, who will likely become his wife and mother, is more inclined to participate in sexual promiscuity and steals goods that will make her more appealing to the other sex. The petty nature of female criminality was explained by Klein and Kress in terms of women's social inferiority because the black market also contains a sexist class system.

## CONTROL THEORY

Hirschi thinks that because people are naturally immoral, they will participate in both pro- and antisocial behaviour unless someone stops them. According to him, society has created a number of techniques for policing its citizens and thwarting their propensity for deviation. A person will decide not to offend if they are linked to conventional people, committed to and participating in conventional institutions and behaviours, and believe in the rules of conventional society. He discovered that strong academic standing and close parental communication between boy and parent predicted less delinquent involvement.<sup>6</sup> Criminologists who attempted to apply the same idea to girls noticed that, despite the fact that girls' stronger social bonds explain why they exhibit more conformity, this is not a sufficient explanation.

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<sup>4</sup> Chesney-Lind, M. (1997) *The Female Offender. Girls, Women and Crime*. Thousand Oaks, California: Sage

<sup>5</sup> Prayas, *Forced Separation: Children of Imprisoned Mothers*, Prayas, Mumbai, 2002.

<sup>6</sup> Cherukuri, Suvarna, *Women in Prison*, Foundation, Delhi, 2008.

## DOUBLE STANDARD THEORY

According to Pollak, dishonesty and double standards are characteristics of crimes committed by women.<sup>7</sup> The use of physical appeal helps her to lure the victim, just as physical weakness compels a woman to turn to deception. According to him, female criminal behaviour is also fueled by frustration, envy, and false charges against men.

## LABELLING THEORY

Howard Becker advanced the notion that a criminal is defined by an outward social stigma or label. It claims that the powerful men in society assign labels to the powerless men, who internalise the message and alter their behaviour and self-perception in accordance. However, Anthony Harris said that it was used against women, tricking them into believing that crime is something that only men should engage in in order to force them to stay at home and raise their children. According to Fox, women respect the law because they are encouraged to be model citizens by social value constructs such as "nice girl" and "lady."<sup>8</sup>

## FEMINIST THEORY

As criminology has historically been dominated by men, feminists contend that all traditional ideas are judged in the context of men's experience. Feminists promote the premise that in a patriarchal society, women are subordinated based on their sex, and that this subordination causes crime. Due to patriarchy, there are different standards for men and women, and frequently, female criminals have also experienced abuse. Therefore, patriarchy is to blame for crimes committed by and against women.<sup>9</sup> The patriarchy, according to feminists, must cease, or at the very least, significant changes in gendered institutions and social relations must be undertaken. Reducing gender-based gaps and inequalities in society at large, and in the legal and criminal justice systems in particular, would be the aim.

Additionally, they advocate for the use of treatment and preventative programmes rather than harsh punishment for female offenders. These women experience special vulnerability to sexual assault, intimate partner violence, unintended pregnancy, and adolescent parenthood, among other exceptional or unique life variations. They contend that, in both residential and non-

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<sup>7</sup> Akers and Seller, *Criminological Theories*, Rawat, Jaipur, 2004.

<sup>8</sup> *ibid*

<sup>9</sup> Maniyar, Mridula, *Women Criminals and Their Life Style*, Kaveri, New Delhi, 2023.

residential community programmes, women are less violent, more responsive, and more open to treatment and prevention than men. Feminists thus emphasise the patriarchal system as the fundamental source of the social difference between dominant and inferior groups. Males with privilege set and uphold the rules. Women in this system are more oppressed, confined, and disadvantaged.<sup>10</sup>

## Causes of Crime by Women

1. **Economic Causes-** According to scholars, economic hardship is one of the primary reasons why women get involved in criminal behaviour. The pressure to conduct consumer-based crimes like shoplifting, cheque fraud, service theft, and welfare fraud rises because a significant portion of the female population experiences more economic uncertainty and adversity. The majority of offenders come from the lowest socioeconomic classes, according to studies conducted in India, and many crimes are committed for financial gain or as a result of a precarious economic situation. The need for dowry, however, is another reason why Indian women commit crimes.
2. **Physiological Causes-** According to several researchers in India, the premenstrual period is the most stressful time for women, and nearly 50% of those who experience it commit crimes when the symptoms first appear. A few foreign academics have also asserted a statistical relationship between menstruation and criminality.
3. **Illiteracy-** A person can make more money and live a more law-abiding life with knowledge, but in India, women typically lack access to education or receive just a limited amount of it. Illiteracy and criminality clearly have a relationship, according to studies.
4. **Social Cause-** Researchers in the west have discovered that factors in society, such as the rising divorce rate, illegitimacy, female-headed households, low-paying occupations, the unemployment rate for women, and the cost of child care, drive women to commit minor offences. According to studies, family dysfunction, particularly marital strife brought on by intoxication and adultery, joint families, and fractured houses, are causes of crime in India. Indian society is conservative and patriarchal, which causes brides to be victimised by their husbands and in-laws, including the mother-in-law, who then torture and murder them for dowry. Young women may kill their spouses or other male family members as

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<sup>10</sup> Nirmal, Chiranjivi J. 'Human Rights of Prisoners' in Nirmal Chiranjivi J. (ed), *Human Rights in India*, Oxford, New Delhi, 2000, p 164.

a result of sexual abuse or suspicions of adultery. Young ladies are occasionally falsely accused of murder by their relatives even when they haven't committed any crime.<sup>11</sup>

5. **Superstition-** Women may commit crimes motivated by superstition, such as sacrifice, in rural areas of India.

## **TYPES OF CRIMES COMMITTED BY WOMEN IN INDIA**

- a) **Prostitution or Sex Delinquency-** It is thought that a sizable portion of women offenders are sex offenders. According to earlier reports from the United States of America, a sizable portion of women's criminality was related to sex. Although other data sources show that prostitution is still the most common sort of female crime, the arrest rate for prostitution-related offences is currently much lower. Sex-related crimes account for a sizable portion of all crimes perpetrated by women in India as well. Actually, 86.9% of women were detained in India in 1996 as a result of the immoral traffic prevention act.<sup>12</sup>
- b) **Dowry and Murder-** Murder committed for dowry is a significant reason why women get arrested in India. Dowry is the sum of money and presents that the bride's family gives to the groom and his family both before and after the wedding. However, it has become troublesome as grooms and their families have begun to expect excessive amounts of cash and gifts, such as vehicles. In order to get as much information from the bride's parents as possible, they are bullied, ridiculed, and tortured. If the demands are not met, she is killed so that the groom can get a second chance at marriage and dowry.
- c) **Child Marriage-** The Child Marriage Restraint Act in India, which saw 32% of women jailed in 1996, is the second most common reason for arresting women.<sup>13</sup> This served as a significant justification for the arrest of women in 2000 as well. In the northern region of India, child marriage is a long-standing tradition that is destructive to girls' education and development. The law was passed to prevent underage marriages in order to safeguard young women. Traditionalists believe that girls should get married before they reach puberty, and while the family patriarch typically makes these decisions, the law also holds mothers accountable.
- d) **Cruelty-** Forcing cruelty on the daughter-in-law in exchange for dowry or because the daughter-in-law is viewed as a lower class person is another main reason why women are

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<sup>11</sup> V.R. Krishnan Iyer, "Are not women human even in custody". Human Rights Year Book(2000), P.94.

<sup>12</sup> Sethna, M. J., *Society and the Criminal*, Kitab Mahal, Bombay, 1964.

<sup>13</sup> Steffensmeier, Darrell 'Female Crime Trends 1960- 1995', in Renzetti, and Goodstein (ed), *Women Crime and Criminal Justice*, Roxbury, Los Angeles, 2001.

arrested. In arranged weddings, she is typically an individual without any allies or protections, perhaps merely engaged for dowry and devoid of any love or affection. Although it appears that a woman is tormenting a different lady in this instance as well, the mother-in-law is once more the patriarchal power.

## **Constitutional status of Female Prisoners and Offenders**

The women convicts are not given any specific protections under the Indian Constitution. The Indian Constitution, however, accords women the position of equality. The Indian Constitution's founding fathers seriously considered how to safeguard and advance the rights of women and children. The Preamble, which incorporates "the ideals and aspirations of the people of India," sufficiently reflects this. "The equality of status and opportunity" is one of the supreme goals. The Indian Constitution's Article 14 guarantees women in India equal legal protection, while Article 15 forbids sex-based discrimination.<sup>14</sup> For example, Article 21 of the Indian Constitution provides that women convicts have the right to live in protected homes, have access to free legal representation, and have quick trials. The rights of female inmates include a swift trial. According to a ruling by the Supreme Court, undertrial detainees have an undisputed right to a quick trial. Rights include the prohibition on harsh and unusual punishment, the right to a fair trial, the prohibition on incarceration, abuse and death in police cells, and the right to a dignified existence. Additionally, the Indian Constitution protects against torture, handcuffing, and solitary incarceration. The Protection of Human Rights Act, 1993 was enacted by the Indian government, and the National Human Rights Commission was established to advance and defend human rights. The Directive Principles of State Policy are outlined in Part 4 of the Indian Constitution and give the State clear instructions on how to grant its citizens economic and social rights. In order to guarantee equal rights for women, India has ratified a number of international conventions and human rights instruments.

## **Women Prisoner's Right under the Prisoner's Act, 1894**

The earliest law governing jail regulation in India is the Prisoners Act of 1894. The following provisions of the Prisoners Act of 1894 explain the rights of women prisoners in India. This Act focuses primarily on the reformation of inmates in relation to prisoners' rights.

- a) The right for female inmates to dwell apart from male convicts is stated in item (a).

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<sup>14</sup> Bastick, M. & Townhead, L. (2008), Women in Prison: A Commentary on the UN Standard Minimum Rules for the treatment of prisoners.

According to Section 27(1) of the Prisoners Act of 1894, female prisoners must be housed in separate buildings or areas of the same building from male prisoners in order to prevent them from seeing, speaking with, or engaging in sexual activity with them.<sup>15</sup>

- b) According to Section 31 of the Prison Act of 1894, a civil prisoner or an unconvicted criminal prisoner is allowed to support himself and to purchase or obtain from private sources food, clothing, bedding, or other necessities at the appropriate times, but only after passing an inspection and adhering to any rules that the Inspector General may deem appropriate.
- c) Section 33(1) of the Prison Act, 1894 states that any civil or unconvicted criminal prisoner who is unable to provide for their own clothing and bedding needs to have the Superintendent provide them with whatever clothing and bedding may be required.
- d) Housing and hygienic conditions for prisoners,
- e) Making arrangements for the extra convicts who can't be held safely in any prison's shelter and safe custody
- f) Requirement for certified medical officers to examine detainees

## Conclusion

For analysing female criminality, the feminist theory of female crime seems to be the most appropriate. In India, women are even more at risk since patriarchy is more ingrained than it is in western nations. Both external and interpersonal violence were perpetrated against women. When women fail to stop domestic abuse and sexual exploitation by male relatives or are made into prostitutes, they kill their husbands and male relatives. But in India, many women are detained and found guilty of murder and dowry-related crimes. The three jails show that the majority of convicted women are uneducated and underprivileged.

According to feminists, gendered structures and social relations in society need to be fundamentally changed in order to end patriarchy or at the very least, they should be. The objective would be to lessen gender-based disparities and inequities in society at large and in the legal and criminal justice systems in particular. The need for dowry and the crimes associated with it will cease to exist if men and women are treated equally. Women must earn the same amount as men do, be educated, and be aware of their rights for there to be equality in society between men and women. Finally, women's economic and educational empowerment, together

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<sup>15</sup> [http://www.academia.edu/540727/RIGHTS\\_OF\\_WOMEN\\_PRISONERS\\_IN\\_INDIA\\_AN\\_EVALUATION](http://www.academia.edu/540727/RIGHTS_OF_WOMEN_PRISONERS_IN_INDIA_AN_EVALUATION)

with a stable legal environment that keeps men and women apart, are the key components of the solution.

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