
FEMALE CONVICTS: ARE WOMEN BEING PUNISHED LESS FOR THEIR CRIMES?

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ABSTRACT

“People sometimes don’t see gender as male and female being equal. Instead, they see it as a female being treated better than male.”

Many criminologists have agreed on the fact that the gender gap between men and women in crime is universal. But there are few discussions about the differences between male and female towards the issues that involve crime and punishment. As the title of the paper suggests, this research paper basically deals with the differences in punishment given to men and women offenders or convicts. The author has intrinsically analysed on the issue that are women really being punished less for their crimes or their punishment is reduced only in certain exceptional circumstances. This paper also explains who are female offenders. The paper also explains why there exists a difference between genders and why is the difference still prevalent in the 21st century. There are many findings that state that women receive chivalry treatment through the all the stages of justice deliver system by various officials. The research paper deals with the question that are women really being receiving some benefits due to their sex. The author also looks into the factors that are involved in deciding the punishment for a female convict. The author in this research paper concludes that the concept or the notion in the minds of people that women are being treated differently or being punished less for their crimes when compared to males is basically a myth and not true. Criminal justice system treats men and women equally and both are rewarded same punishments for the same offences.

Keywords: Female convictions, gender bias, chivalry treatment, punishment, crime.

1. Introduction

In the recent times, the most commonly accepted belief among the people of the society is that the women due their sex receive lenient treatment from the authorities. Not only this, there are debates and discussions going on that women are also being punished less for their crimes. The main goal or motto of this paper is to look into the judgements and cases where women have been convicted and see whether the notion that they are being treated differently is true in today's world or it is just a myth without any backing or evidences in its support.

There has been a question which exists in the mind of people that why there seems that there is a difference that the gender plays in how they will be treated in the whole process or procedures of justice delivery system. It is been found in many studies that females benefit from their gender when dealing with the sentencing decisions.¹ The research paper will analyse the chivalry treatment received by women at all the four stages of criminal justice system i.e., pre-arrest, arrest, prison and judicial proceedings. It will give a clearer knowledge and understanding of the issue and the contentions that are related to this topic. There are many research papers available which concludes that the female convicts receive or tend to receive milder punishments when compared to their male counter-parts. But this might not be true. This will be concluded in this research paper by findings, analysing and going through various judgements.

According to Cambridge Dictionary, Conviction is basically the fact of officially being found guilty of a particular crime, or the act of officially finding someone guilty. Female conviction means that when the accused in a crime is a woman and is found to be guilty by the courts of law and the evidences provided than she is convicted and this is known as female conviction. The idea of chivalry treatment received by women was propounded by Otto Pollak in the year 1950 that suggested that the females or the women within the criminal justice system are treated leniently when compared to the men is because of the idea of chivalry that should be showcased to the women. Further, Herzog and Oreg in 2008 mentioned that under this concept the law officials or the judges see women basically as child-like and defenceless in their nature and behaviour.

¹ S. Fernando Rodriguez & Theodore R. Curry, *Gender Differences in Criminal sentencing: Do Effects Vary Across Violent, Property, and Drug Offenses?*, SOCIAL SCIENCE QUARTERLY, Mar. 2001, at 318.

This paper will look into recent judgment and instances that deal with female convictions to better analyse that this notion is still prevalent in today's world or not. There are various factors that are involved in the delivery of the judgement that will be further discussed in this paper. The author concludes after the extensive and rigorous research that this notion is not true in the 21st century. Women today are not treated differently than their male counter parts in giving them punishments for the crime and offences committed by them.

2. Research Problem

Many discussions are arising on the issue that women offenders are being punished less for the crimes committed by them as compared to their male counterparts. There is a notion that women receive a chivalrous treatment and are treated leniently by the authorities or officials in the criminal justice system.

3. Research Questions

- i. What is Conviction?
- ii. What are the cases and the judgments related to female convictions?
- iii. Are women offenders being treated leniently as compared to their male counterparts?
- iv. What are the factors involved while deciding the punishment that is to be given to female convicts?

4. Research Objectives

- i. To trace out female conviction.
- ii. To analyse judgements related to female convicts.
- iii. To see whether females are treated differently.
- iv. To evaluate various factors that influence the delivery of judgment.

5. Literature Review

There are few cases in which courts have given lenient punishments to women. There is a

debate as whether this is the case or leniency is been shown to women only in certain exceptional cases. A brief review on the topic “Female Convicts: Are Courts being Lenient in Punishing Women for their Crimes?” is important to analyse the scope of the research topic. A literature review is basically a piece of academic writing which demonstrates the knowledge and understanding of the academic literature on a research topic. Several articles and case laws are available in the public domain related to female convicts and the punishment granted to them. This Literature Review puts forth the gist of journal articles and research papers written on this topic.

Jon Hurwitz and et. al.²

The journal article basically establishes a gender difference between men and women committing crimes and how the punishments differ. It also mentions women’s as well as men’s approach to crime in punishment. The authors mention that an attitude towards a crime and punishment are more often thought to flow from the feelings of vulnerability in an individual. They also mention that women have a greater sense of vulnerability and therefore that is the reason for the gender gap in crime and punishments attitudes. This article basically talks about the attitude differences in women and men and why women would not do harsher crimes than men. This article only talks about vulnerability of women. But this is not the case in present scenario. It is been noticed that over the last 50 years women have been increasing their participation in the labour market and in crime market³. The author does not talk about the punishments given to men and women and are women being shown leniency when it comes to punishing them for their crimes. The authors have only talked about why women commit crimes and the intensity of the crimes that they do but missed on the point that because of the vulnerability that they have mentioned are they being punished less.

Darrell Steffensmeier and et. al.⁴

The authors have focused on the crime rates by men and women. They have also gone through the increase in female arrests from time to time. They try to explain the female offending

² Jon Hurwitz & Shannon Smithey, *Gender Differences on Crime and Punishment*, POLITICAL RESEARCH QUARTERLY, Mar. 1998, at 89.

³ Nadia Campaniello, *Women in Crime*, IZA WORLD OF LABOR, <https://wol.iza.org/articles/women-in-crime/long> (last visited on Aug. 20, 2023).

⁴ Darrell Steffensmeier & Emilie Allan, *Gender and Crime: Toward a Gendered Theory of Female Offending*, ANNUAL REVIEW OF SOCIOLOGY, 1996, at 459.

patterns in the present scenario and also explained the shortcomings of the traditional theories on the overall pattern of female offending. The authors mentioned that the victimization and gender equality among females leads to higher share of crimes. The authors have not mentioned the conviction rate of women as compared to men. They have compared the crime rates, arrests rates and increase in crimes by both the gender but have not compared the conviction rate which would have shed a light on are women being punished for their crimes equally as men or have they been shown some leniency while being convicted.

Meda Chesney-Lind⁵

The author here talks about the women's crime and the responses that it generates. The author mentions that there has been a dramatic upsurge in women's criminal activity over the years. Crimes done by females have almost become the "shady side of liberation."⁶ This author also talked about the role of victimization of women which leads to crimes committed by women. The author has nowhere mentioned that as arrests rate of women have been increasing rapidly then is there an increase in the conviction rate of women. The author basically talks about the reasons why women commit crimes and is silent on what happens after the crime is committed by the. Is this vulnerability of women is taken into consideration while granting then punishment?

Etta A. Anderson⁷

The author here mentioned a very important point, she said that the female offender, female criminality has generally been a neglected topic in criminological research⁸. Here the author mentions that men basically hate to accuse women, even police officers do not like to arrest them, district attorneys are reluctant in prosecuting them and judges and juries find it difficult to grant them punishment on finding that they are guilty. The author stated that most of the time women offender receive a lenient or chivalrous treatment in the justice system as compared to their male counterparts. The author mentions the theory that exists behind women receiving

⁵ Meda Chesney-Lind, *Women and Crime: The Female Offender*, SIGNS, 1986, at 78.

⁶ Freda Adler, *The rise of the Female Crook*, PSYCHOLOGY TODAY, Nov. 1975, at 42.

⁷ Etta A. Anderson, *The "Chivalrous" Treatment of the Female Offender in the Arms of Criminal Justice System: A Review of Literature*, SOCIAL PROBLEMS, Feb. 1976, at 350.

⁸ Id.

lenient punishments as compared to men but does not substantiate it with examples or cases where this has been observed.

Sergio Herzog and et. al.⁹

The authors said that the female offenders have been frequently been receiving more lenient judgements as compared to males. They have mentioned that this maybe the result of the paternalistic and benevolent attitudes that society have towards females and particularly to those females who have been seen as the women who is basically there to fullfill the stereotypical female roles¹⁰. They have mentioned that female offenders tend to receive more lenient punishments or treatments as compared to their male counterparts who have committed the same crime. They have not analysed that whether this difference is still pertaining or is this leniency shown towards women will do justice to the principles of justice system.

6. Hypothesis

- i. Courts are being lenient in punishing women.
- ii. Women receive chivalry treatment as compared to their male counter-parts.

7. Research Methodology

This research paper is primary a doctrinal research and the main source of this research is digital media. The author sought help from various research papers and books on the situation of female convictions and the differential treatment received by them by the officials at the various stages of the criminal justice system. The news published in the newspaper also helped in the research. Many articles and essays, literature review and critical analysis on the topic was read by the author to understand the severity of the issue and also the position in today's world. The author also went through different newsletters of various colleges for better understanding of this topic.

The methodology used by the author for this research paper is doctrinal and non-empirical. This method was employed by the author as the issue can be dealt by reading various

⁹ Sergio Herzog & Shaul Oreg, *Chivalry and the Moderating Effect of Ambivalent Sexism: Individual Differences in Crime Seriousness Judgement*, LAW & SOCIETY REVIEW, Mar. 2008, at 45.

¹⁰ Id.

judgements given in the cases that related to female offenders. The difference or the chivalry treatment can be understood by going through various judgements and books written on this topic.

8. Female Conviction

‘Sex’ can basically be referred to know whether someone is female or male based on their physiology, while the term ‘gender’ represents a social construct of an individual that takes a very wide range of forms. Typically, women commit less crimes as compared to men. Men basically commit more crimes than women do. This still holds true over time and across different cultures. This difference applies to practically all the crimes, while there are differences which can be observed in participation of females in the commission of some type of crimes. The number of female crimes is comparatively small.

Women are enormously underrepresented as criminal offenders. In America, male comprise of 93% of the prison population and men also account for 73% of all the arrests that is made and 80% of those are charged with violent crimes and also this difference between the sexes are most notably visible when it comes to murder. 90 percent of the time, the ones who are accused or convicted for murder are men.¹¹ All these numbers basically add to the gender gap in the crimes committed by men and women.

In some of the cities of the UK, the number of female arrests have increased 50% from 2015 to 2016. The global female prison population has surged by more than the half since the last century while on the same hand the male prison population has increased just be a fifth over that same period. This data clearly shows that there is a rise in female offenders and also they are being convicted for the crime that is being committed by them. It was first noticed by Alder in 1975 in his book *Sisters in Crime* that the gap in the crime committed by men and women had become smaller.

During the past quarter century, it has been observed that there has been a profound change in the involvement of women in the criminal justice system around the world. This is also because of stricter laws and regulations that uniquely affect women. The female who were convicted

¹¹ Rene Chun, *Female Fugitives: Why Is ‘Pink-collar crime’ on the rise?*, THE GUARDIAN, <https://www.theguardian.com/us-news/2020/jan/06/female-fugitives-women-crime-rates-rise> (last visited on Nov. 18, 2023).

for their crimes is now increased to six times over than that in the year 1980. Between 1980 and 2021, the number of the females incarcerated increased by more than 525% rising from the total of 26,326 in the year 1980 to 168,449 in the year 2021.¹²

9. The Chivalry Treatment

There is a notion that is being going on since a long time and till today that the criminal justice system shows a 'chivalrous' treatment or attitude towards the female criminals. Women offenders because of their gender or sex are treated more leniently when compared to their male counterparts. The theory of women receiving a chivalrous treatment by the justice system was first talked upon by Thomas in 1907 in his book *Sex and Society*.¹³ In his book he mentions that *"man is merciless to woman from the standpoint of personal behaviour, yet he exempts her from anything in the way of contractual morality, or views her defections in this regard with allowance and even with amusement."* There has been a notion that most of the men basically hate to accuse women for the crime committed and therefore indirectly refrain to send them to their punishment, and even police officers do not like to arrest female offenders, advocates do not like to prosecute them, and also judges and juries do not like to convict them or punish them and so on.

According to the chivalry thesis, sentencing decisions are influenced by gendered prejudices about men and women, regardless of the gender of the offender. Chivalry, also known as paternalism, maintains that women are not entirely to blame for their illegal behaviour because they are viewed as erratic and immature. Males must so defend women as, with all due gallantry, they are depicted as desiring to lessen any pain or suffering that women may endure. The chivalry thesis states that when these assumptions are applied to the criminal justice system, female offenders will receive preferential treatment from judges, prosecutors, and police officers who are primarily men.

There are other criminologists, who have asserted to the notion that female offenders receive a chivalrous treatment, that women are basically protected in a male dominant society or a male dominated world. Also, that, female offenders have a very high chance than their male counterparts of not being reported and ultimately not being arrested and presented in front of

¹² Niki Monazzam and Kristen M. Budd, *Incarcerated Women and Girls*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls/> (last visited on Nov. 19, 2023).

¹³ WILLIAM I. THOMAS, *SEX AND SOCIETY* (1907).

judicial authorities. Many criminologists have also mentioned that the police officers and the judiciary are reluctant in prosecuting an offense which is committed by a woman.

Some people dislike to report a female offender to the police and the police officers are more likely to release a woman offender or a young woman over to her parents or guardian or release them to social agency which is not true for their male counterparts i.e., the male offenders. Haskell and Yablonsky have also claimed that police officers are less likely to arrest a female than a male under similar circumstances or where the crime committed is similar.

In a nutshell, criminologists who have dealt with the topic of female offenders have mostly described or supported the notion that female offenders and also female convicts for that matter, receive more 'lenient' and 'chivalrous' treatment by the justice system than their male counterparts respectively.

10. Crimes Committed by Women: Nature and the Causes

When looked into the data, the fact clearly states that the female contribution to serious crime is minuscule. Offenders who were arrested for serious crimes in 1980 (for example: murder, forcible rape, robbery and aggravated assault), only 10 percent of the offenders were female.¹⁴ Therefore, women constituted only 15.8% of all the arrests that were made during that year and most of them were trivial offences.

Arrests of girls who break the law or commit an offence have been and even today for most of the cases have been for minor crimes which generally include shoplifting etc. Adult women have also been arrested for petty or trivial offences like, theft, fraud, forgery, drunken driving, disorderly conduct, etc. Large number of women are arrested for trivial property and morals offenses that may be coupled with the virtual absence of women from among those who are arrested for serious property crimes and violent crimes. It has also been noticed that women committing murders have been very rare. The negative attitudes of students towards school and poor performance in the school were significant in predicting delinquency in both the genders but this relationship was stronger in girls when compared to the boys.

Many studies have explored and found out that the relationship between the attitudes toward the women's movement and women's crime to fail to support the notion that as women become

¹⁴ Meda Chesney-Lind, *Women and Crime: The Female Offender*, SIGNS, 1986, at 78.

critical about their place in the society or anywhere there is a high chance that they will become more delinquent.

11. Factors Effecting the Delivery of Judgement

There are many factors that affect the justice deliver systems across the world. Some of the factors are mentioned below:

- i. Age of the offender – Some studies indicate that both boys and girls tend to begin their antisocial conduct or approach when they are around the age of fifteen. The judges here look into the age factor of the offender. And factors like what was their maturity level while committing the crime. Here, they nowhere differentiate between the male and the female offenders. They just look into the age factor of the offender and give their decision accordingly.
- ii. Biological Factor – This factor has often been used to explain the gender differences in aggressive behaviour. Exhibition of high levels of testosterone or oestrogen/progesterone before birth has been linked to the aggressive behaviour in both men and women. In the same manner lower resting heart rates of the individual have been associated with the delinquent behaviour in both men and women.
- iii. Victimization – Victimization of men and women during childhood or adolescence is a risk factor in both men and women in committing crimes. In many researches conducted in this aspect on the broader population where the main focus area was the youth, no gender difference has been shown in the rates of physical treatment.¹⁵
- iv. Interpersonal – Many researchers believe that family dynamics are a key contributor to delinquency.¹⁶ The general family aspects or the environment in which the child is brought up influences both male and female antisocial behaviour or the crimes committed by them.

¹⁵ Terrie E. Moffitt and et. Al., *Sex Differences in Antisocial Behaviour: Conduct Disorder, Delinquency, and Violence in the Dunedin Longitudinal Study*, CAMBRIDGE UNIVERSITY PRESS, 2001, at 278.

¹⁶ Sheldon Glueck and Eleanor Glueck, *One Thousand Juvenile Delinquents: Their Treatment by Court and Clinic*, HARVARD UNIVERSITY PRESS, 1934.

- v. Degree/Severity of the crime – If a offence is committed with a higher degree of mens rea and actus reus then, irrespective of whether the offender is male or female, the punishment given is of higher degree or more severe. It also includes the vulnerability of the victim. If a victim is a minor, is of unsound mind or is incapable of understanding what is happening to them or has happened then the severity of punishment increases.
- vi. Criminal History of the offender – The previous conduct of the offender is also one of the factors considered while sentencing. Factors like, is the offender a repeat offender and is prone to committing offences even after being punished for the offences committed earlier. This factor is also not gender bias while looking into the offences being committed by the offender.

Therefore, there are many factors which influence the decision by the court. But they are not gender specific or no gender bias is involved in those factors. The factors taken into account by the judiciary is gender neutral. It nowhere gives women offenders any leniency to the crime committed by them when compared to their male counter parts for similar offences or crime.

12. Relationship between the sex of the offender and the sentencing

Many researchers including the sociologists have repeatedly conducted exploratory research on the sentencing of offenders. There is a prediction that if a crime or offence is committed by a woman then she will receive a milder treatment and will receive a less harsher treatment as compared to the males, and this notion is been going on since decades. The relationship between the sex of the offender and the sentencing is the byproduct of human error expressed in judicial outcomes.¹⁷ Sentencing of the offence not only depends on the gender of the offender but it has two aspects. First, the gender of the victim and second, the gender of the offender. The gender alone does not impact the sentencing of the offenders but there are many extra-legal factors that is looked into. It may include having children and family responsibilities.

It can be said that in the matters of female offenders, the judiciary looks into the extra-legal factors for women when they are making any sentencing decisions. It is also because someone else cannot be punished for somebody's else's crime. And if the females with kids are convicted

¹⁷ S. Fernando Rodriguez, et. al., *Gender Differences in Criminal Sentencing: Do Effects Vary Across Violent, Property, and Drug Offenses?*, *SOCIAL SCIENCE QUARTERLY*, Jun. 2006.

more severely or harshly, they will have to suffer without any fault of their own.

Generally, there are no differences in sentences for men and women in particular with regards to sentence length. Most compelling cases of chivalrous treatment could be seen as to specific behaviours as they apply to the traditional genders roles played by women.

13. Conclusion

Men and Women are actually very similar in terms of offences that they commit for which they are most often arrested and that the majority are crimes that may be viewed as petty.¹⁸ The notion that a chivalrous treatment is received by women convicts or female offenders by the justice system which have been described the past and present criminologists in past and even in present is only a myth and which is one of the many myths relating to the nature of female crime. This is a myth that has been publicised by various writers and authors.

The main issue was whether the differences made by the courts when judging crimes committed by men and women are basically because of the sex. The answer is not negative or for that matter affirmative. There are many factors that are kept in mind while delivering the judgements which goes beyond the gender factor.

There may be certain exceptional circumstances where the punishment given to women may be reduced or may be lesser than their male counterparts. But it is not a general trend. They may receive chivalrous treatment in the way they are brought up in the criminal trial or proceedings but while awarding the sentence they are treated equally when compared to men. They are punished similar to their male counterparts for the similar or same offences. Women do not receive less punishment by the judiciary because of their gender or sex.

Initially, during earlier times this notion might be true as people did not want to convict women as they were considered to be delicate but that notion is not true in the present circumstance. Women who commit serious or heinous offences are not any leniency while awarding them punishment. They are punished according to the laws of the state. And no law makes a difference in the punishment for a certain crime or offence on the basis of the sex of the offender.

¹⁸ Dana M. Britton, *Feminism in Criminology: Engendering the Outlaw*, THE ANNALS OF AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Sep. 2000, at 60.

14. Suggestion

The main purpose of the present research was to look into the fact that are women treated differently than their male counterparts. And what is the relationship between the sex of the offender and the punishment given. The notion that women receive a 'lenient' or 'chivalrous' treatment by judiciary or the criminal law enforcement agencies does not hold true in present.

Criminal Justice System has already evolved a lot from time to time and still continue to evolve according to the need of present world. The notion and the myth that is being held for centuries that women offenders and female convicts are shown leniency has to be taken out from the minds of people so that they believe or trust more in the law enforcement agencies and justice delivering systems.

To curb this myth and false notion the author wants to put forth certain suggestions. Firstly, while reporting a certain crime, and if the offenders involve both men and women the minute details of how both were treated should also be mentioned so that there is no doubt that in the minds of the people that they were treated differently. Secondly, if news portals report the conviction of a female and if by chance, she is receiving less punishment for the crime committed by her then proper reasons should also be mentioned that why such decision was given by judiciary and what factors led to that decision so that people know that there were certain exceptional circumstances because of which she received lesser punishment and not because of her sex. Thirdly, there might be cases where for the same offences a woman was punished less and for the same offence her male counter part was punished more harshly when compared, but the only reason that she is a woman should not be put forth, there should be proper rationale given as only the gender cannot be a reason. There are many factors like the woman has children who will be left unattended if the female offender is kept in jail for longer duration, etc.

Females being treated differently or being punished less severely cannot be attributed only to the factor that she is a female. There are many more reasons that they receive such treatment. Most often it is not the intention to punish them less harshly than men but it depends on the factors and circumstances in each case, the fact that she is a woman does not get her a less punishment but many other factors and reasons are looked into by the judiciary.