

## CHALLENGES TO FEMALE CRIMINALITY

by

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### ABSTRACT

*The current study focuses on the global scourge of rising female criminality, which has recently become a focus of criminal policy, law, and justice in the modern world. Women's crime accounts for a small percentage of total crime, but it is growing at a considerably quicker rate than men's in most countries. Female criminality has taken on new shapes and dimensions as a result of the rapidly expanding chances for women to participate equally in all aspects of society. Because the sorts of female crime that are prominent in each country varies, a more in-depth examination of the socio-cultural milieu of female criminals is required in light of changing socio-economic conditions and their concomitants, such as modernization, industrialization, and urbanization.*

*A criminal woman's life is like a trajectory on which her temperament, wants, drives, circumstances, provocations, temptations, maladjustments, poverty, and tremendous stress may all seem as planets in a galaxy. Because her life is already a punishment, it is pointless to further damage her. The pressing need of the hour is for her to be reformed by bettering her life. In light of the fact that female crime is as common as male crime and that female criminals do not form an isolated group from the general population, the sentencing system for male offenders has been significantly modified in our society with the help of new reformatory practices and alternatives to imprisonment. The same should be applied to female offenders as well.*

## Female Crime – The Biological Explanation-

Lombroso, Pollock, Thomas, and Freud were among the first to study female criminality. Early crime theories claimed that women's criminality stemmed from the fundamental nature of abnormal 'women who were born' with a high proclivity for crime. Women who portrayed specific atavistic features, according to Lombroso, would become more criminal than others. According to him, criminal women resembled males since they possessed passion and intelligence, as well as a cranial size and other masculine characteristics. According to him, their excessive activity was the cause of their deviance<sup>1</sup>.

A woman according to Lombroso was turned towards prostitution due to inordinate virility and overdeveloped precocity<sup>2</sup>. He said that women of the 'born criminal type' were a small minority who exhibited even higher proclivities and perversities from a behavioral and psychological standpoint than men of the same kind. To support his claim, Lombroso used the Italian saying "rarely is a woman wicked, but when she is, she exceeds the male." According to him, the cruelty of the minority of born criminal girls was far more "refined" and "diabolical" than that of their male counterparts. Their need for revenge could not be satiated by simply killing their foes; they needed to experience the full taste of death by witnessing their suffering.

In the case of early thievery and prostitution, Lombroso believes that circumstances such as parental neglect and desertion may be to fault. Finally, Lombroso noted that, due to the conditions and customs of many countries, there are often local patterns of female crime, and that there are avenues of criminality for the occasional rather than the born female criminal. Infanticide, the substitution of newborn children, abortion, and stealing have all evolved as local patterns of occasional female criminals.

The alleged link between the menstrual cycle and criminal behaviour is a different type of biological theory. Menstruation, according to Freud (1924) and Pollak (1961), reminded women of their lowly status, and so most female criminality happened before menstruation. Katherine

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<sup>1</sup> William Katherine S. (2001, 4th Ed) Textbook on Criminology, New York: Oxford University Press, p 497

<sup>2</sup> Lombroso Cesare and Ferraro William (1916) The Female offender, Introduction by W. Douglas Morrison. New York and London: D Appleton and Company, p112.

Dalton, a modern proponent of this biological theory linking menstruation to crime, concluded that women committed half of all crimes during menstruation or the premenstrual period, according to her research<sup>3</sup>.

### **Theory of Women's Sexuality and Crime-**

Women's criminal behaviour, according to Pollak (1961), is rooted in their capacity to conceal their lack of sexual excitement. Girls who steal are regarded as sexual rebels by West, whereas Konopka claims that shoplifting, running away, and truancy are all associated with sexual disturbances<sup>4</sup>. Kleptomania has also been linked to sexuality in women. Al Issa cited proof that putting hands on specific goods with the aim to steal caused orgasm<sup>5</sup>. Cooper had even linked female terrorism to women's sexuality. He believes that the key to female terrorism lies somewhere in women's complex sexual nature. Sexuality, according to both Lombroso and Freud, is the cornerstone of women's being and thus the primary cause of female criminality.

In the appropriate light, sexuality is the adornment of womanhood; nevertheless, for a long time, undue emphasis has been placed on the relationship between female criminality and sexuality. Female crime could be a kind of vengeance against men, but not because of sexuality, but because of a submissive inferior position in sex. It could be that they are utilizing their sexuality to deviate rather than expressing deviance via sexuality.

### **Traditional Crimes by Women- Prostitution, Shoplifting and Abortion**

#### **Prostitution**

Prostitution is a crime in the civilised world; it is carried out in the privacy of individuals who have given their assent. A prostitute delivers sexual enjoyment to a customer in exchange for a monetary payment. This personifies a service contract, despite the fact that such a contract is both immoral and against public policy. It is a mystery for society, and no one knows why a prostitute is considered a criminal yet the guys who look for women should be the true criminals. While it is true that prostitution is mostly a female-driven crime, the role of men in this crime should not be overlooked.

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<sup>3</sup> Dalton, Katharine Dorothea (1961), Menstruation and Crime, British Medical Journal, Vol 2, pp 1752-3

<sup>4</sup> See Konopka, (1966) The Adolescent Girl in Conflict, Englewood Cliffs, New Jersey: Prentice Hall

<sup>5</sup> Al- Issa, I (1980) The Psychopathology of Women, Englewood Cliffs : Prentice Hall, p 179

Prostitution is illegal in India. "Whoever sells, lets to hire, or otherwise disposes of any person under the age of 18 years with the intent that such person at any age be employed or used for the purpose of prostitution or illicit intercourse with any person, or for any unlawful and immoral purpose, or knowing it to be that such person will at any age be employed or used for any such purpose shall be punished with imprisonment for either a term which may extend to 10 years."

In the case of voluntary prostitution, it should not be recognised as a defence for the accused because most teenage females apprehended may be coerced to lie to their captors that they voluntarily entered the industry. Currently, if a minor has voluntarily entered prostitution to earn a living, the accused is not covered by the punitive requirements of section 372. Another lacuna in sec.372 can, of course, be filled by an appropriate amendment that restricts the sin of prostitution to the utmost extent possible. If the female is 18 years old or older, Section 372 does not apply. Following the praiseworthy path of our cherished constitution's Art 23, age restrictions should be removed.

The Constitution of India imposes prohibition of trafficking in human beings including trafficking women and children for immoral or other purposes<sup>6</sup>. The Indian Penal Code also provides for Sec. 366A and 366B which hits at procurers in the flesh trade. Persons who urge any minor girl to leave any place or conduct an act knowing that she will be compelled or lured into unlawful intercourse with another person face a penalty of up to ten years in prison and a fine under the Indian Penal Code<sup>7</sup>.

In the case of *Bhagwati Prasad v Emperor*<sup>8</sup> the court observed "The aim of the provision of Sec 366A is to prevent immorality and the provisions are framed more with the desire of safeguarding the public interest of morality than the chastity of one particular woman".

In the case of *Manik Moela v Emperor*<sup>9</sup> the court observed- "The section is aimed at procurers. The prosecution must prove that the accused intended that the girl would be forced or seduced to illicit intercourse with someone other than himself, or that the accused knew that it was likely she would be so forced or seduced.

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<sup>6</sup> Art 23

<sup>7</sup> Sec 366 A IPC

<sup>8</sup> AIR 1929 Allahabad 709 at 710

<sup>9</sup> AIR 1945 Calcutta 432 at 433

Prostitution is a discriminatory and exploitative practise because it is based on the belief that men cannot control themselves. Prostitution consent is a fallacy. Consent to repeated intercourse with all types of men at all hours of the day, week after week, month after month, and finally year after year is impossible, and even if it is, it is distressing and damaging. Prostitution, according to radical feminists, is a sexual act. Prostitutes are victims, not criminals, according to anti-prostitution supporters, and society should not dismiss the prostitutes' long-term psychological and physical effects. How long can prostitution be voluntary when the majority of these women are in it because of poor life circumstances (such as poverty, a history of childhood abuse/neglect, a lack of opportunity, drug addiction, kidnapping, and abduction, to name a few?)

### **Shoplifting**

Theft of retail products without paying for it is known as shoplifting. Theft of retail goods and services, sometimes known as shoplifting, is a crime. One of the crimes associated with women is shoplifting, yet little is known about the crime itself. Shoplifting has become the new middle class disease. Shoplifting is a pathological behaviour that necessitates a thorough knowledge in order to design appropriate solutions for people who unavoidably fall into this trap again and again. Such female criminals demand deep sympathy and empathy, as well as therapeutic therapy. Shoplifting is a pathological behaviour that necessitates a thorough knowledge in order to design appropriate solutions for people who unavoidably fall into this trap again and again. Such female criminals demand deep sympathy and empathy, as well as therapeutic therapy.

The criminal justice system imposes a variety of punitive sanctions, including fines, jail time, probation, and community service, but even these do not provide the support that many female shoplifters require to address the 'root cause' of their shoplifting behaviour and prevent them from repeating it. Hardcore addicts require therapy under the careful supervision of experts. The 'causes' may change in the circumstances of different female shoplifters, necessitating a targeted and personalised solution to this issue. Because most non-professional shoplifters do not perpetrate other types of crime, the rehabilitation programme should be offence specific. The therapists working on these shoplifters should try to motivate, develop and sustain a sense of responsibility and accountability for their own actions.

## Abortion

Abortion is defined as the termination of a pregnancy by the removal or expulsion of a foetus or embryo from the uterus, resulting in or causing the death of the foetus or embryo. Abortion can occur naturally due to complications during pregnancy or be induced to protect the pregnant woman's health.

At present the IPC provides “Whoever voluntarily causes a woman with child to miscarry shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman be punished with imprisonment of either description for a term which may extend to 3 years or with fine or with both and if the woman be quick with child shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine<sup>10</sup>. Apart from the relevant law in the Indian Penal Code related to abortion there is the Medical Termination of Pregnancy Act (34 of 1971) and yet another recent law the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 which relates to abortion. One of the provisions of the Medical Termination of Pregnancy Act allows termination of pregnancy by registered medical practitioners where the pregnancy is alleged to have been caused by rape or as a result of failure of a contraceptive used by a married woman or her husband<sup>11</sup>.

Pregnancy can also be terminated by registered medical practitioners if the pregnancy is less than 12 weeks or if at least two medical practitioners believe that continuing the pregnancy would pose a significant risk to the pregnant woman's life or grave injury to her physical or mental health, or if there is a substantial risk that if the child is born, it would pose a significant risk to the child's health.

Sex selective abortion is a serious crime that should be treated as such. Many Asian countries, particularly China, Taiwan, South Korea, and India, have reported a preference for male offspring<sup>12</sup>. The economic importance of men, the expensive expense of dowry, and a prevalent Indian tradition that only males can execute burial rites have all contributed to the preference for sons in India. In 1994, Indian legislation made it illegal to give or take prenatal tests, including

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<sup>10</sup> Sec 312 IPC

<sup>11</sup> Much latitude is provided in the ‘form of excuse for abortion ie’ ‘failure of contraceptive’ can be a fabricated one in most cases.

<sup>12</sup> Banister Judith (1999) “Son Preference in Asia – Report of a Symposium.”

ultra sound scanning to identify the fetus's gender. In 2002, the penalties were increased to three years in prison and a punishment of Rs. 10,000 for the first offence, and five years in prison and a fine of Rs. 10,000 for the second.

### **Women and the Criminal Justice System-**

Gender is inextricably linked to the criminal justice system. Several psychological defences for women's legal defence have arisen, such as the battered women syndrome and rape trauma syndrome, which do not exist for men convicted of rape. When compared to men, psychological considerations are more typically deployed as defences. Women are less likely to be prosecuted than men, and they are more likely to utilise 'psychiatric pleas' and get psychiatric or non-custodial penalties. Men, on the other hand, enter standard pleas and are sentenced to prison. Filicidal women are typically subjected to less overt containment than filicidal men, who are treated punitively with the emphasis on retribution and deterrent rather than treatment and rehabilitation.

The criminal justice system's treatment of women and girls has been regarded as sexist. 'Sexist ideology' is a complex combination of personal beliefs, professional policies, and practises that are constantly shaped by the demands of practise and organisational restrictions<sup>13</sup>. In addition, the police, social workers, and magistrates have a limited awareness of the lives of women with various cultural values and family arrangements. The fundamental process operating in the criminal justice system could be described as paternalism rather than mercy. True, the criminal justice system, which is dominated by male criminal justice professionals, cannot help but patrol and control the boundaries of women's roles.

For women, punishment in the form of imprisonment has unthinkable implications that much surpass the crime committed most of the time. Women are biologically, cognitively, and socially distinct from men, and penology for women should reflect this distinction. There should be a well-thought-out and well-coordinated policy strategy for women's alternatives to incarceration. The sociological analysis of each case of a female offender aids in the identification of causal variables and offers the required information to the courts in order for them to determine the

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<sup>13</sup> Gelsthorpe, L. (1986) Towards a Sceptical look at sexism, *International Journal of Sociology of law* Vol. 14, No.125, p 142

most appropriate treatment for female offenders. Many women languish in prison due to a lack of legal representation; some are innocent, and a considerable number are eligible for probation<sup>14</sup>.

Though it is incorrect to regard female offenders solely as victims in a male-dominated society, it is equally irrational to ignore and deal with the prevalence of exploitation, severe loss, and poverty in women's backgrounds. Similarly, we cannot overlook the significant societal cost of women's imprisonment in terms of family and social disruption, which is why alternative sentencing systems are best suited for the majority of female prisoners. Instead of teaching women only 'good' and 'bad' female roles, the old-fashioned punishment system needs reforming, and instead of teaching women only 'good' and 'bad' female roles, new pastures should be explored with reintegration and rehabilitation as its primary goal for society's most vulnerable yet essential constituent<sup>15</sup>.

### **Social Reintegration of Female Criminals-**

Family support, supportive parole officers, and access to post-release programmes are essential for female ex-convicts' rehabilitation and reintegration. Female offenders are also better suited to alternatives to jail, such as parole, probation, suspended, and indefinite terms. They prevent the severing of familial relationships, which has negative mental, emotional, physical, and societal consequences. The woman is protected from the mental pain of being separated from her family, and she is eager to reintegrate into society and her family owing to her innate female nature. Financial, emotional, and child care help are the most common types of support women receive from their families. The positive support network also includes the function of supervising officers, who listen, encourage, and give further support by finding jobs and assisting people through the process. The majority of the formerly jailed women said they were involved in a number of community-based groups that provided a variety of services tailored to their unique needs, such as child care support and parenting services.

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<sup>14</sup> Bhushan Vidya (1970) Prison Administration in India (with special reference to Uttar Pradesh) New Delhi: S Chand and Co, p 84-86

<sup>15</sup> . Jayshree L. (2005) Community Service – An alternative to Imprisonment, Criminal Law Journal Vol. 4, p 116



## Conclusion-

It is true that female criminality has expanded its frontiers and uncovered fresh unknown territory. Strange crime episodes shock society not because the crime is unique to the culture, but because the culprits are females who are seen as conformists, traditionalists, and rule-followers. The idea that women enjoy being celebrated has been passed down for years, but in today's society, it appears to have become subject to extrinsic as well as intrinsic forces set on breaking the stereotype and instilling a menacing and deadly new meaning to womanhood. Studies show that the majority of deviant females do not repent of their wrongdoings.

The criminal justice system should stop focusing on young girls' and women's sexuality. Professionals in the criminal justice system should be taught not just to punish female criminals and prevent crimes, but also to assist them in their rehabilitation and reintegration. Because the state cannot control crime on its own, it should devolve some power to new institutions at the community level that can not only control and prevent crime, but also assist people who want to conduct research on the problem of crime in society, exploring its theoretical, practical, and ethical implications, and reporting their findings to the government for framing proactive policies for male and female offenders. Women should not be held solely responsible for social ills like as prostitution and abortion, in which male perpetrators go unpunished. It is necessary to reform and amend the relevant legislation in order to increase their enforcement. Procurers in the vice of prostitution should face the bare minimum of penalty, and the offence should not be age-specific.

Women are valuable to mankind, nation-building, and the continuation of civilisation, thus everyone should contribute to their development and well-being by removing all impediments to their progress.



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