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GENDERED PATHWAYS TO CRIME: RETHINKING MASCULINITY AND FEMININITY IN CONTEMPORARY JUSTICE SYSTEMS

AUTHORED BY - ANUBHUTI DHADHICH¹ & DR NAVNA SINGH²

INTRODUCTION

Crime does not affect men and women alike. While legal systems say they are neutral and universal, the experiences of both offenders and victims show that gender has a huge impact on the experience of criminalization. The social construction of masculinity and femininity, not biological givens, is a significant influencing factor in criminality, victimization and responses to criminality in institutions. This research challenges the gendered pathways to crime and asks what stereotypes of masculinity and femininity are produced and/or challenged in contemporary justice systems.

Traditionally, the narratives in criminology were male focused. These theories reinforced the patriarchal stereotype of criminality as biological abnormality in the case of women, and socialization in the case of men, instead of questioning structural inequalities.³ The Female Offender (1895) was written by Cesare Lombroso and William Ferrero, who pathologized women's criminality as a deviation from the norm and biological abnormality, while later Edwin Sutherland's sociological framework focused on socialization, which means that female criminality was seen as a deviation from the norm and a biological abnormality, while male criminality was seen as an extension of masculinity.⁴

In the 1970s feminist criminology arose and challenged these assumptions. Feminist criminology theorised crime as a gendered issue, and posited that women's routes to offending were often tied to their experiences of victimisation, poverty and systemic marginalisation.⁵

Males, on the other hand, have been linked to violence, gang life, and organized crime. Criminal activity may serve as a way to establish a sense of masculinity and social standing for marginalized communities, which is reflected in the theory of hegemonic masculinity as put

¹ Research Scholar, Faculty of Law, Tanta University, Sri Ganganagar.

² Associate Professor, Faculty of Law, Tanta University, Sri Ganganagar.

³ CESARE LOMBROSO & WILLIAM FERRERO, THE FEMALE OFFENDER (1895).

⁴ EDWIN H. SUTHERLAND, PRINCIPLES OF CRIMINOLOGY (1939).

⁵ MEDA CHESNEY-LIND, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME (1997).

forth by R.W. Connell.⁶ Research on the nature of gang violence shows that young men use violence not only for material gain but to assert their manhood to others, while research on domestic violence shows that it is the violence of men who assert their manhood over women.⁷

On the other hand femininity has been linked to nurturing and passivity. The participation of women in crime has been conceptualized at times as deviant and in need of special explanation.⁸ There are many examples of how women's crimes are met with treatment that reflects gender stereotypes within justice systems, which can include lenient treatment for women who behave in a traditional feminine way, and harsh treatment for those who do not.⁹ Women involved in sex work or drug trafficking may often report histories of victimization, including sexual abuse, domestic violence, and economic dependency, suggesting that their criminality is linked to survival and exploitation.⁷ Feminist criminologists argue that women's paths into crime are often determined by experiences of victimisation, such as sexual abuse, domestic violence and economic dependency.¹⁰

Kimberlé Crenshaw's concept of intersectionality is a useful tool for exploring how gender intersects with race, class, caste, and other markers of identity to create experiences of marginalization.¹¹ The specific vulnerabilities that Dalit women in India suffer from sexual violence and systemic neglect, and the disproportionate number of Dalit men in custodial deaths highlight the need to re-think justice systems from a gender responsive and intersectional perspective.

Both the treatment of offenders and victims in justice systems around the world perpetuate stereotypes of gender. The assumptions underlying police practices, prosecutorial discretion, and judicial reasoning show gender bias in both directions: men charged with sex crimes are assumed to be dangerous, which means they get longer sentences, while women charged with sexual violence are treated with suspicion and blamed for the crime, and men who have been sexually assaulted are treated with paternalism and infantilization.

Modern justice systems are confronted with new problems. Proponents of gender-neutral laws, e.g., the Uniform Civil Code in India or the gender neutral sexual assault laws in the United States, are concerned that such neutrality fails to acknowledge the gendered context,

⁶ R.W. CONNELL, MASCULINITIES (1995).

⁷ See James Messerschmidt, Masculinities and Crime: Critique and Reconceptualization, 2 THEORETICAL CRIMINOLOGY 85 (1998).

⁸ See Michael Flood, Men, Sex, and Domestic Violence, 12 VIOLENCE AGAINST WOMEN 295 (2006).

⁹ See Ngaire Naffine, FEMINISM AND CRIMINOLOGY (1997).

¹⁰ See Kathleen Daly, Women's Pathways to Felony Court: Feminist Theories of Lawbreaking and Problems of Representation, 2 S. CAL. REV. L. & WOMEN'S STUD. 11 (1992).

¹¹ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. CHI. LEGAL F. 139.

resulting in ineffective policies.¹²

There needs to be a paradigm shift in order to rethink masculinity and femininity in the justice systems. Gender-responsive policies are being promoted by scholars who maintain that there are difference in pathways men and women follow toward criminality. This involves training police officers and judges to reduce the stereotypes, implementing sentencing practices that take into account victim histories, increasing support for women's offenders and working with toxic masculinity within communities.¹³ These reforms are in line with international commitments under CEDAW and the UNCRC, which include the call for inclusiveness and equality in justice.¹⁴

This research has the potential to enrich criminology and legal scholarship theories by questioning the effect of gender identities on motivations, victimization, and institutional responses. It calls for changes to the system of laws that puts men and women in unequal positions and urges them to be neutral. In conclusion, a rethought masculinity and femininity is not just an academic endeavor, it is a practical imperative when designing just, equitable and inclusive justice systems that address human identities.

REVIEW OF LITERATURE

The way the study of crime has shifted over the last hundred years, from a biological to a sociological and feminist perspective, has changed in many profound ways, and has focused on an examination of the role of masculinity and femininity in both the process of going into crime and in how individuals are treated in the justice system. The early thoughts of Lombroso and Ferrero on female criminality as an anomaly were followed by sociological explanations, the most significant of which was by Edwin Sutherland on social learning and differential association, which posited that female criminals were different from male criminals, and were socialized into compliance while male criminals into aggression.^{15 16}

During the late 1970s feminist criminology emerged, which represented a paradigm shift. In turn, scholars like Meda Chesney-Lind pointed out that women's offending was frequently related to strategies of survival, such as shoplifting, sex work and drug use, and not

¹² See Barbara Bloom, Barbara Owen & Stephanie Covington, *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* (2003).

¹³ See Barbara Bloom, Barbara Owen & Stephanie Covington, *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* (2003).

¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹⁵ CESARE LOMBROSO & WILLIAM FERRERO, *THE FEMALE OFFENDER* (1895).

¹⁶ EDWIN H. SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY* (1939).

to a quest for dominance or status.¹⁷ This suggested that female criminality was driven by victimization, poverty and systemic marginalisation. Such research by Kathleen Daly reinforced the idea of women's journeys to felony court and the fact that women crime offenders frequently had histories of abuse and coercion, raising questions about the neutrality of law and the importance of gender-responsive justice systems.¹⁸

In contrast, the concept of masculinity has been linked tightly to violence, gangs and organized crime. Gang culture, especially, has been found to be an arena where criminal activity is used to assert a masculine identity and a status within the social community, a status that has been denied to many men due to a lack of economic opportunities within this community.¹⁹ Domestic violence is another example, as it is a reflection of the norms of masculinity that define society as women are oppressed and subjected to violence within it.²⁰

On the other hand, femininity has been traditionally linked with passivity and nurturing. In many ways the participation of women in crime has been seen as "aberrational" and is thus thrown into the spotlight of special explanation. Feminist criminologists argue that the paths into crime which women take are often determined by events which have happened to them – sexual abuse, domestic violence and economic dependency.²¹ For example, women involved in sex work or drug trafficking often describe histories of victimisation and coercion, making their criminality dependent on survival and exploitation.¹¹ Female offenders are often treated by gender stereotypes by the justice systems with leniency when they are conforming to traditional femininity whilst harshly punished when they are defying the gender norms.²² Ngaire Naffine's work on feminism and criminology highlights how femininity can both mitigate and exacerbate a woman's criminality based on their conformity or deviation to gender norms.²³

Kimberlé Crenshaw coined the term intersectionality which foregrounds the fact that gender is not an identity that exists on its own, but exists in relation to race, class, caste and others, affecting experiences of marginalization. The disproportionate vulnerability of Dalit women to sexual violence and their disproportionate representation in custodial deaths, in

¹⁷ MEDA CHESNEY-LIND, *THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME* (1997).

¹⁸ Kathleen Daly, *Women's Pathways to Felony Court: Feminist Theories of Lawbreaking and Problems of Representation*, 2 S. CAL. REV. L. & WOMEN'S STUD. 11 (1992).

¹⁹ MEDA CHESNEY-LIND & LISA PASKO, *THE FEMALE OFFENDER* (2d ed. 2004).

²⁰ Kathleen Daly, *Women's Pathways to Felony Court: Feminist Theories of Lawbreaking and Problems of Representation*, 2 S. CAL. REV. L. & WOMEN'S STUD. 11 (1992).

²¹ MEDA CHESNEY-LIND & LISA PASKO, *THE FEMALE OFFENDER* (2d ed. 2004).

²² Hilary Allen, *Justice Unbalanced: Gender and the Legal System*, 22 BRIT. J. CRIMINOLOGY 40 (1982).

²³ NGAIRE NAFFINE, *FEMINISM AND CRIMINOLOGY* (1997).

India, highlights²⁴ the need for a gender-responsive and intersectional approach to rethinking justice systems.

Gendered stereotypes are deeply embedded in justice systems globally with regard to the treatment of offenders and the victims. For example, women who report sexual violence are more likely to be dismissed as either a liar or a hysterical victim, and men who are victims of sexual assault are more likely to be seen as weak, unmanly, or lacking in character than women who are sexually assaulted.²⁵

New problems in modern systems of justice. Debates over gender-neutral law, for instance, Uniform Civil Code in India and the gender-neutral provisions in sexual assault statute in the USA, have also presented gendered issues and questioned the efficacy of a gender-neutral approach, as gendered pathways are not accounted for.²⁶ Ratna Kapur, in her critical discussion of gender neutrality in India, argues that failure to acknowledge gendered pathways risk the erasure of structural disadvantage, thus leading to ineffective policies.²⁷

Greater focus on gender responsive policy responses. They call for policies and practices to change, such as training police and judicial officials to counter stereotypes, creating sentencing policies that take into account the victimization experiences of men and women, increasing services for female offenders, and implementing community-based policies and practices to address toxic masculinity. Such reforms are consistent with the international obligations under CEDAW and the UNCRC with a focus on inclusive and equitable justice systems.

Overall, the literature provides evidence that masculinity and femininity are not secondary factors but key factors of criminal behavior and justice outcomes. Researchers have questioned the neutrality of law, the lived reality of men and women in the contemporary justice system, and the need for reform, by examining the impact of gender identities on motivations, victimization and institutional reactions to such situations. Gendered pathways to crime hence offer a lens to reimagine criminology and legal policy in the twenty-first century.

MAPPING PATHWAYS

Crime is a complex social phenomenon and one of its most lasting aspects is that gender plays a role in the processes of offending and victimization. Although the traditional view of

²⁴ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139.

²⁵ Danielle Keats Citron, *HATE CRIMES IN CYBERSPACE* (2014).

²⁶ Barbara Bloom, Barbara Owen & Stephanie Covington, *Gender-Responsive Strategies: Research*

²⁷ Ratna Kapur, *Gender Neutrality in Indian Law: A Critical Appraisal*, 45 J. INDIAN L. INST. 23 (2003).

criminology has been that crime is a gender neutral event, empirical research has repeatedly shown that men and women are impacted by crime in different ways as both victims and perpetrators of crime. In this essay I will examine three interrelated aspects: patterns of male and female offending, and the socio-economic, cultural, and psychological factors that shape these patterns; and patterns of victimization that differentiate domestic from public sphere crimes. Combined, these dimensions highlight the need for a new understanding of masculinity and femininity in modern justice systems.

Patterns of Male Offending

Overall, men are more likely than females to commit violent and property crimes. For instance, in the context of limited economic opportunities, gang culture can glorify violence and risk-taking, where crime is seen as a way to gain status and recognition from other gang members.²⁸ James Messerschmidt (1990) examined the link between the construction of masculinity and crime, particularly by analyzing the roles of men in homicide, robbery, burglary, and gang activities.⁶ Studies have consistently found that men are more likely to be involved in homicide, robbery, burglary, and gang-related activities than women.²⁹

Male offending is also strongly linked to structural inequalities. The disproportionate representation of men in criminal records in India, with men from lower castes and minority groups being overrepresented in criminal records, shows systemic inequalities in policing and the criminal justice system; likewise, African American men are overrepresented in criminal records in the United States, which is related to racial profiling and discriminatory sentencing.³⁰ These patterns point to the need for a socio-political context when examining male offending.

Women have been traditionally viewed as an aberration in crime, needing some special explanation. Meda Chesney-Lind has found that women who are involved in crime tend to engage mainly in property crime, fraud or drug offenses, often as a result of economic marginalization or abusive relationships, and that their histories of victimization, such as sexual abuse and domestic violence are often a key part of the pathway into crime.¹¹ Kathleen Daly found that many of the women who were involved in crime in her study of women in felony courts have histories of victimization, including sexual abuse and domestic violence, that helped to shape their pathway into crime.

There are also systemic inequalities when it comes to female offending. Further, women

²⁸ Meda Chesney-Lind, *The Female Offender: Girls, Women, and Crime* (1997).

²⁹ Carol Smart, *Feminism and the Power of Law* (1989).

³⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139.

involved in sex work or drug trafficking often describe experiences of coercion or exploitation, indicating that criminality is embedded in survival and victimisation experiences.³¹ Justice systems also commonly use gender stereotypes in the way that women are treated as offenders. The double standard, that is, the double accountability of courts to women who fit within the traditional feminine role, versus the double punishment of women who fail to do so, is a result of the fact that traditional feminism is contained within the law, where it can be both a mitigating and aggravating factor depending on its conformity to societal expectations.

Socio-Economic Drivers

Socio-economic deprivation is a key factor in the gender disparity in offending. Economic marginalisation is often associated with crime and for men it can manifest itself as property crime, gang life or organised crime; for women, it may be related to victimisation and result in survival crimes, such as shoplifting or sex work.

Economic inequality also influences victimisation. The above facts highlight the need to implement policies that fight structural inequalities, such as access to education, employment and social welfare, as part of the prevention measures against crime, especially domestic violence against women and low socio-economic status men in violent street crime.

Cultural Drivers

Gendered pathways to crime are influenced by cultural norms. In some instances, the culture of the patriarchy is associated with women's oppression, for instance by aggressive and controlling behaviors within the home, which are perceived as acceptable and legitimate forms of male behavior.³² In other cases, the culture of the patriarchy is linked to the glorification of violence and risk-taking, which is reflected in male domination of women in the home, and is seen as acceptable and legitimate forms of male behavior.³³

Cultural norms often limit opportunities for women and encourage their dependency, making them more likely to be victims of violence and criminalisation, and in many societies, women are double-jacked for crimes and for failing to adhere to gender norms.³⁴

³¹ Barbara Bloom, Barbara Owen & Stephanie Covington, *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* (2003).

³² Michael Flood, *Men, Sex, and Domestic Violence*, 12 *VIOLENCE AGAINST WOMEN* 295 (2006).

³³ Stephen Tomsen, *Masculinities, Crime, and Criminal Justice*, in *OXFORD HANDBOOK OF CRIMINOLOGY* (2016).

³⁴ NGAIRE NAFFINE, *FEMINISM AND CRIMINOLOGY* (1997).

Psychological Drivers

Gendered pathways to crime are also influenced by psychological factors. Trauma and victimization are also factors that contribute to female offending. Women are more likely than men to engage in coping behaviours in response to stress, such as substance abuse or domestic and family violence, and to internalize a feeling of being a victim. The psychological consequences of victimization increase a woman's risk of committing survival crimes, especially women who have suffered abuse in the past.³⁵

Gendered pathways are further complicated by mental health issues. The perpetuation of this stigma against men seeking mental health services and against women seeking disorder in the justice system suggests the need for gender-responsive mental health services in the justice system.

A comparison of trends in victimisation rates for both public sphere and domestic sphere crimes.

There are significant differences in victimisation between genders. The crimes of domestic violence, sexual assault, trafficking and harassment deeply embedded in the socio-economic dependency and cultural norms of society, particularly affect women in rural areas, who have limited access to support services and high stigma.

Male victimisation, on the other hand, is under-reported because of the cultural expectation that men should be 'tough' and not report on or admit to being a victim of violence on the street or homicide.³² This silence serves to strengthen stereotypes of masculinity and to camouflage vulnerabilities that face male victims.

Gendered patterns can also be discerned in public sphere crimes. The gender differences in incidence rates highlight the importance of tailored support for the victims of sexual harassment, trafficking and cybercrime, and tailored interventions for those who are victims of robbery, assault and gang violence.

Overall, these trends in offending by males and females, as well as the socio-economic, cultural and psychological factors that influence these trends, provide a clear illustration of the gendered nature of crime, as do the different trends in victimisation between domestic and public sphere offences. Masculinity and femininity are not just factors but central factors in crime and justice outcomes. The study of the ways in which gender relates to motivations and victimization experiences as well as institutional reactions can help create more inclusive and

³⁵ JAMES W. MESSERSCHMIDT, *MASCULINITIES AND CRIME* (1993).

equitable justice systems. However, a more nuanced approach to gendered pathways to crime is needed to break the cycle of stereotypes, empower marginalized individuals and groups, and achieve equal opportunity for both genders.

GENDER BIAS IN CRIMINAL JUSTICE SYSTEMS

Despite the profession's claims of neutrality, empirical research shows that gender stereotypes have a significant influence on police tactics and tactics, prosecutive decision-making, judicial thinking, and sentencing.³⁶ Women are let off with it when they play their traditional roles, men are stereotyped as being inherently violent and therefore are punished more severely. This chapter discusses these biases, considers sentencing differences and looks at jurisdictions to draw international lessons.³⁷

Police Practices

The first point of contact between individuals and the justice system is policing and there is a gender bias as complaints are recorded, investigated and pursued. It has been observed in India that women's complaints of domestic violence or sexual assault are frequently dismissed and women who fit into stereotypical caregiving roles are given greater lenience, whereas women who commit violent offences are subjected to more rigorous investigation.³⁸

The Department of Justice gave guidance in 2015 to the United States to eliminate gender bias in the prosecution of domestic violence and sexual assault cases, including misclassification of cases, failure to investigate sexual assault kits and failure to prosecute cases involving LGBTQ victims.³ In the world, women are underrepresented in police forces and create institutional bias, because male-dominated institutions are poorly trained to handle gender issues.³⁹

Prosecutorial Discretion

Prosecutors have a lot of discretion over whether to charge, the specific charges they bring and whether to seek plea bargains. These decisions are biased by gender. In domestic violence cases, prosecutors in the larger gender category (women) also punish male defendants more frequently, consistent with the representative bureaucracy theory, when they are more

³⁶ Flavia Agnes, *Dalit Women and Sexual Violence: Justice Denied*, 47 *ECON. & POL. WKLY.* 12 (2012).

³⁷ Hilary Allen, *Justice Unbalanced: Gender and the Legal System*, 22 *BRIT. J. CRIMINOLOGY* 40 (1982).

³⁸ U.S. Dep't of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2015).

³⁹ Carol Smart, *FEMINISM AND THE POWER OF LAW* (1989).

experienced.⁴⁰

Prosecutorial discretion is influenced by implicit bias as well. In India, prosecutors' lack of zeal to prosecute cases of marital rape is reflective of cultural norms that value family preservation over the rights of women, as studies have shown.⁴¹

Judicial Reasoning

Judicial reasoning is often influenced by gender stereotypes. This reflects the “Chivalry Thesis” that women are treated more leniently when they act according to traditional gender roles, and the “Evil Woman Hypothesis” that women who deviate from their gender roles are punished more severely.

Judicial stereotyping is still prevalent in India. In South Africa, however, the Constitutional Court in *S. v. M* placed emphasis on the transformative constitutionalism, rather than on stereotypical reasoning, and emphasized on substantive equality in sexual violence cases, where questions were asked regarding women's clothing or behaviour.⁴²

Sentencing Disparities

Gender stereotypes are well recognised in sentencing. Women are generally seen as victims or passive and have lighter sentences. By contrast, women are stereotyped as weak, and punishment is more severe, as *R. v. Sharma* in Canada discussed the need to address gendered sentencing, especially for Indigenous women who suffer systemic disadvantage.⁴³

Women convicted of violent crimes tend to be sentenced more severely than men with the same convictions, and in India, women who are convicted of dowry-related crimes are blamed for family conflicts, while the men receive lenient sentences.⁴⁴

Comparative Global Insights

Through comparison, growth and areas for improvement are identified. Sweden has taken a pro-gender-neutral stance to sentencing in a ‘welfare justice’ system, whereas in India, there are still strong patriarchal sentiments that need to be challenged.⁴⁵ Canada takes a gender-sensitive stance to sentencing, especially for Indigenous women, and South Africa's courts

⁴⁰ Cassia Spohn, Gender and Sentencing of Drug Offenders, 24 CRIM. JUST. POL’Y REV. 285 (2013).

⁴¹ Ngaire Naffine, FEMINISM AND CRIMINOLOGY (1997).

⁴² Cassia Spohn, Thirty Years of Sentencing Disparity Research, 3 JUST. Q. 231 (2015).

⁴³ *R. v. Sharma*, [2022] 3 S.C.R. 1 (Can.).

⁴⁴ Dana M. Britton, Feminism in Criminology: Engendering the Discipline, 571 ANNALS AM. ACAD. POL. & SOC. SCI. 57 (2000).

⁴⁵ UNODC, Global Study on Homicide (2023).

place a strong emphasis on 'transformative constitutionalism'.

The United Nations Office on Drugs and Crime (UNODC) and other global institutions report that while women are less likely than men to be involved in homicide, they are more likely to be victims of domestic violence and trafficking, particularly amongst marginalised groups. Men's involvement in homicide is also reported as being more prevalent than women's.⁴⁶ The Global Justice 50/50 Report (2026) also showed that there has been progress in gender justice policies in 171 organizations, albeit with gaps in implementation, particularly for marginalised communities.

CASE STUDY

Gender stereotypes in criminal justice outcomes are presented in real-world examples through case studies. The study of key cases in various jurisdictions reveals the role of masculinity and femininity in police response, prosecutorial decision-making, judicial decision-making, and policing disparities. Four cases are analysed in this chapter namely Nirbhaya gang rape case (India), Sushant Singh Rajput case (India), R v Sharma (Canada) and S v M (South Africa). Overall, these cases illustrate the continued existence of gender bias and the necessity of gender-inclusive reforms.

The Nirbhaya Case (India, 2012)

The brutal gang rape and murder of a young woman in Delhi in December 2012, called the Nirbhaya case, was a turning point in India's criminal justice system, which exposed the weaknesses in law enforcement, prosecution and judicial logic.⁴⁷ At the time, police initially refused to register the complaint, and the general attitude towards sexual violence was dismissive, with the police taking action and making quick arrests and convictions.⁴⁸

In the case, entrenched stereotypes were evident in judicial reasoning. The case also demonstrated sentencing inequity, in that the juvenile offender was sentenced under the Juvenile Justice Act, whereas male offenders were sentenced to death – an assumption about age and culpability.⁴⁹ Feminist scholars point to the case as further evidence of the neglect of everyday victims of sexual violence in the name of retribution.⁵⁰

⁴⁶ Global Justice 50/50 Report, Gender Justice Policies in International Organizations (2026).

⁴⁷ Mukesh & Anr. v. State for NCT of Delhi & Ors., (2017) 6 SCC 1 (India).

⁴⁸ Flavia Agnes, Dalit Women and Sexual Violence: Justice Denied, 47 ECON. & POL. WKLY. 12 (2012).

⁴⁹ Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000, INDIA CODE.

⁵⁰ Meda Chesney-Lind, The Female Offender: Girls, Women, and Crime (1997).

Sushant Singh Rajput Case (India, 2020):

The death of Bollywood actor Sushant Singh Rajput in 2020 came under intense media scrutiny and legal controversy, and the police investigation showed gender bias by vilifying the actor's partner, Rhea Chakraborty, and conducting intrusive investigations on her, portraying her as a manipulative or destructive force.⁵¹

There is a clear instance of prosecutorial discretion in the aggressive prosecution of the charges against Chakraborty despite the lack of evidence; moreover, the judges' reasoning also included gendered narratives, where the feminization of Chakraborty was described as a 'bad woman' who corrupted Rajput. Sentencing disparities were not directly applicable, though pre-trial detention and media trial demonstrated how femininity can be pathologised in high-profile cases.⁵²

R. v. Sharma (Canada, 2022)

In *R. v. Sharma*, the Supreme Court of Canada considered sentencing disparities affecting Indigenous women, finding that systemic disadvantages, such as poverty, victimization and the legacy of colonization, influenced Indigenous women's path into crime. Sharma, an Indigenous woman convicted of drug trafficking, challenged mandatory minimum sentences, which she argued had an inequitable effect on marginalized Indigenous women.⁵³

The case provides a good example of how judges can be gender sensitive and break the cycle of stereotypical thinking and fair justice.

S. v. M (South Africa, 2007)

The South African Constitutional Court in *S. v. M* considered sentencing differences for primary caregivers who are sentenced to imprisonment when the woman was the victim of fraud. The Court highlighted an emerging 'transformative constitutionalism', noting the effects of sentencing on women and children.⁵⁴

This case represents an approach to judicial reasoning that is tailored to the specific needs of girls and women as well as the substantive equality of all girls and women. This case reflects gender sensitivity in judicial reasoning to reduce disparities and promote justice.

⁵¹ Sneha Priyadarshani & Jyoti Yadav, *Gender and Crime: Exploring Patterns and Implications*, IJCRT (2024).

⁵² Hilary Allen, *Justice Unbalanced: Gender and the Legal System*, 22 BRIT. J. CRIMINOLOGY 40 (1982).

⁵³ *R. v. Sharma*, [2022] 3 S.C.R. 1 (Can.).

⁵⁴ *S. v. M*, 2007 (2) SA 539 (CC) (S. Afr.).

CONCLUSION

Gendered pathways to crime expose the ways in which crime is a gendered phenomenon that is inextricably linked to the social constructions of masculinity and femininity. Globally, culturally and historically, evidence shows that men and women are affected by crime differently, both as a victim and as a criminal, and that justice systems tend to accentuate and reinforce gender differences rather than eliminate them. This conclusion brings together the arguments of the chapters that have gone before, and outlines the implications for theory, empirical scholarship and policy of reconceptualizing gender in modern systems of justice.

The central tenet of this study is the understanding that masculinity and femininity are not purely biological constructs, but socially constructed gender roles that are influenced by cultural norms, socio-economic and psychological conditions. The concept of masculinity has always been linked to aggression, dominance and risk-taking, which are admired qualities in a patriarchal society and frequently embodied in organized crime and gang culture, as well as in acts of violent crime. Femininity on the other hand, has been associated with passivity, nurturing and compliance, and female offending often described as aberrational or a result of victimisation and survival strategies. The buildings not only define avenues to crime but they also affect the reactions of justice systems to offenders and victims.

The patterns of male offending reveal the intersection of the concept of masculinity and structural inequalities. Violent acts are mainly perpetrated by men, which is not always explained by performance of hegemonic masculinity. Where poverty and marginalisation exist, crime can be a way of claiming identity and of securing status. Gang culture is an example of this—a culture that manifests violence and risk-taking in the form of symbolic expressions of masculine performance. Domestic violence is also an indicator of patriarchal norms that associate men with being in control of women and cycles of violence and exclusion. These pathways highlight the need to consider male offending in the context of the socio-economic and cultural systems that perpetuate a culture of aggression/dominance.

Unlike male offending, the victimization and survival histories of women are frequently linked to their offending. Women's participation in property crimes, fraud, or drug offenses often is a result of a lack of economic opportunities, victimization by males or force. Many female criminals have a history of sexual abuse or domestic violence, indicating that many of their crimes are not necessarily a reflection of who they are, but what has happened in their lives. The justice system may also apply gender-based stereotypes in the way it deals with

female offenders, being lenient towards those who behave in a traditional manner while being very tough against the ones that do not. This double standard is a reflection of the continued existence of the patriarchy's assumptions in legal institutions, in which the feminine is a mitigating and aggravating factor depending on whether or not it corresponds to the expectations of society.

Socio-economic factors exacerbate gendered trajectories to crime. Poverty, unemployment and illiteracy put people in a situation where crime is a way of life and social mobility. Economic marginalisation may result in property crime or organised crime for men, as expressions of manhood. Poverty and victimisation are interconnected for women and can result in a situation where they are forced to commit crimes in order to survive, for example, shoplifting or sex work. Economic inequality also impacts victimisation with women in lower socio-economic groups being more vulnerable to domestic violence and trafficking, and women in marginalised groups being more likely to be victims of violent street crimes. The lessons from these facts point to a need for policies that reflect and respond to structural inequalities in the context of crime prevention.

Gendered pathways are influenced by cultural drivers. Patriarchy sees men as the aggressors, the controllers and normalizes men's violence towards women. Domestic violence is a kind of cultural norm that places a stronger emphasis on the male than the female and gang culture glorifies violence and risk-taking as a sign of manhood. Cultural norms limit opportunities, promote dependency and make women more susceptible to victimization and criminalization. Women who commit crimes are not only blamed for committing crimes, they also are blamed for breaking gender norms, which further marginalises them. Such cultural dynamics emphasize the importance of the justice systems in confronting, not sustaining or reinforcing, the notions and expectations of patriarchy.

There are also psychological mechanisms that affect gendered pathways. The connection of aggression and risk taking with socialization processes that equate masculinity with dominance are related among men. Men tend to externalise stress through violence, women tend to internalise stress, manifesting in other ways of coping, such as by using drugs. Trauma and victimisation are important in the patterns of offending by women, and those women who have a history of victimisation are more likely to commit 'survival crimes. These pathways are further complicated by mental health issues, for it is still stigmatizing for men to go for mental health treatment, and for women to ever be pathologized through justice systems. These patterns reflect the need for gender-responsive mental health interventions.

There are significant gender disparities between crimes in the domestic sphere and in

the public sphere; these disparities are revealed in victimization trends. Patriarchal structures and norms are the basis of domestic violence, sexual assault, trafficking, and harassment against women, which disproportionately affect women. Domestic violence is indicative of socio-economic dependency and male supremacy, with women in rural areas being particularly at risk as they are less likely to have access to support services. By contrast, men are more likely to be victims of violent street crimes and homicide but less likely to be discussed in this matter because of the culture of tough guys. There are also gender disparities in the number of public sphere crimes targeting women, particularly sexual harassment, and cybercrime, and men, particularly robbery and gang violence. These differences highlight the specific vulnerabilities of women and men that should be considered in victim support services.

Through case studies, the presence of gender stereotypes in criminal justice is illustrated. The Nirbhaya case in India exposed the failures in the policing and judicial responses and brought people to the public platform for the purpose of public outrage, which in turn resulted in retributive justice, but not much in terms of systemic changes. The case of Sushant Singh Rajput also brought to light that femininity can be pathologized in a case of this magnitude with Rhea Chakraborty being the subject of invasive investigations and vilification by the media. In Canada, *R. v. Sharma* was a case that illustrated how a judicial approach that was gender-sensitive could overcome stereotypes and move towards substantive equality, particularly for Indigenous women. In South Africa, *S. v. M* used to highlight the concept of transformative constitutionalism and the effects of sentencing on women and children. These cases were instructive in their shared biases, as well as the possibility of change based on gender-informed judicial logic.

Gender stereotypes are highly visible in the police work, the prosecution of cases and the courts' decisions on them, as well as in sentencing. Women are given extra credit for their "femininity" and men are given extreme punishment for their lack of "aggression". A comparison highlights that countries such as Canada and South Africa are making progress in adopting a gender lens when considering sentences, while India faces deeply entrenched gender norms. It is important to tackle these inequalities through gender neutral laws, train judges and train more women and marginalized genders, and through intersectional reform to make justice more fair in all justice systems.

Theoretical implications from this study are to further expand feminist criminology and masculinity theory from comparative justice. This research will provide a deeper understanding of crime and justice by examining the motivations, victimization and institutional reactions of people as influenced by gender identity. The implications for practice contain policy

suggestions for gender-responsive policing, prosecutorial decision-making, judicial reasoning, and sentencing. The reforms are consistent with international commitments in instruments like the Convention on the Elimination of All Forms of Discrimination Against Women and the United Nations Convention on the Rights of the Child, which include the provision of inclusive and equitable justice systems.

To sum up, the reconstruction of masculinity and femininity in the modern justice systems is not just an academic matter but a practical one. Justice systems can not afford to overlook gendered pathways, as this can lead to perpetuation of inequality and to a lack of fairness. Justice systems can work towards inclusivity and equity through acknowledging lived realities of men and women, breaking stereotypes and advancing substantive equality. This calls for a change of paradigm from formal neutrality to substantive responsiveness; an understanding that equality can be accomplished only by treating different groups as different.

The findings of this research highlight the importance of gendered pathways to crime as an important aspect of understanding of criminality and justice. Gender roles influence not only the types of crimes committed and their motives but also reactions to crime by justice systems. This study draws on theoretical considerations, empirical data and case studies to recommend policy changes that break the stereotypes, increase the gender empowerment and ensure fairness for all genders. The way forward is to adopt gender-responsive policies, intersectionality analysis and transformative justice, to make the current justice systems, both formally and practically, gender just.

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