



THEORIES OF FEMALE CRIMINALITY: A SOCIO-LEGAL ANALYSIS.

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ABSTRACT

Female has always been seen as a victim rather than perpetrator of the crime. Therefore in any criminal justice system special provisions are framed for the treatment of women. But from the experience of the current scenario prevailing all over the world the involvement of women and girls in crime commission are startling. The reasons behind this change may be many but the consequences are posing threat to the society. As women is considered to be the foundation of the social structure of any country and if Female Criminality is on the rise then surely the very existence of humanity and moral values in the society is at stake.. In this backdrop the paper address the issues related Female Criminality and various theories attached thereto.

KEYWORDS : Female, Crime, Female Criminality, Theories, Criminology, Women Offenders, Reformation Etc.

Introduction

"Women... Are always-already not men, Femininity is constructed on the site vacated by masculinity, and this absence of maleness is manifested in two opposing sets of expectations..."¹

We often relate criminality with males and females represent a minority of offenders. Therefore because of the small number of females committing crimes, it becomes necessary to closely assess the responses by the justice and social systems to females who offend and in the development of gender-informed crime prevention strategies. However, in order to understand the scope of issues related to women and the criminal justice system it is important to look at the incidence and experience of crime against women, as well as women as offenders. It is because of the relatively small number of females committing crimes that it is crucial to closely monitor female offending patterns. Otherwise, differences in the experiences of women and girls in the criminal justice system may be masked by trends that reflect the larger male offender population.²

If we talk about civilization, we talk about law. As we cannot imagine a civilized life without an existing law to regulate the behavior of the citizens. And among all branches of law, the criminal law is the most important aspect of controlling the civilized life. Criminal law condemn crime and explain what is crime or what kind of act or omission amounts to crime .Crime, we are told, is today a salient fact, an integral part of the risks we face in everyday life. In both scholarly and public opinion crime is associated with harm and violence; harm to individuals, destruction of property, and the denial of respect to people and institutions. It is clear that we face pressing problems of a practical and scholarly nature in understanding crime. But we lack agreement on the most basic question, namely what is crime?³

Crime operates as a core concept in modern society. It seems like a common sense category but this is only a superficial appearance. Its widespread use, moreover, makes it necessary to ask what boundaries can be placed around the use of the term 'crime'. What does its use mean for us, individually, as speakers of the word, and collectively, as social groups that use the concept? Who has the power to make their claims as to what is a crime, and by what processes do these claims stick? These questions raise issues of social power and of popular acceptance, of objectivity and relativism; is there a settled or 'objective' way of calling things crime that is accepted across social groups and different territorial institutions or must any use of the term crime be subjective, perhaps accepted within a particular locality or group, but leading to relativism when other perspectives are taken into account?⁴

Writing in the late nineteenth century, the French sociologist Emile Durkheim—often referred to as the 'father figure of sociology' — pointed out that a great deal of social change has occurred as the result of people going against the settled rules and opposing the interests of those in power

According to Durkheim, a society that had no crime would-be 'pathologically over-controlled': Accordingto Athenian law, Socrates was a criminal, and his condemnation was no more than just. However, his crime, namely, the independence of his thought, rendered a service not only to humanity but to his country. It served to prepare a new morality and faith which the Athenians needed, since the traditions by which they had lived until then were no longer in harmony with the current conditions of life.⁵

As per the above definition, it seems that Defining crime is complex, dependant on social, political and economic factors. Crime is an act punishable by law. If somebody breaks the law, whether it is a serious or minor crime, s/he will be punished. Some argues that no matter how immoral, reprehensible, damaging or dangerous an act is, it is not a crime unless it is made such by the authorities of the State, the legislature. Some sociologists argue that only those are criminals who have been adjudicated as such by the courts, and no act can be considered criminal before and unless a court has meted out some penalty. Not all of those who break criminal laws are caught and convicted and many acts that could be considered criminal are rarely prosecuted. The forms of punishment are varied, depending of seriousness of crime, for example, imprisonment etc. Deviance is a type of behaviour that is not accepted by the majority of the society. It is behaviour that differs from the "norm" and terms weird, evil, sick, immoral are often connected with this form of behaviour. This could be something as minor as wearing the wrong kind of clothes to a party or as major as a murder. Many deviant acts that are not accepted by society are not necessarily criminal acts. Certain type of behaviour may be accepted by one society, but devalued and discredited by another. For example, drinking alcohol in British society is considered acceptable, even if it has negative impact on our society. However, there are many cultures (particularly those influenced by religious beliefs) that disapprove of this behavior.⁶

Thus we can say that Crime is some action or omission that causes harm in a situation that the person or group responsible 'ought' to be held accountable and punished, irrespective of what the law books of a state say. Crime is an action against the law of God, whether as revealed in the holy books, such as The Bible, Koran, or Torah, or that we instinctively recognize as against God's will, irrespective of what the law books of a State say..Crime is an act or omission that is defined by the validly passed laws of the nation.

Without the State and the criminal law there is no crime. Without criminal justice systems there are no criminals.⁷

I Female Offenders and Crime:

Although violent offenses constitute only a small percentage of all the offenses committed by offenders in any population, females participate in substantially less violent crime than males during the course of their criminal careers. The careers of violent females both begin and peak a little earlier than those of males..Females are far less likely than males to repeat their violent offenses..Females are far more likely to desist from further violence. In brief, long-term involvement in crime an extensive criminal career is extremely rare within the female offender population.⁸

Feminists believe that all the traditional theories of criminality are rated in men's experience as criminology has been dominated by males. Feminists hold that women experience subordination on the basis of their sex in patriarchy and this subordination lead to crime. They argue that patriarchy must be ended or at least fundamental changes must be made in gendered institutions and social relation in society.The goal would be to reduce gender based disparities and inequalities in society and especially in law. This explanation seems most appropriate for India where a large percentage of women are arrested and convicted for dowry harassment and murders because most convicted women are educationally and economically backward. They commit the crime of murder along with an accomplice. However most are first time offenders. Here at first it seems that women are killing other women for money however dowry in itself is a very patriarchal custom which clearly represents that man is superior to woman and every person from the grooms side is superior to the brides side and can ill treat, misbehave, hurt and even kill the bride and insult people on her side. Crimes committed by women offenders mostly constitute prostitution or Sex Delinquency, Child-Marriage, Dowry Murder, Cruelty by Relatives and Dowry Harassment, Kidnapping and Abduction, Murder,Theft etc.

II Causes Of Female Criminality:

There are various factors causing female criminality. Most prominent among them are Social, Cultural, Psychological, and Economic factors.Which are discussed below:

Socio Economic Factors

According to Freda Adler⁹, there is a strong correlation between the social and economic role of Women in the society and the concept of Female Criminality. He claims that when the social status of women provides parity with men, their crime patterns and frequency will more seem like those of their male counterparts. He focused on the association between the startling rise in Female Criminality and the women's liberation movement and new feminism. He described new feminism as a "consciousness-raising" movement and he predicted that, as women drew closer to men socially, they would become more equal on all counts in criminality as well¹⁰

-Psychological Factors:

According to Burt, Healy and Bonger, there is a difference of arguments with respect to association of Female Criminality with some psychological features. Burt argues that females commit fewer numbers of crimes due to dominant feelings like tenderness, forgiveness and fear. Bonger suggests that women are far psychologically stronger than men, and thus their participation in crime is far lower than that of men. According to Bonger, in the post-World War II period, a small proportion of women have participated in economic crimes due to economic deprivation¹¹ However, there are also studies arguing that women are far more disconcerting than men and psychological problems are more common in women than in men, and that, due to these reasons, women more commonly feel desperation than men do. The fact that women are

more suspicious than men may as well be a factor that might lead to female criminality.¹²

-Biological Factors:

According to Lombroso¹³, women, as required by their nature, are in fact the defenders of the social order and that the mentioned harmonization forces them to adopt and to be overwhelmed by the social order. It is also argued that women participate in criminal behavior due to some physical incompatibilities. For the internal physio-chemical characteristics, the females are more conservative and play a neutral role; consequently, committing less crime than males¹⁴ Lombroso argues that criminality is principally the product of inconsistent and altered thought of women, related to their indirect role in domestic affairs educational factor

According to the study of Guttentag and Secord, women are protected more in societies where the percentage of females in the population is low, since their role as mothers and wives are prioritized more highly. On the other hand, in the societies where female population is higher in number, marriage age is low and fertility rate is high, while the education opportunities for women are extremely limited¹⁵

-Cultural Factors:

According to Cohen, the reason that women commit fewer crimes than men is that the subculture they belong to is different than that of men. Even when they live in the same village or quarter, the interpretations about the criminality of women and men and the subcultures created by these interpretations are quite different. The faults of women are less tolerated. The education women receive in the society is more repressive than that received by men. The mentioned education continues to be given in the family, neighborhood and at school in different intensities. One of the most determinative factors for women creating their own subcultures with regards to Female Criminality is the family. Because of this, most of the recently conducted studies focus on the families of female criminals¹⁶.

III Theories Of Female Criminality:

As said earlier, when we think of a stereotypical criminal, we tend to think of a male. It is unlikely to imagine a female as criminal. The prison statistics also justified this stereotype thinking¹⁷.

But now the trend is changing and this criminal gap between male and female offenders or conviction is fast closing. Therefore the question arises is whether this rise is due to reporting and conviction policies, or whether women are genuinely starting to commit more crimes. Considering it's so uncommon for women to commit crime various theories have evolved to answer, why some women do become criminal.¹⁸ There are traditional as well as contemporary theories dealing with issue of female criminality. Each theory tends to give its explanations of Female Criminality through observations and behavioral study.¹⁹

-Traditional Criminological Theories: Early explanations (1890's to early 1950's) of Female Criminality tended to view crime and Human Behaviour in a more general way. Theories surrounding criminality tended to attribute crime to biological or social factors; beyond the control of the individual committing the crime. For most traditional explanations, women and their criminality were viewed as ancillary, or secondary to that of males. Female Criminality was often explained in simple terms, with simple motivations.

The most important among these theories are as follows:

1. Cesare Lombroso (1835-1909)

The Born Criminal suggested that biological properties were the determinants of criminal behavior. A reversion to a primitive man, with physical features closely linked to apes, were both indicators of

a criminal for Lombroso. He studied autopsies of criminals and determined certain physical "stigmatic" characteristics to be present: deviation in head size and shape, eye defects and oddities, asymmetry of the face and cranium, ears of an unusual size, etc. This was his evidence to suggest biology as a determinant of crime. He viewed female criminals as having excessive male characteristics and as exhibiting masculine biological orientations. He argued that, criminal females resembled men (criminal or non-criminal) more closely than non-criminal females.²⁰

This old theory suggested that criminals had certain biological characteristics, which manifested in them looking a certain way. According to this theory, female criminals are genetically and biologically disadvantaged, and less evolved than men. It's suggested that these women suffer from "penis envy", which causes them to turn to crime.²¹

2. Otto Pollak (The Criminality of Women: 1950)

Prior to the modern period, Pollak's work is considered to be of importance in the area of explaining Female Criminality. He argued that the types of crime that women commit (i.e. shoplifting, petty theft, abortions, perjury etc.) are under-represented in statistics for the following reasons: easy concealment, chivalry in the criminal justice system, under-reporting. He also suggests that crime rates between men and women are likely quite similar, but for these reasons, Female Criminality appears less prevalent. Pollak's theory perceived inherent and deceitful nature of women which he believed to be rooted in the passive role women maintained (i.e. during intercourse, or by hiding her menstruation cycle). He argued that women were the criminal masterminds; the instigators of crime as opposed to the perpetrators, that they could and would manipulate men into committing offenses to keep their own name clear.²²

-Contemporary Theories of Criminality:

Following the feminist movement in the late 1960's, the role of women in society became a more interesting topic and was observed more closely by society.

1. Freda Adler (The Women's Liberation Hypothesis)

In Sisters and Crime (1975) Adler proposes that changes in Female Criminality are directly related to changes in roles of women in society. Women have increased their numbers in the workforce and have been granted greater freedoms as a result of the women's liberation movement. According to Adler, as women take on more dominant positions in society and adopt more traditional male roles, Female Criminality will increase accordingly.²³ If you listen to traditional gender roles, women should be timid, quiet, attentive and soft. These traits hardly make a good criminal, and some suggest this is why traditionally less women were engaged in criminal activities. Women and men are socialised from an early age to adhere to certain gender roles and stereotypes, and this largely prevents women from having the same criminal opportunities as men. However, due to women's liberation and feminism, society is changing their views towards gender. Women have more rights than before, and these strict gender roles are being blurred more and more in Western society. This change means women are becoming more confident, and having higher self-esteem. It also means women have more opportunities in many aspects of their lives. An unfortunate side effect of this is that they also have more opportunities in the criminal world, and are more likely to commit "masculine" crimes. According to this theory, women commit crimes due to the loosening of gender roles.²⁴ This is supported by Giordano and Cernkovich (1979) who found delinquent girls were more likely to agree with the statement "I can do whatever a boy can".²⁵ However, even then female criminals do still hold some traditional views, usually surrounding family.

2. Clarice Feinman and Ngaire Naffine – (Economic

Marginalization

This theory suggests that increased crime by women is directly related to the absence of real and meaningful opportunities for women. Despite the increase of women in the working world today, there are still a great many of them that are not employed or who are working in minimum wage paying jobs. Statistics support this theory by demonstrating that the majority of female offenders are unemployed or concentrated in areas where pay is low and work is unrewarding.²⁶

3 – Self-Control Theory

This theory was originally devised by Hirschi and Gottfredson, and is considered a "General Theory Of Crime". This means it aims to explain all crime, and does not think you need gender specific explanations of criminality. The theory suggests that crime occurs when people (men or women) have a lack of self-control. They suggest a lack of self-control comes about due to ineffective child rearing practices of their parents as they are growing up. People who are low in self-control are likely to be impulsive, insensitive and get physical quicker. These are obvious traits that could lead to criminality. Thornton, Graham-Kevan and Archer (2013)²⁷ found that criminals are often versatile, and this supports the idea that they have a lack of self-control. According to Longshore there are other factors apart from self control which envisage criminality.²⁸

4 – Social Control Theory

Developed by Hirschi in 1969,²⁹ Social Control theory suggests that every one of us experiences criminal urges. However, the reason the majority of us do not act upon them is that external forces control these urges, stopping us acting on them. Examples of these kind of external factors include attachment, commitments, involvement, beliefs and conformity. These factors all ensure a person is suppressing their criminal desires. However, if these controls are missing or weak in a person, they are more likely to act upon their criminal urges. Alarid, Burton and Cullen (2000) found support for this theory when they found very few gender differences in the relationship between a lack of social control and criminality. This suggests that this theory of crime can also be applied to female offenders.³⁰

5 – Social Learning Theory

Social Learning theory was a theory developed by Bandura³¹ to explain all types of human behavior. This theory suggests behavior is learnt through imitation and reinforcement. Therefore, they would suggest criminal behavior is learnt through observing criminal activity, modeling that behavior (reproducing it) and then either having it reinforced or not. Therefore, according to this theory, the more crime you observe the more likely you are to become a criminal yourself. Some jurist did find that criminality could be explained by the amount of criminal behaviour a male observed in their life. However, it is questioned that whether this relationship holds true for females also.? In this context it is argued that such conception was not as strong for females. It is important to remember, those around a person are likely to be from a similar background to them, and so this could be a confounding variable in this relationship.

IV Conclusion

All of above theories explain Female Criminality in one or another aspect. However none is able to make out fully the psychology and factors responsible for the so called soft hearted women to become criminal. The existing pattern of social relations³², over ambitious and materialistic mentality and breakdown of stereotype image of women is largely contributing to the factor of Female Criminality. If we talk about India then the Dowry Culture, Matrimonial Cruelty, Or Social Insecurity of Women are the main reasons behind women becoming the accused. Sometimes the women being the least suspected criminal is used and implanted by the crime perpetrators in politically motivated crimes.

The case of *State Of Tamil Nadu Through Superintendent Of Police, CBI/SIT v Nalini And 25 Others*³³ very aptly depicts the famous face of Female Criminality in India.

Moreover the unbiased social system is one of the main reasons why women resort to crime as retaliation to her suppression. In most of the cases a female offender suffers mental disturbance in which the probability to her committing crimes goes higher. At last the author is of the view that whatever may be the reasons and the circumstances for a female to turn in to criminal the theory of criminal justice requires that the treatment of female offenders should be unbiased of gender. The prime focus of the criminal justice system should be based on social investigation and consideration of personality make-up and the circumstances in which the crime was committed. The female being the foundation of human values should be reformed through reformative treatment during sentence. The feelings, attitudes and psychology of the women offenders and the compelling situations and circumstances in which she committed crime should be targeted during her reformation so as succeed in their reformative aims.

1. Carlen, P.(1998) *Sledgehammer*,London, MacMillen Press Ltd
 2. Tina Hotton Mahony, *Women and the Criminal Justice System* <http://www.statcan.gc.ca> and Wayne Morrison, What is crime? Contrasting definitions and perspectives <https://www.issafrica.org/crimehub/>
 3. *Ibid*
 4. Durkheim, E. (1966) *The Rules of Sociological Method* (trans S.A. Solvay and J.H. Mueller, (ed) G.E.G. Catlin). New York: Free Press.
 5. William Little, --Introduction to Sociology 1st Canadian Edition, Chapter 7. Deviance, Crime, and Social Control <https://opentextbc.ca>
 6. Chris Hale, Keith Hayward, Azrini Wahidin, E,(2009) *Criminology*, at 12-13.
 7. Jennifer Schwartz and Darrell Steffensmeier *The Nature of Female Offending: Patterns and Explanations* https://www.upf.edu/mastercriminologia/_pdf
 8. Freda Adler, *Sisters in Crime* (1975) The Rise of the New Female Criminal, New York, McGraw-Hill, at 287
 9. Flowers, R.B.,(1987) "Woman and Criminality" *The Woman as Victim, Offender and Practitioner*, Greenwood Press, America, at 61
 10. İcli, T.,(1988) "Sosyal Degisme Surecinde Kadın Suçluluğu", Hacettepe Universitesesi , Edebiyat Fakultesi Dergisi, Cilt.5, Sayı,2, at 17-32
 11. Rhone, L.M., (1986) Measurement of Text Anxiety Among Selected Black Adolescents, prioriteness of four anxiety Scale, Journal of School Psychology, 24,at .313-319
 12. Lombroso Cesare, (1895), *The female offender* New York : D. Appleton company.
 13. *Ibid*
 14. İcli, T.,(2004) *Kriminoloji, Martı Kitabevi*, Ankara, at 369
 15. Id at 371-74
 16. According to the International Centre for Prison Studies, in Canada females only make up 5% of the prison population, and in the USA this figure goes up to 6.9%. Furthermore, 81% of the women in prison in the USA are in prison for non-violent crimes.(5 REASONS FEMALES TURN CRIMINAL psych2go.me/post/157195998482/5-reasons-females-turn-criminal)
 17. Imogen bowler, www.psych2go.net *Evolutionary Psychology*
 18. Williams, McShane, (2004) *Criminological Theory*, Pearson/Prentice Hall, at 253
 19. Supra note 19 Williams, McShane, at 125
 20. There is very little evidence for this approach, other than Lombroso's own observations, and nowadays this theory would be considered sexist, and completely outdated. This theory is completely incorrect. **Rita James Simon, Heather (2005)** *The Crimes Women Commit: The Punishments They Receive* Ahn-Redding,Lexington Books UK at 7.
 21. Joanne Belknap(2007) *The Invisible Woman: Gender, Crime, and Justice*,the University of Michigan at 36
 22. Supra note 19 Williams, McShane at 256
 23. Pamela J. Schram, Stephen G. Tibbets (2014) ,*Introduction to Criminology: Why Do They Do It?* Sage Publications at 295.
 25. Giordano and Cernkovich (1979) *A Comparirive Analysis Of Male And Female Delinquency*, Sociological Quarterly,20;131-45
 26. Merry Morash (2006) *Understanding Gender, Crime, and Justice* Sage Publication at 165
 27. Joanne Savage, Kevin H. Wozniak,(2016) *Thugs and Thieves: The Differential Etiology of Violence* oxford university press at 6
 28. L. Edward Wells (2011) *Social Control and Self-Control Theories of Crime and Deviance* Ashgate Publication at 165
 29. Travis Hirschi (2002) *Causes of Delinquency* Trancastion PublisherUK at 85
 30. J. Robert Lilly, Francis T. Cullen, Richard A. Ball (2015) *Criminological Theory: Context and Consequences* ,Sage Publication
 31. Albert Bandura,(1977) *Social Learning Theory* Prentice Prentice Hall, University Of Michigan.
 32. Such as Social Inequality,Female Sexuality,Increasing Rate Of Crimes Against Women And Economic And Emotional Independence Of Women etc...
 33. (1999) 5 SCC 253 On the night of 21.5.1991 a diabolical crime was committed. It stunned the whole nation. Rajiv Gandhi, former Prime Minister of India ,was assassinated by a human bomb. With him 15 persons including 9 policemen perished and 43 suffered grievous or simple injuries. Assassin Dhanu an LTTE (Liberation Tigers of Tamil Elam) activist,who detonated the belt bomb concealed under her waist and Haribabu,a photographer (and also a conspirator) engaged totake photographs of the horrific sight,also died in the blast.Similar cases of female criminality are
- *Regina v. Kiranjit Ahluwalia* (1993) 96 Cr App R 133. The factual details of the case was as follows:
In September, 1992 Kiranjit Ahluwali made news after she was released after serving three and a half years of a mandatory life sentence for murdering her husband, Deepak, whom she had drenched in petrol while he was sleeping and set alight. Her retaliation followed 10 years of systematic abuse, but what caused her to flip on that fateful evening was that he had pressed a hot iron against her, the scars of which she still bears. Kiranjit was released by Appeal Court judges on ground of "diminished responsibility".
 - *Priya Payel v. State of M.P & Anr* [(2006) 6 SCC
In this case, complaint was lodged by the prosecutrix alleging that she was returning by Utkal Express after attending a sports meet. Upon reaching her destination Sagar, she met accused Bhanu Pratap Patel (husband of the accused appellant) at the railway station and told her that her father has asked him to pick her up from the railway station. Since the prosecutrix was suffering from fever, she accompanied accused Bhanu Pratap Patel to his house. He committed rape on her. During the commission of the rape, his wife, reached there. The prosecutrix requested the appellant to save her. Instead of saving her, the appellant slapped her, closed the door of the house and left place of incident. Bhanu Pratap Patel was charged for offences punishable under Sections 323[3] and 376 IPC, the appellant, as noted above, was charged for commission of offences punishable under Sections 323 and 376(2)(g) IPC.This is one of the celebrated case in which the question whether a lady may be prosecuted for gang rape has been taken up. The Court precisely held that the non-ambiguous language of section 375 of IPC expressly mentions that the act of rape can only be performed by a 'man' and not by "any person". Thus a woman cannot commit rape. The court further ruled that a woman cannot have an intention to rape, as it is conceptually inconceivable and therefore, she can neither be held for rape, nor gang-rape. The court further held that

the expression "*in furtherance of their common intention*" as appearing in the Explanation I to Section 376(2) IPC, relates to intention to commit rape. A woman cannot be said to have an intention to commit rape. And therefore, a prosecution cannot be launched against a woman for gang rape