

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 3**

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**2021**

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# Gender Disparity in Criminal Justice System

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## ABSTRACT

*While criminal law generally promotes and mandates the majority of power relations, law compels and authorises competing social power. Women employees are a major factor in the economy's transformation. But the development that we want to pursue can be hindered by gender disunity and violence. The gender divide has been made necessary by all the philosophies, structures and current policies. The first part of the paper starts with an introduction to the present system of gender disparity in India with respect to the Criminal Justice system. Second part deals with the various causes gender disparity in India. Third part of the paper talks about the contemporary examples of women being mistreated in the system. The paper ends with the recommendations as to how the disparity can be reduced along with the conclusion. Socio-cultural transformation can be achieved by increasing literacy and economic mobility, dealing with the majority of the issues facing women. As men are involved in government departments, implementation of welfare laws and schemes is quite sluggish.*

**Keywords:** *criminal, gender disparity, feminism, victim, crime, women, politics.*

## I. INTRODUCTION

For this issue of disparity, feminist analysis of crime has mostly focused on male-on-on-female brutality.<sup>2</sup> Feminists have questioned male perceptions of rape myths and cast doubt on domestic abuse, causing them to collapse. Now women have turned their attention to the question of how severely we can prosecute women who violate the law. While the criminal law usually encourages and mandates most relationships of power, the law compels and authorises competing social power. Criminal law also influences what women are expected to be in society.

Gender parity is an adjective that describes the need for a design in place. Women in the workforce is a significant factor in the turning of the economy. However, due to gender disunity and abuse, the development we wish to achieve can be hampered. All of the various philosophies, institutions, and existing policies, have made it necessary for the gender gap to

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<sup>2</sup> Kathleen Daly & Meda Chesney-Lind, *Feminism and Criminology*, 5 *Jusr. Q.* 497, 513 (1988).

exist. However, regardless of the upper administration's estimations of the spread of training and financial emancipation for females, the increase in illimitable women to viciousness follows afterwards. There is a huge difference between the compliance on paper and the effective reporting of harassment by women. If they suffer damage as an individual, they thump on the doormat of the public when they are unable to handle their problems. Cobalt was for many years the enemy of steel, because it took steel out of the solid in an industrial process. Now the steel is free, but no one has realised it has given it to you, because it is inside the microprocessor. In its structure, the “difference”<sup>3</sup> approach emphasises gender variances and provides alternative coverage for women. When everyone is treated the same, so differences between the genders disappear. Supporters of the “one-of-and-a-kind” approach' views argue that it hurts men's and women alike if gender differences are not acknowledged or emphasised. Though men challenge the male legal preferences, two casualties and guilty parties are involved. When we view gender equality as safeguarding “comparable treatment,” individuals see a few initiatives to prevent sexual harassment as condescension. This definition also accepts women's criminal behaviour as well as being unidentifiable, since it refers to a person's propensity to get in the predicament of being criminal. Gender assistance in all elements, particularly in corporate advancement was very helpful. The criminal code has been seen as a plaything for men and a hindrance to women for quite some time.

When you look at the justice system of an entire India, a woman prisoner is seen differently than a man. According to the Supreme Court of India, though the situation varies across the world, gender is a predominant consideration when adjudicating the punishment of a female criminal. A corporation's slogan is the glass still has one third full of water when an employee attempts to claim the ownership of the water cooler or bathroom, never one third, even though a thorough investigation is not made to determine the true extent of why someone is willing to enter or use that. In this article, the author will discuss various details regarding just disparity.

## **II. CAUSES OF SUCH DISPARITIES**

### **(A) Economic Factors**

1. Division of labour- women are delegated light and domestic duties, while the men keep the purse strings Domesticity and creative work are not paid equally because of the prevailing view that men do not know how to manage money.
2. Employment problems- Workplace sexual assault, especially in the unorganised sector, can be very pervasive for women. They will not engage in economic activity

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<sup>3</sup> Dr P Ganesan, “Gender discrimination in Indian Judicial System: Causes and Implications”, April 2018

unless their families need financial aid. When a girl has the means to survive, she is in a position to experience sexual abuse, and she is not mentally prepared to be harassed, there is a correlation with subsequent loss of livelihood.

### **(B) Social Factors**

1. Patriarchal supremacy has given rise to women's underrepresentation in decision-making and task-making and perpetuated women's disadvantage in terms of their lives. men's superiority, women's tendency to submit, their gentle natures, and courtesy gives men greater access to upper-hand control
2. It could be harder for women to act on their abilities because of the cultural blocks they face. they are unable to gain the best opportunities by tackling the obstacles and entrenching themselves in the culture as well
3. Roles and life contribute to inferiority. The very essence of their assigned roles and preferences foster sexism and bigotry.
4. Men receive male preference in most food, schooling, recreational activities, and even in what they consume because they are identified as members of a family or group. As a rule, men are unable to continue to seek further education beyond high school.

### **(C) Educational Factors**

1. Parents, particularly mothers, are generally unaware of their children's educational needs. BIMARs indicates that these reasons can be attributed to other issues.
2. Women are encouraged to get a first-level education, but due to the socioeconomic, cultural, and political climate, they are often forbidden from pursuing an advanced level of learning. Our social structure does not allow women to pursue higher education due to the perceived limitations on getting married, bringing home an appropriate salary, and confining them to domestic positions.
3. A general non-readiness amongst women, lower income, and so on prevents females from going after entering the field of law. Equality for women is the most urgent priority in this particular sector.

### **(D) Political factors**

1. Due to social, economic, and cultural factors, the gender equality project cannot guarantee justice and liberty. There is still a long way to go until political institutions have an equal balance of power in all spheres of society.

2. Reservation Policy: Despite the fact that women constitute half of the legislature, and a portion of the judiciary, there are significantly fewer women officials in these roles than men. Almost no government jobs are open to women in the managerial or executive ranks. However, 33% of the population of the seats are reserved for indigenous people in local elections, but they are not allowed to operate at full capacity.
3. The prevalence of violence against women is increasing while the prosecution rate is decreasing. Technological growth, increase of numbers of police stations, courts, jails and financial commitment of Government are fast increasing but sufferings of women is still not contained.

### III. PILLARS OF CRIMINAL JUSTICE SYSTEM AND GENDER DISPARITY

Almost all government institutions are patriarchal, which is the root cause and reason of sustaining of all forms of gender discrimination. In India, just 5% of women worked in government offices in 2013-2014.<sup>4</sup> Historically, men have dominated bureaucratic institutions, which have systematically favoured men over women. Women's exclusion leads to a lack of or slow growth, which unconsciously leads to weak policy implementation and management.

Women were also barred from entering law-making institutions such as parliament and state legislatures, resulting in male dominance in the legislature. Participation of women in politics State legislators account for 8.71 percent (359/4120 MLAs), while central legislators account for 11.42 percent (62/543 MPs). Ministers in the federal government account for 8/66, while those in the state government account for 41/593.<sup>5</sup> Women are unable to engage in politics due to socio-cultural, economic, and political factors. For a long time, women's domestic responsibilities and limited familial positions did not provide them with sufficient liberty and empowerment to participate in politics. Women are underrepresented in the legislature, denying them the opportunity to engage in the drafting of legislation. Women, who make up nearly half of the population of our nation, must debate, discuss, and agree on legislation before it can be enacted and followed.

Judges who are female are also subjected to misogyny. There have been cases of female lawyers being slandered by male lawyers. When a woman judge in Delhi's Karkardooma courts was subjected to sexist harassment by a prosecutor, she filed a FIR. Her own chief judicial magistrate, however, is said to have asked her to drop the case. Women are underrepresented

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<sup>4</sup> Rukmani, S. (2015, March 3). The "Second" Sex. The Hindu news daily.

<sup>5</sup> *Ibid*

in the courts. Just six women have been appointed to the Supreme Court since independence, out of a total of 229 judges appointed since 1950. Just 62 of the 611 national high court judges are female. Fathima Beevi of Kerala was the first woman to be nominated to the Supreme Court in 1987. After independence, it took more than four decades for a woman to be named to the Supreme Court. Just 98556 female advocates are registered with India's Bar Councils, out of a total of 955013.<sup>6</sup> At the national level, approximately 10% of women law graduates serve as advocates. Statistics show that the world is dominated by men. As till 2018. in the Supreme Court, there was only one female judge, Justice R. Banumathi, compared to 25 male judges. So far, only six women had been named to the Supreme Court as judges. There are only 64 female judges in the country's 24 High Courts, compared to 557 male judges, and eight High Courts have no female judges. Though the Allahabad High Court collegiums recently recommended at least 44 names to the government for appointment as judges, only two of them are women. Only in 1959 was a woman appointed to the High Court. In the Supreme Court, there have never been more than two female judges.<sup>7</sup>

#### **IV. DISPARITY AMONG VICTIMS**

The rape law has been endorsed by women's feminists. They have shown that, rather than ensuring women's advantage in regulating their bodies and sexuality, the rule of rape has succeeded in pursuing male interests in controlling sexual admittance to females.<sup>8</sup> In either case, after twenty years of rape reform, the criminal law does not adequately protect female sexual autonomy. Furthermore, some women's activist efforts to broaden society's understanding of what constitutes rape, especially colleague abuse, have been criticised for perpetuating paternalistic generalisations about female detachment. Oberman's investigation into the criminal law's failure to protect girls is predicated on a fundamental understanding of the value of consent. As any other legal decision, a woman's consent to sex is a "social build".<sup>9</sup> The legal determination of whether or not adolescent girls are unreservedly preoccupied with sex is based on standardising decisions about the admissibility of the male pressing factors they encountered. Oberman claims that maintaining young girls' sexual freedom requires taking into account the necessary preconditions for their important consent to sexual activity. These experts are concerned about the disparities in intensity between juvenile young men and young

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<sup>6</sup> Dhananjay Mahapatra, (2015, November 4) Why has collegiums chosen only a few women judges? Ask women lawyers. The times of India.

<sup>7</sup> Shiva Tokas, Position of Women in Indian Judiciary an Analysis. Internship research paper, National Social Watch.

<sup>8</sup> Susan Brownmiller, *against our will: men, women and rape* (1975); Susan Esrrich, *real rape* (1987).

<sup>9</sup> Stephenj. Schulhofer, *Taking Sexual Autonomy Seriously: Rape Law and Beyond*, 11 *Law & PHIL.* 35, 41 (1992).

girls, as well as the disparities in cultural expectations about sexuality. While it is appealing to believe that young girls are now explicitly free, our way of life forces them to consent to unwanted physical interaction in order to please men.

The litmus test for reform is enacting legislation that recognises girls' vulnerability without overly limiting their sexuality or shamefully rejecting young men who engage in widely desired sexual relations. Oberman's report brings up two additional concerns about the rape statute. To begin with, legal translations of attack resolutions ignore a great deal of savagery in the lives of women. Second, the provision of both legally defined sexual rape laws and convincing rape laws demonstrates that the importance of rape is determined by classes of qualification representing relations of strength in the public eye.<sup>10</sup>

## V. DISPARITY AMONG OFFENDERS

When compared to male wrongdoings, the most striking fact about female culpability is its rarity and lack of savagery. Male violence against women is established in dominant force relations rather than in men's organic or mental variations, according to women's activists. Female respondents can feel obligated to portray themselves as sick or insane because the law ignores the suffocating social pressures that exacerbated their criminal behaviour. Generally, female respondents would argue that natural factors such as premenstrual disorder and post-partum anxiety, rather than the shortcomings of traditional female professions, drove them to commit the crime. Another point to consider is the importance of gender equality when it comes to punishing wrongdoers. It's possible that reducing women's sentences based on family responsibilities is paternalistic and perpetuates female stereotypes. For this problem, there is strong, verifiable assistance. Until now, a woman's position in the family determined the criminal punishment a judge imposed on her. Condemning female wrongdoers reflected society's image of women as mothers or mothers-to-be, and maintained appropriate gender roles.<sup>11</sup>

## VI. RECOMMENDATIONS

Women's growth requires a combination of education and economic empowerment. Transformation of socio-cultural attitudes can be accomplished by increased literacy and economic mobility, which would address the majority of women's issues. Due to the participation of males in government agencies, there is some sloppiness in the implementation

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<sup>10</sup> Steven B. Katz, *Expectation and Desire in the Law of Forcible Rape*, 26 SAN DIEGO L. REV. 21, 21-23 (1989); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence* p. 635, 648 (1983)

<sup>11</sup> *Ibid*

of welfare laws and schemes; however, this situation can be improved. Women's inclusion in economic growth could automatically reduce patriarchal oppression. The current school-level education patterns show that girls are more successful and earn more than boys.

Women's psychological issues can be alleviated by recreational activities, meditation, therapy, physical activity, practising self-defence techniques, and sex education. Self Help Group participation and coordinated activities of women work well, and women, especially homemakers, have benefited from them.<sup>12</sup> Men should recognise women's rights, equality, and empowerment in their families, educational institutions, and workplaces.

In government institutions and politics, there is a reservation scheme. Education and political empowerment in general, as well as the elimination of corruption and criminalization of politics, the introduction and expansion of reservation in elections, the rights of women leaders such as MLAs and Presidents, and the empowerment of officers from the top down, will turn women into taking advantage of opportunities and participating in nation building and growth. For rural people, including women, poverty eradication, infrastructure growth, and initiatives to increase agricultural production are needed. Significant disparities, especially of gender, class, caste, and area, are hampered India's path to growth. According to the Millennium Development Goal report, "Persistent inequalities, inadequate delivery of public services, weak accountability mechanisms, and deficiencies in the implementation of pro-poor policies are further hindrances to progress in this regard".

## VII. CONCLUSION

Men's dominance of government agencies results in the denial of justice to women who are harmed by men. The presence of men in government agencies makes it difficult for women to approach government offices and assert their legal rights. Especially when women are victims of crimes such as rape, sexual assault, eve-teasing, and other rights violations. Male officers hold the majority of high-ranking positions in government departments, and they are unable to deal with women's problems without discrimination, as the rule of law emphasises. They usually try to persuade women not to give up their rights or to accept perpetrators' behaviour by implying that they will lose their chastity, dignity, and popularity, among other things, depending on the girls' status. Masculinity seeks to save male criminals who lack material advantages by suppressing feminine gender in every way possible, setting poor precedents and resulting in the non-implementation of all kinds of women's rules. We have given many legal

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<sup>12</sup> Amtul Waris & B.C. Vraktam, (2013). Gender gaps and women's Empowerment in India – issues and strategies. *International Journal of Scientific and Research Publications*, 3, (9), 2250-3153.

initiatives and welfare schemes in India to improve women's status and turn women into development activities, but due to traditional, cultural, social, economic, educational, and political factors, we have yet to achieve the desired results. Women should prioritise news and public visibility in the media. Women face similar issues, and men use similar strategies to trick girls, such as love through false promises, trafficking women through false work opportunities, and other forms of deception that can be learned through the media. In today's rapidly evolving world, women's sex education and self-defence training are critical. Women's Self-Help Groups, Women's Clubs, Associations, Women's Commission branches, and other types of group activities can assist women in obtaining and enforcing their rights. Not only women, but also men, are speaking out against atrocities against women these days, which has resulted in significant policy and legislative changes in our country. To give women trust in the legal system, the formal social control system should be strengthened and expanded. Child Help Line and Help Line for Women in Crisis, Employer Action Against Sexual Harassment at Work, and Women's Reservation Election are all good programmes that are working well. Modern mechanical life, diet patterns, hormonal changes in adolescents as a result of internet exposure, a rise in divorce cases, and other needs of the globalised technological age necessitate commercial sex work licencing. Via joint family living arrangements, informal social control systems such as folkways, mores, traditions, beliefs, customs, and other strategies that emphasise respect for equality, democracy, and respect for women will be prioritised. The rate of growth would accelerate if the barriers are eliminated and women engage in productive activities. It is the duty of men in the home, culture, workplace, and government to eliminate gender inequality and ensure women's liberty in order to create a more equitable society.

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