



## CRIMINAL FEMINISM

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### Abstract

Feminism is not a single theory, it is an amalgamation of various theories and viewpoints. Its various ideas and agendas depend upon different definitions of it, on contrasting perceptions of the origins and evolution of gender inequality and oppression, and on varying strategies for eradicating it. The more liberal feminist approaches to the study of crime and justice correspond closely to the ideas and beliefs of most capitalist democracies and have been the dominant feminist theories. More radical critics have come up recently, however, future research on feminist theories should focus on issues like race and crime, white-collar crime, and deterrence. It is also the need of the hour to deal with the complexities of crime and feminism so that its critics will not anymore consider it to be facile, rhetorical, or lacking a theoretical basis. Giving due consideration to the now normal relation between feminist and conventional criminology, it will be too far to opinion the same thing about the effect of feminism on criminology. We provide an overview of approaches to research favoured by feminist criminologists. In order to highlight on-going debates and emerging themes in feminist methodology we focus on research that investigates violence against women.

**Keywords:** women, crime, investigation, feminist, Constitution theories, criminal.

<sup>1</sup>Walklate S. Book Reviews. *Criminal Justice*. 2001;1(3):352-353.

### Introduction

It has been often said by some that feminism is an outdated and irrelevant concept. In the previous years, it has been argued that there is no such thing as feminist viewpoints in criminology. Even though, criminology includes within its ambit conflicting viewpoints, it is quite probable and analytical to recognize a large range of beliefs, perceptions and behaviors related to feminism<sup>1</sup> without such deviations suggesting for an inchoate thought. Since long, traditional reasons for crime and delinquency have always been linked to male delinquency. Men have always been the main subjects of criminology related surveys, studies and theories and of the core justice system also. Consequently, the existence of women in crime related issues has always been neglected or not acknowledged, whether in capacity of victim or offender. It was at a much later point of time that feminist criminology corrected this fault and applied feminist theories to the field of criminology, and thus pushed the legal professionals to take female offenders and female victims of crimes as seriously as male offenders and male victims.

### What was the need of feminist perceptions in Criminology?

First of all, criminology has generally always paid no heed to women and their existence as a member of the society. It has been the males and males' discourse which have put a check on the evolution, development and distribution of criminology related expertise. As one author has rightfully said that:

" An outing via the development of criminology in the 20th century is a pathway



through neighbourhoods populated only by men, through street corners and sea fronts occupied solely by male youth and through soccer stadiums, youth clubs and rock venues where women and their experience have not even reported a passing statement from the researchers.<sup>2</sup>

It is no point of defense that many other members of the society have been ignored by the criminologists while developing the subject. Such neglect or omission raises certain fundamental concerns about the credibility of the analyses made. Secondly, in a handful of cases where women have been talked about in criminology, the same has been done so in such a way which has been highly stereotypical in nature; in a different terminology, they have often been talked about in the sense of their stereotypical physiological and biological features<sup>3</sup>. All the aforesaid points can indicate that what is required is crashing of women's science, but this has indeed happened to a great extent. Because of the sudden inflow of feminist criminologists in the field, there have been a recent recognition of women in the theories of these fields. However, it is to be noted that women cannot easily be understood with respect to criminal analyses if the fundamental frameworks of criminology are not relaxed. Therefore, it is essential to breakdown and again built the criminological references. Thus, it is the latest development in the field of feminism that special reference to womankind is being paid in the arenas of crime , criminal justice ;

most specifically in order to dismantle or break the established boundaries of knowledge and traditional methodologies .<sup>4</sup>

### Contributions of feminists

There are varying and diverse inputs and achievements of feminists dealing in criminology<sup>5</sup>. It is to be analyzed as to what is the most intrinsic contribution to the study of gender and crime. Simply understood and put together, over a period of time, feminist writers have revealed criminology in the sense of male criminology. Traditional and conventional crime methodologies have been proposed from male subjects and checked upon male subjects. While there is no fundamental wrong in this, the problem is that these concepts have usually been expanded to include with its ambit all offenders. The theories have been thus simply assumed to be applicable to women. Feminist work has not only given rise to a criticism of collective wisdom about female offenders and victims, but has also highlighted on institutionalized discrimination within the aspect of criminological theory, policy and practice. For example, the perception of judiciary towards women in the legal system points out that the usual accepted procedure of chivalry depicts a deep misunderstanding with regards to sentencing; women who may not have the suitable gender role (as a wonderful mother and a good wife) may be seen by courts as ' doubly deviant. ' Women who were serving sentences in prisons were shown to be

<sup>2</sup>Scraton, P. (1990) 'Scientific knowledge or masculine discourses? Challenging patriarchy in criminology' in L. Gelsthorpe and A. Morris (eds) *Feminist Perspectives in Criminology*. Buckingham: Open University Press.

<sup>3</sup>Women, Crime and Criminology: A Feminist Critique. London: Routledge & Kegan Paul.

<sup>4</sup>Gelsthorpe, L. (2002) 'Feminism and Criminology', in M. Maguire, R. Morgan and R. Reiner (eds) *The Oxford Handbook of Criminology* (3rd Edn Oxford: Clarendon Press).

<sup>5</sup> Id.



probable to undergo the promotion and implementation of a domestic position in criminal regimes. Feminism studies have also shown that girls are often held liable or punished for such behaviours which, if not entirely acceptable in boys, is definitely considered as being more 'normal.'

Women victims (especially victims of sexual assault) have also been made more visible by feminist researchers and have exposed the harsh reality that women who wrongly report harassment are often subject to unjustified suspicion by criminal justice workers. Another important achievement concerns the fear of crime by women, which has been exposed not only as the fear of crime by men but also as something that structures and forbids social life in public spaces. In addition to this work, the role of women in social control and contact between overt and indirect controls on women has been a major feminist focus. Analytical studies by feminists on gender issues have also contributed to evolution in masculinity theory. While the 'maleness' of crime has traditionally been recognized under criminology (even so, sex, along with age, has long been considered as one of the most significant predictors of crime), it is not perceived to be a problem in most of the popular texts on the subject. However, the sociology of masculinity was partly focused on feminist work on gender and the role of men in feminism, as well as on the emerging field of lesbian and gay studies. A crucial change happened in asking "what it was all about men as men and "not as workers, not as migrant, not as underprivileged peoples but as men, that inhibits them to commit these

crimes"<sup>6</sup>. Feminist criminologists, concerned with recognizing violence and other violations against women, argued that in the social construction of masculinity, feminist criminology will consider what is so criminogenic.

### **Criminal Feminism in India**

In India, the criminal laws on one hand give more protection to womankind when it comes to crimes relating to sexual dignity while in a minuscule number of cases, females have or had a wrongful advantage. In some cases, their issues had been not recognized in the manner in which they should have been. Whatever the case might be, it cannot be denied that feminist ideologies have not impacted criminal law in India.

Before the year 2013, under Section 375 of the Indian Penal Code, 1860, only forceful vaginal penetration was considered to be a form of rape. It was only in the year 2013 that anal and oral penetrations of forceful nature have been included with the definition of rape. The pre 2013 concept of rape was highly patriarchal as it considered only forceful vaginal sex as rape and the reason for this was that this type of penetration might cause pregnancy leading to a long battle related to property, etc. The second patriarchal aspect of rape laws is that consensual sex which takes place on false pretext of marriage is rape. Another one is the non criminalization of marital rape on the basis that if done so it would lead to easy breaking up of the institution of marriage. Earlier, adultery was a criminal offense in India, but only with respect to males. That is,

<sup>6</sup>Grosz, E. (1987) 'Feminist theory and the challenge to knowledge', *Women's Studies International Forum*, 10/5:208- 217.



a female who would be indulging in adultery would not be punishable under law. However, a man indulging in adultery, including unmarried man having illicit relations with a married female, will be punishable for the same. This law laid down under Section 497 of the Indian Penal Code, 1860 was criticized for several years till its striking down in the case of *Joseph Shine v Union of India*<sup>7</sup>.

Provisions of the Indian Penal Code, 1860 like the Section 354, 354A, 354B, 354C and 354D protect the sexual sanctity of women at varying levels. S 354 deals with assault or criminal force done with the intention of outraging the modesty of women. S 354A deals with various instances of sexual harassment. S 354B refers to use of criminal assault with the intention of disrobing a woman. S 354C punishes for voyeurism, it refers to the capturing of a woman's photograph, videos, etc while she is indulging in some private act which is under normal circumstances not to be seen by the other people. S 354D punishes stalking, which is an extremely common form of crime. Article 21 of the Constitution of India, 1950 grants to all people within the territory of India, the right to life and personal liberty. Article 15 (3) of the Constitution of India, 1950 grants the duty of protection of women to the government for the purpose of which the government can enact laws specifically aiming at their protection and empowerment. Laws in India tend to protect women at varying degrees especially against domestic violence. The Protection of Women from Domestic Violence Act, 2005 provides protection to women against all forms of violence from which they suffer within the four walls of their home. This provides

protection to men also but has mostly been applied in cases of females only. The Indian Penal Code, 1860 under its Section 304B and Section 498A lay down punishment for causing dowry death and harassing a married woman. Section 304B was inserted into the Indian Penal Code in lieu of granting protection to married women who are suffering from the evils of dowry demand. Dowry related crimes have always been the reason of distress for a large chunk of married females. By virtue of the Dowry Prohibition Act, the practice of dowry has been criminalized in the sense laid down in the act. Such statutes have made it clear that the executive legislature and judiciary considers woman as a special class which needs extra care and protection at the hands of the law. It has been provided under Article 15 of the Constitution of India, 1950 that the government can choose to give reservation to woman in such jobs and educational institutions where it deems to be fit. The directive principles of state policy also direct the government to make special provisions or laws for women as they are a vulnerable class, constitute to be a separate classification which fulfills the doctrine of reasonable classification coming out from the Article 14 of the Constitution of India, 1950.

The author would now like to highlight the fact that the laws which grant women protection have been often exploited by them to meet their self needs, especially the provisions protecting married women from dowry related and other form of harassment. Provisions like Section 498A of the Indian Penal Code, 1860 are very much exploited. This is because the burden of proof on the prosecution is not too strong. Mere suspicion or weak evidences can be twisted to prove the

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ingredients of the same. Also, the general rule of evidence in criminal law, that the burden of proof to establish the guilt of the accused (s) lies upon the prosecution is not followed in cases of rape, rather the burden of proof is always upon the defendant to prove his innocence. The fact that most of these crimes are committed in isolation, it becomes difficult to gather such evidences which have a high evidentiary value. Therefore, many jurists and legal scholars have opined that special laws for women are unfortunately, the side effects or ill impact of feminist ideologies. With rise of feminism, the need to formulate appropriate set of laws for women was felt. However, after a point of time, these provisions of law have actual become legal instruments used for harassing males for extracting revenge, money, etc. This is also a challenge which will in the near future act as the blockage for justice for several woman who genuinely needed help or protection.

### Challenges for the future

It is to be comprehended as to what would be the problems relating to feminism and criminology in the future to come. There is room for more work on women as offenders (to focus more specifically on women's agencies, so to speak) in all work on women as victims. A few of the latest feminist theories regarding female's structural and social positions in societies and ideas regarding their lifestyles is likely to be influential in recognizing women's way to crime<sup>8</sup>. There is an immediate need to delve into the aspect of the privilege of gender above race in some feminist thinking about crime and justice, and how much this

obscures our perception of issues as well . As Walklate (2001) says,

"...a gendered lens obviously helps us see some characteristics of the crime issue most evidently; but how or under what conditions is that clarification made brighter by gender or distorted by it?"

Under the umbrella of feminism, will we really need to tackle these issues? I think this, on its own, is worth discussing. Do we not foresee a new humanist criminology if other reactionary, gender identity and anti-discriminatory criminologies are on the surface? Feminist concerns about gender and crime are actually, however, helping women to count.

### Conclusion

It would be gratifying to be able to deduce a review on feminist study in criminology from the argument that Carol Smart has just introduced about the discipline of sociology, which is that feminist approaches have impacted sociological analysis methodology to the degree that they have been taken for granted or popular practice. It would be far too far to say the same about the effects of feminism on criminology, considering the now healthy link between feminist and traditional criminology. Even so, just as feminism, as a common political movement and a philosophy, influenced the way we do things and examine crime and the justice system, the approaches used by feminists have often affected analysis methods preferred by feminists.

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<sup>8</sup>Chesney-Lind, M. (1997) *The Female Offender. Girls, Women and Crime*. Thousand Oaks, California: Sage.



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