

THE 'DOUBLE JEOPARDY' OF CRIMINAL WOMEN IN INDIA: REVISITING THE LITERATURE AND JURISPRUDENCE

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ABSTRACT

When crime and women are read together, women are often considered as victims of crime. The mere thought of women being violent criminals may seem to be very bold, so bold that they are sometimes not even considered women. Social norms paint a peculiar picture of womanhood that sees acts of delinquency in women as abnormal phenomena. Women criminals not only have to face the consequences of their actions as criminals but also as women. Correspondingly, this seems to be prevalent in the literature surrounding the criminality of women. As often as women are made muted, irrelevant and invisible, it is important to look into how women are directly affected by such a forged picture of their reality. This paper tries to shed light on two areas *viz.*—the idea of criminal women in the literature of women's criminality and the consequences of being a criminal woman, particularly in India.

Keywords: *Criminality, Women, Crimes by women, Feminist jurisprudence.*

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I. Introduction

A CRIMINAL woman is one of the most misunderstood persons in society. She is an offending woman of whom much has been written about by men in fields of knowledge such as sociology and criminology. In the early periods of the classical theories, any type of crime and criminality was treated as a male crime¹. An inherently overarching gender gap in the legal system makes it even more convenient for male versions of who and what a criminal woman is, to prevail far and wide, for far too long. "The premise of male bias does not insist that these founding fathers of philosophy began their work with the thought: 'I am male; I shall construct a theory that only

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1. Mohammad J. Islam, Subrata Banarjee and Nurjahan Khatun, "Theories of female criminality: A criminological analysis" 7 *IJCST* 2 (2014).

a man could create.’ The bias appears to result instead from the authors’ habit of deriving supposedly universal truths from their individual, and therefore male, viewpoints”.²

Criminal women are defined, through definitions that have male viewpoints as antecedents, which are far away from that of women and their act of offending. Although it may appear certain who a criminal is in society, there remains an utter uncertainty of who criminal women are and what are the causes that lead to their offending.

Who is a criminal woman? Why does a woman commit a crime? What are the types of crimes women commit? Are some of the most pertinent questions that when given a platform only limits to answering only the first question. Before we try addressing these questions, we reason with the need of having a woman-centric approach to criminality, which is, to transcend from the societal imagery of ‘normal’ and ‘abnormal’ women.

For a very long period, there was a non-acknowledgement of the relationship between society and criminal behavior. This meant that the lack of female criminal behavior was supplemented by the dearth of cognizance of the effects of patriarchal society on the criminality of women. It was only later, after feminist understandings of women’s criminality that the study of female crime became associated with society. Post-1990s, major changes occurred in feminist thinking, “feminists were influenced by post-structural, post-colonial, postmodern, and critical race theories, each of which draws attention to the discursive power of criminological and legal texts in representing sex/gender and women.”³

While feminist understandings were on the rise, there is also a cautionary approach to be observed while taking feminist understandings into consideration. This means that while it was important to look at women’s criminality as a separate sphere, it was also vital not to constrict it or make it non-inclusive. As Gordon (1986) puts it, that feminism itself is not only about a woman’s experiences but also a “controversial political interpretation and struggle, by no means universal to women”⁴. Scholars such as Smart (1990) particularly rejected the idea that criminology could offer anything to feminist scholarship and was also critical of the idea of a “feminist criminology”.⁵ Smart thought that clubbing feminist perspectives as “feminist

² Judith A. Baer, *Our Lives before the Law Constructing a Feminist Jurisprudence* (Princeton University Press, New Jersey, 1999).

³ Kathleen Daly, *Feminist Thinking About Crime and Justice* 206 (Westview Press, Colorado, 2006).

⁴ Linda Gordon, “What’s New in Women’s History”, in *Feminist Studies/Critical Studies* 30 (Palgrave Macmillan, 1986).

⁵ Carol Smart, “Feminist Approaches to Criminology, or Postmodern Woman Meets Atavistic Man”, in *Feminist Perspectives in Criminology* 70-84 (Open University Press, England 1990).

criminology” would hamper the development of the field of feminist perspectives on criminology itself and it also would deny the vagaries that lie within feminism.

Such developments led to the introduction of two main notions regarding crime and women, which have been elucidated by Daly (2006). First, there was a considerable increase in the ways sex/gender-related to crime and criminal justice practices, which have been “reluctantly called ‘feminist criminologies’.”⁶ Second, there was a recurring feeling among feminists that mainstream criminology was not a place to start the analysis of gender shaping crime and criminal justice.

Against this backdrop, this paper would be presented in four parts. In the first part, it shall trace the early literature in the field of female criminality followed by tracing Indian literature of criminality of women, in the second part. The third part of this paper will discuss Indian cases of women’s offending, bringing to light the judgments that have been carried out in India where women have been tried for violent crimes (particularly murder) and also highlight the current trends in media trials of women at large.

The need for taking up murder-related cases is to emphasize the nature of sentencing of women engaged in violent crimes of heinous nature. Finally, at the conclusion of the paper, a discussion of the contemporary state of the social lens to women criminals is underway along with some remedial measures as suggested by the author.

II. Who is a Criminal woman?

Primitive studies around the criminality of women have delved into the study of women’s bodies and minds. Sexualizing of the body and pathologizing of the mind was a major thrust in earlier studies but it is unfortunate that sexual undertones still prevail in studies of female criminality today. Feminist approaches to the criminal justice system’s process of justice delivery problematize these sexist interventions in the literary development of the field of female criminality and women’s offending.

One of the earliest studies on female crime, the works of Lombroso and Ferrero (1898), was heavily influenced by Freudian concepts of human development. Their argument was based purely on biological/physiological anomaly in a woman’s body, as a cause to women’s offending. Lombroso (1898), argues that the female criminal is an anomaly in society and she represents multiple physical anomalies too, that make her particularly criminal. They argue,

⁶ Kathleen Daly, *Feminist Thinking About Crime and Justice* 206 (Westview Press, Colorado 2006).

‘for what we look for most in the female is femininity, when we find the opposite in her, we conclude as a rule that there must be some anomaly.’⁷

After the ‘abnormality of the body’, there was the ‘abnormality of the mind’, scholars paid special attention to while explaining the criminality of women. As when, Konopka (1966), argued that women turn delinquent as a result of unfulfilled psychological needs. This, she believed could be solved by therapy. She further argued that criminal women need to be “adjusted” into society since they are clearly in conflict with it. Psychological explanations of female criminality portrayed a consistent need to make the female adjust to the society which insinuated her gender role in society; that of a docile domestic person.

The idea of the “normal woman” or “femininity”, emanates from the idea of stereotyping women in society. Women were/are supposed to be domestic, docile, nurturing and passive. Anything other than these meant that they were criminals. Highlighting this kind of stereotyping, Anne Worall (1990), among recent scholars, has viewed the criminality of women, as a social problem emanating and deeply associated with the social structure.

She highlights a major point about women criminals, who are seemingly kept out as almost alien belonging to no category within a society that segregates everyone to somewhere they belong. As Worall (1990) states, “Criminality is still assumed to be a masculine attribute and women criminals are therefore perceived to be either ‘not women’ or ‘not criminals’.”⁸ Criminal women by such depictions are seen as either belonging to no categorization at all or a crossing over to the male gender defying character traits of their own gender.

Criminality in women was also seen more as an expression of the inherent deceit and “bad” nature of a woman. Women were categorized as Pollack (1950) describes, as manipulative, sly and passive, qualities that lead her to use the act of sex to influence others, and mostly men, to commit crimes for her.⁹ Pollack (1950), further proclaimed that women use stealth and are masked criminals mostly committing petty offenses, like robbery and burglary. His description of women criminals suggests that women are dependent on men, and often use men to commit crimes for them. A certain dissociation of crime and women is seen here. A dissociation of

⁷ Caesar Lombroso and William Ferrero, *The Female Offender* 112 (D. Appleton and company, New York, 1898).

⁸ Anne Worall, *Offending Women: Female Lawbreakers and the Criminal Justice System* 31 (Routledge, London, 1990).

⁹ Otto Pollack, *The Criminality of Women* (University of Pennsylvania Press, Philadelphia, 1950).

violence and women, in turn showcasing that criminality and violence, are specifically male attributes.

Albeit his male bias, Pollack (1950), points out that the petty offences committed by women are due to economic reasons. Similarly, Thomas (1923), also associates delinquency in women as a normal response under certain social conditions. However, Thomas, adds that female criminals are slaves of their uncontrollable sexual desires. Both are of the opinion that women get a differential treatment in law. Wherein Thomas, explicitly cites that since women fall out of the sphere of property and production, consequently they have lesser engagements with law, and the little engagements that they have with the law, render them special/better/lenient treatment than their male counterparts. Pollack (1950), on the other hand, advocated that chivalry helped women gain an advantage in law, which led to women gaining a certain level of leniency in the criminal justice system.

The literature on female criminality had a tendency to make criminality in women an individual problem, failing to take note that crime itself, is a social problem. This big gap in the literary tradition of criminality puts Durkheim's (1895) sociological work to shame. Although Durkheim did not delve too deep into crime theory, yet he worked out "Anomie" and the intricate relationship of evils like crime have with society, which he calls are necessary.

While this inherently male definition of female criminality was gaining prominence, there were still others developing criminal theories surrounding women, in sync with contemporary historical developments. In the advent of the 1960s, the women's movement had produced varied ripples in academic literature. Scholars like Freda Adler worked on the implications of the women's movement on the criminality of women. Adler saw the women's movement had an emancipatory effect followed by an increase in criminality by women.

However, this theory was soon repudiated by Smart (1976), who states that the emancipation theory remains too simplistic and those female criminals are affected more by social changes than anything else. Smart also argues that opportunity indoctrinates criminal activity in men more than women since women have always been restricted and domesticated in society leading them to commit petty and domestic crimes.¹⁰ She lays out that intent is an important factor that studies like George Grosser's (1951) were incapable of inquiring into with regard to the criminality of women.

¹⁰ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (Routledge and Kegan Paul, London, 1976).

Smart (1976) explains, while male criminality has moved forward from biological to socio-economic, cultural, etc., “the few engaged in the study of criminality still appear to be searching for one simple cause”.¹¹ Smart highlights the need to indulge in the origins of sex roles which will challenge those sex roles and gender differences perceived to be ‘natural’. Her contribution to the study of criminal women is the emphasis she delivers on the need to look into the female offender through historical, social and cultural lenses. It is clear now, that the criminality of women committing crimes is a complex phenomenon.

Naffin (1980), also adds that there is a certain feeling of failure that female offenders have when they see themselves as opposed to the non-criminal self-image which would attract social disapproval. Therefore, internalizing such negative emotions, “the female offender is stigmatized both socially (family and friends) and officially (the criminal justice process).”¹²

All of these lead to ‘female criminal traits’ having been mentioned as emotional, self-critical and highly sensitive to the opinions of others. Hence, considering Naffin’s (1980) method of using symbolic interactionism theory too, it can be seen that, women’s reaction to her offending is a result of social interactions and sex role expectations rather than her physiological or psychological problems.

III. Women’s Engagements with Law

Women’s engagements with law, have frequently seen a “double societal jeopardy”¹³. Wherein women face consequences of not only their criminal act but also their position in society. We shall see further in this paper the real life repercussions of the “double jeopardy” that women face throughout the criminal justice process adhering much less, if at all, to the “chivalry hypothesis”¹⁴, which claims the criminal justice system’s leniency towards women.

Anne Worall (1990), introduces the concept of “gender contract”, which describes women’s engagements with law. Here, the criminal woman or law-breaker is offered an option to enter into a contract, where she could give into her being ‘represented primarily in terms of its domestic, sexual, and pathological dimension’¹⁵, in order to neutralize her sentencing. This

¹¹ Carol Smart, “The new Female Criminal: Reality or myth?” 19/1 BJC 52 (1979).

¹² Ngaire Naffin, “Theorising about Crime”, in Satyanshu K Mukherjee and Jocelyn A Scutt (eds.) *Women and Crime* 85 (Australian Institute of Criminology in association with Allen & Unwin, 1980).

¹³ Meda Chesney-Lind and Lisa Pasko, *The Female Offenders: Girls, Women, and Crime* (Sage, California, 2012).

¹⁴ *Ibid.*

¹⁵ Anne Worall, *Offending Women: Female Lawbreakers and the Criminal Justice System* 31 (Routledge, London, 1990).

strips off a woman's socio-economic antecedents, making the criminal act an individual problem.

Sex-role stereotypes are at the core of such results of women's offending. They are consequences of what Dorie Klien (1973) calls the typology of "good" woman and "bad" woman, more precisely while dealing with female criminality.¹⁶ Adding to the behavioural crises that women are always facing. The "good" woman is always to adjust to a "normal" woman in society. Here, Ballinger (2000) reiterates, that women disqualified under such gender norms are put closer to "judicial misogyny".¹⁷ Thus making any chance of clemency, pardon or even an appreciation as impossible as removing such gender norms from society.

IV. The Indian Scenario

The Indian strand of literature on the criminality of women bears an overwhelming concentration of empirical studies carried out on large scales. Most of the earlier studies, as similar to western literature have sexual overtones and study women's offending in a problematic manner. Notwithstanding this, the following will showcase some of the major studies in India about criminal women.

If we take a look into one of the mentions of the criminality of women in the Indian scenario, Anangol (2002), in her study on infanticide by women at the time of the British Raj, extensively highlighted the socio-economic backdrop of women's offending at the time.¹⁸ She explains that fear of ostracism and women's dependency on either their natal home or their husband's, being the only socio-economic support, made women of economically stronger or weaker sections of society face similar problems, leading them into infanticide.

Literature that emerged in the post-independence period where criminality and particularly female criminality, was written about, was dominated by works like those of Singh (1980), who asserted that menstruation was a major cause of crimes of violence by women.¹⁹ Let us be reminded that they were mostly empirical studies, meaning weightage was given to counting of numbers than any other factors, social, economic or cultural-traditional, to name a few.

¹⁶ Dorie Klien, "The etiology of Female Crime: A review of literature" 8(2) *Issues in Criminology* 3-30 (1973).

¹⁷ Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales 1900-1955* (Ashgate Publishing, UK, 2000).

¹⁸ Padma Anangol, "The Emergence of the Female Criminal in India: Infanticide and Survival under the Raj" 53 *Hist. Workshop J.* 73-93 (2002).

¹⁹ Arvinder Singh, "A Study of Personality of Murderers and the Psycho - Social Factors related to Murder" 8/1 *Indian Journal of Criminology* 15-20 (1980).

Singh (1980), associated menstruation with criminal activity in women. The study was on a number of ninety-five prisoners at a jail in India, and, assessed that more than half (53 per cent)²⁰ of the respondents were under premenstrual or menstruating cycle while committing a crime. Through this study, Singh (1980), made a direct correlation between the irritability during menstruation to the level of violence in criminal activity of women.

On similar grounds, B.K. Nagla (1991) adds to this physiological explanation to women's criminal activity through the findings of his study.²¹ Where Nagla (1991) shows that 78.56 per cent of women committed a crime when they went through irregular periods of estrus, 74 per cent when they were pregnant, 62.94 per cent when they were menopausal, 21.42 per cent when they had bouts of regular estrus and 14.8 per cent each in the pre-and post-menstrual cycles.²²

'The abnormal kind' was a special criterion in Mathew's (1992), study where it was showcased that 32.20 per cent of them had committed violent crimes like murder and infanticide.²³ When it came to the crime of thievery, the percentage came to a total ratio of 27.27 per cent. Further, she shows 66.66 per cent of women criminals committing homicide and murder were committed by the "monstrous" appearing women.²⁴ Finally, the commission of heinous crimes which includes murder, homicide and infanticide was committed by mentally unwell women who constituted 83.33 percent of the sample study.²⁵

Mathew's (1992), study takes into account female physiology as well as psychology, reverting back to arguments seen in most early western literature on female criminality. Extroversion and neuroticism were and are part of 'characteristics' of delinquent women, as put forward by scholars of the time and reverberated here too. Since then, it has been empirically brought out by Singh (1986), who compared female criminals and non-criminals only coming to the conclusion that there was a strong relationship between mental health and criminal women.²⁶ Other studies on female psychology like those of Sharma (1987)²⁷, Sanyal and Agarwal

²⁰ *Id.*, at 19.

²¹ Bhupendra K Nagla, "The Criminality of Women in India" 63/3 *Indian J. Soc. Work* 273-82 (1982).

²² *Ibid.*

²³ Asha Mathew, *Fair Sex in Unfair Society: Women and Crime* (Ashish Publishing House, New Delhi, 1992).

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Arvinder Singh, "A Study of Personality of Murderers and the Psycho - Social Factors related to Murder" 8(1) *Indian J. Criminol.* 15-20 (1980).

²⁷ Madhu Sharma, "Crime and Women: A Psychological Perspective" 15(2) *Indian J. Criminol.* 126-30 (1987).

(1982)²⁸ too, portrayed women having feelings of insecurity, docility, negative self-esteem and overall low self-esteem.

Suvarna Cherukuri (2008) in her book, refutes every idea that propagates the criminality of women having physiological reasons, which she insists is a limited observation of a complex phenomenon.²⁹ Similarly, Shubra Ghosh (1986), also raises doubts on the psychologists' and psychiatrists' version of criminals being emotionally weak. Ghosh (1986), emphasizes the need to look into the perspectives of society and circumstances that a woman is in, while the commission of a crime.

Weak economic conditions in the family, under-nourishment, lack of basic facilities in the household, generations of patriarchy and women being the churning wheel of the daily machine, that is the household, and her social position in the family is often given a miss. A very close yet failing attempt is made by Ram Ahuja (1969), who argues that women's offending is actually maladjustment of women in a socially-expected behaviour.³⁰ He suggests that deviant behaviour is when a woman violates the normative rules of family and society. Such non-conformity coupled with psychological factors in offending women lead to crime.³¹

And, although, Bajpai and Bajai (2000), explained the causes of women's offending as a variety of reasons ranging from material lust to self-defense.³² They argued that the largest chunk still would go to socio-cultural causes which were illiteracy, married women and women in rural localities. Sharma (1993), came to the conclusion that 56 per cent of his sample study, criminal women belonged to rural regions, having a low monthly income.³³ Nagla (1991), also added through his study that 70.36 per cent of female criminals belonged to rural areas.³⁴

However, there are others like Mathew (1992)³⁵ and Rani (1983)³⁶, who brought out that women criminals actually belonged to backward castes in urban areas. It is quite clear that this particular argument that rural or urban women commit more crimes is rather moot, the important factor remains caste and class. Women in the lower rungs of society often adhere to

²⁸ Subhra Sanyal and Vimla Agarwal, "Self Esteem of Female Convicts" Souvenir Volume *Readings in Criminology* (1982).

²⁹ Suvarna Cherukuri, *Women in Prison: An Insight into Captivity and Crime* (Cambridge University Press India, New Delhi, 2008).

³⁰ Ram Ahuja, "Female murderers in India: A sociological study" 31(3) *Indian J. Soc. Work* 272-84 (1970).

³¹ *Ibid.*

³² Anju Bajpai and Pramod Kumar Bajpai, *Female Criminality in India* (Rawat Publications, New Delhi, 2000).

³³ Madhu Sharma, "Crime and Women: A Psychological Perspective" 15/2 *Indian J. Criminol.* (1987).

³⁴ Bhupendra K Nagla, "The Criminality of Women in India" 63/3 *Indian J. Soc. Work* 273-82 (1982).

³⁵ Asha Mathew, *Fair Sex in Unfair Society: Women and Crime* (Ashish Publishing House, New Delhi, 1992).

³⁶ Bilmoria Rani, "Homicides by females" 2/1 *Indian J. Criminol.* 8-17 (1983).

crimes as these studies suggest. Then again there are other sociological factors like religion and marriage that need particular attention too.

Ram Ahuja (1970), through his study on murder crimes committed by women, dismantles popular belief.³⁷ The figures of Ahuja's work showed that an alarming number of female murderers were from urban areas. These women were from low-income occupations and low-income families. He stresses that the economic cause of low-income was a strong factor of family tension that led to an unfulfilling social relationship as being conducive to criminal behaviour. He adds that punishment to women murderers should be according to the type of causes of murder.³⁸

In his study, the focus is on family structure and relationships. As most scholarly work on women's criminality in India focuses on women in the domestic environment, consequently, they are an exemplification of the power relations in an Indian family. This is another limiting factor in the inquiry of criminal women, now that women also have work outside the household.

Family dynamics in Indian society is an important quotient to take into account, considering the multi-faceted roles women have to undertake inside their homes. However, even in this elaborate study of women murderers, as is Ahuja (1970)'s study, there is still a categorization of them, and also considering that Indian women are living in different contexts today, these arguments may seem outdated and sometimes even irrelevant.

Finally, Mili and Cherian (2015), while acknowledging women's, "social oppression and economic dependency on men and the state"³⁹, also point out that spatial and temporal specificities make it difficult for generalization of women's criminality. The spatial-temporal frame within which such criminal offences occur is also one of the things that the literature on offending women especially in India needs to be understood.

Women's offending happens due to several factors which are of socio-economic and cultural nature rather than an inherent characteristic flaw in women. The idea of making a socially induced act, a personal act, and one that eventually renders a person mentally ill or socially maladjusted, is problematic. Hence, there is a need to look into offending women in India, through the socio-economic causes inside as well as outside their domestic sphere. Given the

³⁷ Ram Ahuja, "Female Murderers in India A Sociological Study" 31(3) *Indian J. Soc. Work* 272-84(1970).

³⁸ *Ibid.*

³⁹ Pavle M. Mili, Rajalakshmi Perumal and Neethu Susan Cherian, "Female Criminality in India: Prevalence, Causes and Preventive Measures" 10/73 *IJCJ* (2015).

nature of diversity of the subcontinent, it only becomes pertinent that a multiplicity of factors are drawn into and considered for studying women criminals.

V. Contemporary Trials and Tribulations of Women in Conflict with Law

One of the most contemporary examples of how women in conflict with the law, are portrayed in society via media platforms is the recent media trial in the high profile suicide case of an A-list celebrity. This particular celebrity was found dead in his apartment and about a few days after his demise, a woman was alleged to be responsible for his death. There was a rigorous media trial of the woman in question. “A trial by media followed the wild accusations, with some of India’s most popular television hosts declaring ... guilty already.”⁴⁰ She was later, “arrested by India’s narcotics control authority for allegedly buying cannabis”⁴¹, instead.

Media trials have serious repercussions on a person’s public and private life and also the trial of the accused in court. A few of the case judgments from the past, that have been in the public eye through widespread media coverage and involving women as prime accused, bears witness to it. The following are a few that serve as examples of a trial of women criminals, both in the media and in the Supreme Court of India.

However, it is beyond the scope of this paper to analyze each and every judgment to trace the inherent prejudices that lie in cases where women criminals are tried. Therefore, in this section, three cases that garnered maximum media attention as well as have seemingly problematic gendered remarks in their judgment are discussed at length, proving the contextual arguments being made in the earlier sections of this paper.

The first case that shall be discussed under this context, is *Shabnam v. State of Uttar Pradesh with Saleem v. State of Uttar Pradesh*, 2015.⁴² A couple, Shabnam and Saleem on April 14-15, 2008 at Bawankhedi village in Hasanpur tehsil of Amroha in Western Uttar Pradesh, committed the murder of seven family members including an infant of not more than ten months.

The information from the case judgment revealed that, Shabnam and Saleem were in a relationship but her family opposed their association. Shabnam was pregnant at the time of the commission of the crime and their main attempt was to eliminate all heirs to the family income

⁴⁰ Geeta Pandey, “Rhea Chakraborty: Why is Indian TV obsessed with Sushant Singh Rajput’s death?”, *BBC News, India*, Sep. 10, 2020, available at <https://www.bbc.com/news/world-asia-india-54098615> (last visited on Sep. 18, 2021)

⁴¹ *Ibid.*

⁴² *Shabnam v. State of Uttar Pradesh* (2015) 6 SCC 632.

and property. Further, it said that Saleem hatched the plan with Shabnam, and killed seven persons, of which the child was executed by Shabnam. Both were given the death penalty, which was halted momentarily by the Supreme Court following an appeal for mercy to the President which got ultimately rejected.

Concurring with the lower courts and the High Court, the Supreme Court with regard to various aggravating and mitigating circumstances declared the case, “rarest of rare” and sentenced Shabnam and co-accused, Saleem, to the death penalty. However, the judgment lays out a paragraph, particularly addressing Shabnam, the prime female accused in terms of her role in society and in her family, which she put to death. The judgment reads:⁴³

Indian culture has been witness to for centuries, that daughters dutifully bear the burden of being caregivers of their parents, even more than a son. Adult daughters place greater emphasis on their relationships with their parents, and when those relationships go awry, it takes a worse toll on the adult daughters than adult sons. The modern era, led by the dawn of education, no longer recognizes the stereotype that parents would want a son so that they have someone to look after them and support them in their old age. Now, in an educated and civilized society, a daughter plays a multifaceted and indispensable role in the family, especially towards her parents. She is a caregiver and a supporter, a gentle hand and a responsible voice, an embodiment of the cherished values of our society and in whom a parent places blind faith and trust.

This paragraph exhibits a social psyche that sees women inside their home or in society at large having an identity deeply embedded in their relationships with other people. Carol Gilligan (1977), in the ethical theory of the ethics of care, argues that women’s “perception of self is so much more tenaciously embedded in relationships with others and whose moral dilemmas hold them in a mode of judgment that is insistently contextual. The solution has been to consider women as either deviant or deficient in their development.”⁴⁴

In other words, this judgment glorifies sex-role stereotypes that have been entrenched into society so deep that “for the very traits that have traditionally defined the ‘goodness’ of women their care for and sensitivity to the needs of others, are those that mark them as deficient in

⁴³ *Id.*, at para 32.

⁴⁴ Carol Gilligan, “In a Different Voice: Women’s Conceptions of Self and of Morality” 47/4 Harv. Educ. Rev. 482 (1977).

moral development.”⁴⁵ In this case, Shabnam, who is an educated daughter, donning her role as a teacher in society, is seen as a failed daughter and an ‘abnormal’ woman. She failed as a daughter because instead of being the caregiver of her family and especially her parents, she took their lives. She deviated from womanhood because she became selfish and committed a crime for the sake of her future with her illicit partner.

Shabnam and Saleem are both criminals, however, there is no explicit description of Saleem or his character, except, being described as an “unemployed youth residing in the same village”⁴⁶. With this particular description, the court establishes that this person is uneducated, leading to the possibility that his socio-economic background, may have been responsible for his criminal behaviour.

In contrast, Shabnam has been time and again described as an educated daughter of a father who worked as a “*Shikshamitra*”⁴⁷ or teacher. Her background has been described as having a “decent and moral” upbringing and living an “elegant respectful life” in an educated family, in the judgment. She is described as being influenced by the “love and lust of her paramour”⁴⁸.

Additionally with the usage of the word “daughter”, in the judgment, there is a constant reminder by the court of the gender role that Shabnam has violated. As Chesney-Lind (1984), contends that in the criminal justice system in general and criminality in particular, women are often subjected to harsher punishment following her “double societal jeopardy”⁴⁹. The societal jeopardy of being a woman and a criminal, wherein the woman violates legal boundaries and also gender role expectations. While the Court states that there have been occasions where compassionate grounds have been held under similar circumstances but Shabnam in this case, did not stand a chance.

Meanwhile, the media coverage ranged from, ‘she was blind in love’⁵⁰ to ‘was like common girls, blind in love with lover’⁵¹. The crime reports were always written in conjunction with her

⁴⁵ *Supra* note 45 at 484.

⁴⁶ (2015) 6 SCC 632.

⁴⁷ *Id.*, at para.33.

⁴⁸ *Ibid.*

⁴⁹ *Supra* note 13.

⁵⁰ Jai Prakash, “‘Shabnam’ may be the first woman in the country to be hanged, the crime will shock you: In Bawankhedi village no daughter will be named Shabnam”, *Patrika*, Jan. 22, 2019, available at <https://www.patrika.com/amroha-news/shabnam-killed-seven-family-member-due-to-love-4018797/> (last visited on Sept. 19, 2021).

⁵¹ “Shabnam, who murdered seven, handed over her child to a college friend”, *News 18 Hindi: Uttar Pradesh*, Aug. 2 2015, available at <https://hindi.news18.com/news/uttar-pradesh/meerut-accused-of-seven-murders-shabnam-hands-over-child-to-college-mate-816574.html> (last visited on Sept. 26, 2021).

deficiency of character. This kind of reportage displays the light in which women are seen when in direct conflict with the law. According to such media portrayals, the “abnormal” character she holds ascertains her criminal behaviour.

On August 31, 2006, two sisters, Renuka and Seema were sentenced to death by the Supreme Court of India for committing a series of kidnappings and murders of children below the age of five years. They carried out the kidnapping and murders over a period of six years 1990-1996. They were thieves who snatched gold chains from large festive gatherings and used small children to get away with theft. These children were then murdered after the job was done.

The High Court had confirmed their conviction on almost all counts and sentenced the death penalty to the appellants. They were one of the first women in India to be given the death penalty. While the first death sentence in India is the landmark case of *Bachan Singh v. State of Punjab*⁵², under the ‘rarest of rare’ category, the media attention to Renuka and Seema’s case was unprecedented. The role of media is very important for any court judgment. It brings out public opinion and “the media often determine, directly or indirectly, which cases ‘outrage the nation’ and which sink without a trace in the public consciousness.”⁵³

Newspaper headlines flashed “Killer sisters nurtured by mother”⁵⁴, with media reports still quoting, “How can a woman with a child commit a crime?”⁵⁵ Even until very recently, when the case is still seen in online forums titled, “Seema Gavit and Renuka Shinde: Scary tale of Wrong Parenting leading to Capital Punishment”⁵⁶.

Each article along with meticulously describing how merciless, gory and violent the killings were, also demonstrated the “wrong parenting” of their mother and the wrong “nurturing” that they received from their mother, leading to the commission of a crime. These particular words that are often ascribed to criminal women, that again, emphasize the gender role expectations

⁵² (1980) 2 SCC 684.

⁵³ Ammu Joseph and Kalpana Sharma (eds.), *Whose News? The Media and Women’s Issues* 101 (Sage Publications, New Delhi, 2/2006).

⁵⁴ Special Correspondent, “Killer sisters nurtured by mother”, *The Telegraph, Mumbai*, Sept. 1, 2006, available at: <https://www.telegraphindia.com/india/killer-sisters-nurtured-by-mother/cid/770236> (Aug. 14, 2021).

⁵⁵ Candace Sutton, “Serial killer sisters Renuka Shinde and Seema Gavit who abducted and murdered children in bid to avoid execution at the gallows”, *news.com.au*, Apr. 22, 2017, available at: <https://www.news.com.au/world/asia/serial-killer-sisters-renuka-shinde-and-seema-gavit-who-abducted-and-murdered-children-in-bid-to-avoid-execution-at-the-gallows/news-story/ef93b4b1ccc699db80223bbf0b4018ad> (Aug. 10, 2021).

⁵⁶ “Seema Gavit and Renuka Shinde: Scary Tale of Wrong Parenting Leading To Capital Punishment”, *The Socians*, November 8, 2019, available at: <https://www.news.com.au/world/asia/serial-killer-sisters-renuka-shinde-and-seema-gavit-who-abducted-and-murdered-children-in-bid-to-avoid-execution-at-the-gallows/news-story/ef93b4b1ccc699db80223bbf0b4018ad> (last visited Sep. 25, 2021).

that were not met. None of the media coverage at the time concerned much with the sisters' appeal against the death sentence.

Following the procedure of law, that the *Machhi Singh v. State of Punjab*⁵⁷ judgment, framed with guidelines for the application of the “rarest of the rare” as described in the *Bachan Singh* case. The necessity to consider mitigating and aggravating circumstances to determine relevant punishment was explicated in detail. However, in Renuka and Seema's case, there was seemingly no mention of mitigating circumstances, in the entire judgment. With the Court declaring, that the “appellants have been awarded capital punishment for committing these murders and their sentence was confirmed by the High Court... we find no mitigating circumstances in favor of the appellants, except for the fact that they are women.”⁵⁸

In the case of *Ram Singh v. Sonia* 2007⁵⁹, which was another instance of mass murder committed by a woman named Sonia, wherein she killed her family. The motive of the murders was clarified by the Supreme Court as a property dispute. Wherein, the judgment reads: ⁶⁰

Insofar as motive qua the crime committed is concerned, it is clearly borne out from the factual matrix of the case on hand that both the accused had an eye on the property and to deprive deceased Relu Ram, which was in crores and in order to gain full control over the property and to deprive deceased Relu Ram from giving it to anybody else, both the accused persons have eliminated his whole family... the motive qua the crime committed stands proved in the present case.

Therefore, the Supreme Court held, Sonia and Sanjiv, “both guilty of the murder of the deceased Relu Ram and his family”⁶¹. The judgment was in favour of both Sonia and her husband as well as co-accused Sanjiv, being sentenced to death. The last descriptive paragraph from the judgment reads: ⁶²

The instant case is one wherein accused Sonia, along with accused Sanjiv [her husband] has not only put an end to the lives of her step brother and his whole family, which included three tiny tots of 45 days, 2-1/2 years and 4 years, but also her own father, mother and sister in a very diabolical manner so as to deprive her

⁵⁷ (1983) 3 SCC 470.

⁵⁸ (2006) 7 SCC 442, para 35.

⁵⁹ (2007) 3 SCC 1.

⁶⁰ (2007) 3 SCC 1, para 44.

⁶¹ *Id.*, at para 51.

⁶² *Id.*, at para 56.

father from giving the property to her step brother and his family. The fact that murders in question were committed in such a diabolical manner while the victims were sleeping, without any provocation whatsoever from the victim's side indicates the cold-blooded and premeditated approach of the accused to cause the death of the victims. The brutality of the act is amplified by the grotesque and revolting manner in which the helpless victims have been murdered which is indicative of the fact that the act was diabolic of the most superlative degree in conception and cruel in execution and that both the accused persons are not possessed of the basic humanness and completely lack the psyche or mindset which can be amenable for any reformation. If this act is not revolting or dastardly, it is beyond comprehension as to what other act can be so. In view of these facts, we are of the view that there would be a failure of justice incase death sentence is not awarded in the present case as the same undoubtedly falls within the category of 'rarest of the rare' cases and the High Court was not justified in commuting death sentence into life imprisonment.

This penultimate paragraph in the judgment, clearly explains the crimes committed by Sonia, which makes the court commuted the death sentence to the two. However, it does not speak much about the role played by Sanjiv, who is equally accused of the same crime. While the motive of the crime has been clearly discussed in the judgment as to both Sonia and Sanjiv's, the motive seems to be Sonia's alone, by the end of the judgment.

Simultaneously, the media's outrage was on the daughter, with news outlets having paragraphs dedicated to Sonia's character in particular. Although, this case first, gained momentum because Relu Ram Punia, was a multi-millionaire and an elected representative from the Barwala Assembly, Hisar (1996).

Many articles read, 'Lady Macbeth?' and specifically under 'Profile of a Killer', in the same article she has been described as having the "makings of a killer since her childhood. She would smoke and drink. She would throw her weight around, threaten people for petty reasons and splurge in 5-star hotels."⁶³ The article also quoting the lawyer of Ram Singh (her uncle) saying,

⁶³ Narendra Kaushik, "Killer Sonia's sapna was money money", *Mumbai Mirror*, Feb. 18, 2007, available at: <https://mumbaimirror.indiatimes.com/news/india/killer-sonias-sapna-was-money-money/articleshow/15682217.cms> (last visited on Sep. 26, 2021).

“She was spoiled from her childhood. Her parents quarreled in front of her and her mother Krishna instigated her to demand a share in her father’s property”⁶⁴.

As has been evident, with the analysis of the above case judgments too. Women’s gender role expectations in society, make depictions of women criminals and particularly women committing violent crimes of a murderer, have sexist undertones that pass so easily in media depictions is amusing. Still, some glaring examples are column pieces writing, “Women are deadly...They are wicked, smart, cunning, and vicious.”⁶⁵

VI. Conclusion

As is time and again discussed in this article, the character of the woman and the nature of nurture/care she received from her mother becomes a major argument brought out not only in the media trials that befall criminal women but also in their respective case judgments. A woman’s role in society, which should automatically be instilled in her by her mother, points at the role women have and their duty to upkeep their gender roles and pass on to the generations of women that follow.

This paper specifically aimed at, showcasing the “double jeopardy” in society towards women in conflict with the law. As seen in the vast literature around the criminality of women, theories of crimes by women lack women’s perspectives. It is pertinent for women’s voices and experiences to be taken into consideration in the literature of criminality in women. The homogenous literary tradition that continuously demonizes the woman while treating criminality as a societal evil remains a highly problematic knowledge tradition.

Contrary to common belief systems, women’s sentencing is not lenient. Women are treated with more societal scrutiny owing to their gender, which eventually also hampers her sentence. It needs to be stressed that women take up crime and offending based on a multitude of complex situational and environmental circumstances, not to forget the cultural effects and also the spatial-temporal vagaries.

Studies of the criminality of women in the Indian sociological context have always been an examination of the domestic woman. Upcoming studies although focus more on a heterogeneous perspective, still needs to upscale in terms of the location of women in society

⁶⁴ *Supra* note 63.

⁶⁵ Rishabh Banerji, “9 Indian Women who’re Accused of Committing Heinous Murders!” *India Times*, Nov. 13 2015, available at: <https://www.indiatimes.com/culture/who-we-are/9-of-india-s-most-notorious-women-murderers-ever-246966.html> (last visited on Aug. 12, 2021).

today. More thoroughly working on the intersection at which each woman stands in the myriad of Indian society, is the need of the hour.

Criminality has a direct connection with the social structure. Many women are still dependent upon men and the state, financially or otherwise. Patriarchy works in multiple ways, one of which is associating violence with men and it being a male characteristic, which is also an additional impediment. The heinousness of crimes committed by women are still considered 'abnormal'.

The reasons behind such misunderstandings of women criminals are the lack of or the minuscule number of women in the criminal justice system, the legislature, law enforcement and field agencies, which is also a cause of simultaneous lack of insensitivity towards women criminals. It will, however, be a long-drawn-out attempt at gender equity albeit not impossible.

A radical approach would be making the language of law more sensitive. Since the legislature bears the responsibility of justice and equality in society. It becomes only appropriate that the language of the law carries with it similar responsibility in maintaining this far-fetched equity by being considerably gender-sensitive and gender-neutral in language, spirit and meaning.

A more workable approach would be making law, as multi-disciplinary, as possible. Law as a discipline of study, could be more open to let social science inquiry as a part of their curriculum. Law, should be taught with other social sciences, to help it grow and attune itself more to the several challenges it faces now and in the future. Law needs to be accommodative and sensitive in order for it to facilitate better outcomes in dealing with the evils of society.

All in all, criminality should be seen as people's offences and delinquencies irrespective of their sex. The criminal justice system in general and the criminal sentencing of women in particular needs to be paid special attention to and analyzed through the lenses of not only gender but also class, caste, region, race, and the like.