



## An In-Depth Review of Gender Bias in the Criminal Justice System

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### Abstract

*This qualitative analysis delves into the pervasive issue of gender bias within the Pakistani criminal justice system. It presents a comprehensive review of existing secondary data, shedding light on the complexities and manifestations of gender-based discrimination at multiple levels of the justice system. In Pakistan, the criminal justice system is deeply embedded with societal norms and biases, disproportionately affecting women who encounter it as victims, witnesses, or accused individuals. Through this review, we examine the ways in which gender bias permeates law enforcement, court procedures, and sentencing. The study identifies and evaluates the various factors that contribute to the perpetuation of gender bias within the system, including cultural norms, socio-economic disparities, and the limited representation of women in the legal profession. It also explores the consequences of this bias on the experiences and outcomes for individuals involved in the system. Furthermore, the research investigates the evolving legal landscape and policy initiatives aimed at addressing gender bias in Pakistan's criminal justice system. By drawing on a multitude of secondary sources, this analysis seeks to provide a comprehensive understanding of the multifaceted nature of gender bias and its implications within the country's legal framework.*

**Key words:** Gender Biasness, Criminal Justice System, Secondary Analysis

### Background

Human society is composed off different genders i.e., males, females and transgender. It is the bitter reality that not all of the genders are treated on the similar footing because the males are given preferences over the females and the transgender (Starr, 2015). This social phenomenon is not only associated with a particular country rather the countries across the globe are facing the same issue. The intensity of this issue may vary from society to society but existence of this issue is found everywhere (Anwar et al, 2012).

There is difference in priorities among the developed, developing and the under-developed countries regarding gender biasness. The developed countries have overcome such issues due to availability of the resources and facilities (Becker, 1968). On the other hand, the developing and under-developed nations have high intensity of the issues. The women are not given the priority in almost all of the fields i.e., social, economic and educational and legal more importantly (Boyd et al, 2010).

### Gender Bias

The unequal treatment of the citizens based on their gender is known as gender bias. For example, there is a vacant post and both men and women applied for the same and the hiring authority selects one of them without providing the equal chances to be selected is called gender bias (Büsch & Timbart, 2016). Similarly, the women are not given the same facilities and opportunities in the criminal justice system, which has become the important concern of the day. Despite, having the universal declaration of the equal human rights yet the women are not given the same opportunities and facilities like men. They are facing multiple issues regarding their legal rights i.e., the unavailability of the female staff, lack of separate portions and the limited female judges and prosecutors (Anwar et al, 2014).

## Gender Discrimination in Criminal Justice System

The women compose a small segment of the offenders because the men are more likely to commit the crimes. According to the existing statistics, the women constitute only 5% of the offenders in the commonwealth. Due to their tinny existence in the criminality, little attention has been given to the women facilities in the criminal justice system. The penal world did not consolidate as much laws and techniques as these are prepared in accordance to the men. This is the prime reason of gender biasness in the criminal justice system (Carrell et al, 2010).

With the passage of time, the statistics changed and the ratio of the women increased in the offenders list. In some cases, the ratio of the women is higher than the men that shows the changing trends in the penalty system. This high rate of the females' involvement in the criminal cases posed serious concerns for the public officials and the social scientists to address the same topic to root out the causes of this phenomenon. Data shows the high rate of the women involvement in offenders on one side but at the same time, the limited legislation and facilities have been granted to deal with them (Depew et al, 2016).

There is mixed perception prevails among the social scientists in accordance to the females' matters in criminal justice system. Some of them reveal that women are treated politely by the legal system as compared to men. On the other hand, there is also a group of the same, which discloses that women are not given sufficient facilities to deal with the cases properly. This is because of their gender that they cannot meet with their lawyers and the prosecutors frankly as the men do (Farrell et al, 2010).

The women are considered a disadvantaged segment of the society when it is talked about the judicial and criminal justice system. The men and women cannot be dealt in the same manners because the provisions of the international human rights forum clearly demonstrate that the women should be given proper circumstances while dealing with them in the criminal cases. The female police officers can only arrest the females but in reality, the picture is totally different because such provisions are only granted in the developed countries. On the other hand, the same are dragged and humiliated before the society especially in the developing and under-developed countries, which indicates the violation of the international provisions of the human rights (Fischer, 1997).

## Global Perspective

It is normally perceived that females are treated chivalry than the males but the concreted evidences demonstrate that there are not such existences. The females are being dealt more harshly than the males. In many cases, they are even physically tortured by the males, which clearly indicates the violation of their human and legal rights (Glaeser & Sacerdote, 2003).

Not only at local police level, are the women even unequally treated at the judicial level too. In the prisons, the women offenders have to face physical and sexual assault as well. They are bound under the custody of the jails administration. Normally it perceived that women offenders are under the watch of female staff only but actually, they have to pass thorough different routine matters where they interact with the male staff as well (Guthrie et al, 2007). They face gender discrimination in the prisons. At the same time, they have limited access to the resources of the criminal justice system. All of the main correctional institutions are framed in accordance to the men mainly. There are limited cells and departments established in the wake to provide facilities to the female offenders. They are not given proper residences; meet up cells with their family and friends rather on contrary they have to take on all of these on the same areas of men (Glynn, A. N., & Sen, 2015).

Generally, the women offenders are involved in the non-violent matters than the men who are involved in all ranges of crimes. The non-violent of civil suits must be dealt on priority basis

when there is relation with women offenders but on contrary to that the women do not gain the support to get rid of the civil cases. They have to take on the cases like that of violent crimes, which is also the gender discrimination against the women (Lim et al, 2015).

According to provisions of international institutions, the juveniles and female offenders should be given proper facilities so that they may rehabilitate into the society soon. However, both female offenders and the juveniles are facing the issues in the criminal justice system. They are investigated through the mechanism prepared for the male offenders because the criminal justice system lacks the laws framed in accordance to the female offenders (Shayo & Zussman, 2011). The females have histories of facing sexual and physical abuses at the prisons and in many cases, the females have to pass through the tough legal system even during their pregnancies (Schanzenbach, 2005).

### **Major factors of Discrimination**

The women are considered one of the marginalized communities across the globe. Although the educational and technological advancements have changed their identities, they are being perceived in the same perspective. Yet, the male dominance is prevailed in majority of the nations which discourage the participation of the women in many fields i.e., education, job sectors and others. In accordance, the women have to face discrimination is the criminal justice system too. Some the major spots of their discriminations are following.

#### **Poverty**

The majority of the females are poor because they are not independent. They have to depend on their families like parents and husbands. They are mostly confined at the homes, which have restricted them in limited monetary resources available just to run their routine lives. However, when they face any civil and criminal suit, the first thing they have to face in the form of discrimination is the lack of resources. They do not have enough resources to lead their cases properly.

#### **Dependency**

In the male dominant society, the women are not allowed to step out of their homes without the permission of their families. Therefore, they have to be dependent on the male family members because there is not available any system specific system related to women in majority of the countries.

#### **Cultural Barriers**

The under-developed and developing world is strongly bound of their cultural traditions. According to their culture, it is not allowed to engage the women in the criminal or any other cases because they think it will humiliate their respect in the society. Therefore, the women have to quit their legal rights in the wake of cultural barriers. In the same way, the females are also not permitted to do a job due to the rigid cultural system. This is another factor of gender biasness especially in the perspective of developing countries like Pakistan.

#### **Limited Facilities**

Apart from the social and cultural barriers, the women face discrimination at the judicial side too. There are limited facilities available for the women. The limited female staff cannot deal all of the women by themselves so they have to face the male staff. The female prosecutors also do not have time to deal with all of the female offenders so this is another discriminative aspect the women face under the criminal justice system.

#### **Physical and Sexual Abuse**

It is the bitter reality that the female offenders have to pass through different tough stages during a civil or criminal suits most importantly they have to face the physical and sexual

abuses. They cannot resist in an environment surrounded by the males so this is another discrimination the women face during their imprisonment period.

### **Lack of Education and Awareness**

Lack of education and awareness is another factor of gender biasness against the women. The women in the developing and under-developed countries are given limited educational opportunities, which is why they are set behind in the educational achievement. This limited level of education limits their awareness level to which resultantly leads to the gender biasness in the perspective of Pakistan and other developing world.

### **Situation in Pakistan**

Like many other developing countries, the gender jurisprudence is also not addressed in the criminal justice system of Pakistan. The biasness exists in the Pakistani criminal justice system as the women offenders mostly have to rely of those resources available for the men as well. the whole of the this criminal justice system is encircled by the offences related to the men and the women side is also totally ignored which directs that there is dire need to develop policies regarding the inclusion of females offenders as well (Younus, 2015). These unfair and unjust means cannot meet the timely justice because the timely delivery of justice system can only be made if there is availability of the respective legal and judicial provisions. The laws of any country depict of the social and cultural system of the same likewise the Pakistani laws are framed according the male dominance, based on masculinity, and ignores the other side. The females are only perceived under their social and cultural domains only because only the educated people in the urban areas grant equal rights to their female members otherwise the Pakistani culture as a whole takes woman for granted in the terms of honor only. This is the reason the majority of the women are killed in the name of honor but at the same time, male members are also involved in the same cases but they are protected by the families and considered proudly sons. Therefore, the injustices against the women start from the families and walks side by side up to the criminal justice system (Younus, 2015).

Not only the criminal but the civil justice system too favors the men over women. Just take the example of the Law of Witness where both men and women are not equally treated rather the evidence of two women is considered equal to one man. Although some of the encouraging steps are being taken in the perspective of Pakistan like Women Protection Act, 2006, there is need of sufficient stuff to be taken in the same cause. Unfortunately, Pakistan is one of among those third world countries where the rate of honor killing is high. This high rate of honor killing can only be controlled through the proper legislation and criminal justice system in accordance to the nature of the crime. The lack of proper mechanism and legal provisions lead to further embark the honor killing especially in the backward areas. The matters of honor killing, rape cases, domestic violence and the forced marriages are routine matters not only among the far-flung areas but in the feudal families too. If the similar justice opportunities are granted to the women, many of the aforementioned crimes can be controlled.

Apart from the formal justice system, there is also informal ways of justice in the backward and traditional areas known as punchayets and jirgas. The performance of the formal justice system is somehow satisfactory when it is compared with jirga and punchayet system because this traditional justice system is totally consisting of the male dominance where there are limited chances of justice available for the women. There are many decisions made by these informal justice systems like forced marriages and even the gang raps are ordered i.e., the case of Mukhataran Mai who was gang raped about tribal punchayet (Younus, 2015).

## Biasness at Judiciary

Iqbal et al (2012) elucidate that apart from the role of police, the women face biasness in the judiciary too. The male judges and staff also mainly represent the judiciary. There is tiny proportion of the female judges, which can be an equal opportunity in cases related to the females. There is also limited availability of the female lawyers and the public prosecutors and the family courts. The cases of the women are mainly held in the open courts, which ripe out the privacy and the sensitivity of the cases concerned with the women. This unavailability of female staff and lack of the resources is also another hurdle leads to gender biasness in the criminal justice system of Pakistan (Hamid & Ahmed, 2019).

Ejaz et al (2011) reported that according to the international provisions of the legal and human rights, the minors and the women are entitled to be granted the special and separate treatment in the criminal justice system. This is because of the sensitivity of nature of criminal and civil cases related to above-mentioned categories. Unfortunately, the both other these are being treated like the other criminal cases in the open and regular courts. Furthermore, the women are not given the proper security from the opposite party, which explains that women are facing many issues in the criminal justice system in Pakistan.

Delavande & Zafar (2013) explored that another issue the women have to face is the lengthy trials. It is the bitter reality of the judiciary that the speedy trials are missing in the perspective of Pakistan. The men can bear the long trials but the women do not have the same capacity, which needs the reforms in judiciary. The women are unable to come for attending the hearing from a long distance neither they are given the special court in Pakistan. Furthermore, all of the police, lawyers and prosecutors try to make a compromise between the parties despite they know the women have legal rights which again shows gender biasness (Butt & Asad, 2016).

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