



Critiquing The Gender Responsivity of Probation in India

Karan Tripathi explores the extent to which probation practice in India responds to the needs of women, arguing that a lack of a gendered approach results in the invisibilising of women on probation.

The needs and narratives of women have long remained at the margins of both research and policy in the criminal justice system. Feminist criminology addressed this gendered amnesia towards women (Cain, 1990), exposed gender insensitive approaches (Carlen, 1987), and argued for foregrounding the lived experience of women in criminological research and practice (Annison, 2015). It further highlighted how a 'gender-neutral correctional gaze' centres male offending (Covington and Bloom, 2000) and subjects women to institutional logic and practices that are grounded in the research conducted on men (Worrall and Carlen, 2004). This article is an attempt to retrieve gender from the margins and use it as the central theoretical tool to critique practices of the probation officers in India. Based on interviews conducted with 40 probation officers from 15 different States, this article will show how women are either invisibilized or seen as 'correctional afterthoughts' (Ross and Fabiano, 1986) in the administration of community corrections in India. It will further expose the gendered frames (Hawkins, 2003; Hannah-Moffat, 2004) that influence how women on probation are conceptualized and "dealt with" by probation officers.

Absence of Gender-Responsive Intervention

Gender-responsive interventions in corrections have emerged as a response to historical exclusion of complex lived experiences of women



Karan Tripathi

MSc Criminology & Criminal Justice student,
University of Oxford.

from penal policymaking. It challenges the privileging of male crime in the design process (Kivel, 1992) to argue that the dynamics of male and female offending are different. It further calls invisibility of women in correctional policymaking as a form of 'oppression' (Covington and Bloom, 2000) and 'epistemic injustice' (Fricker, 2007). To empirically back up this argument, Gelsthorpe's (2013) seminal research revealed that gender-informed probation services, where the experiences of women under supervision are privileged, assist significantly in ensuring compliance with rehabilitation programmes.

The law, policy, and practices governing probation in India, however, provide no provisions for addressing the unique and complex needs of women offenders. The gender-neutral phrasing of the law has grossly undermined the situational and behavioural differences in male and female offending. The federal statute neither has any provision for ensuring a minimum cadre of women officers nor does it provide special guidance or procedures for carrying out probation work for women offenders. Due to the absence of the mandatory requirement under the federal legislation, State governments have also ignored maintaining a minimum cadre of woman probation officers in their respective Rules. This has adversely contributed to the dismal representation of women in the probation workforce: 11 out of the 15 states do not have a single woman in their probation workforce. The irony of this fact becomes even more profound when it is considered that in 7 out of these 11 States, probation falls under the mandate of Department of Women & Child Development.

The forms for conducting social investigation and the proforma for pre-sentence reports are identical for men and women. Apart from having a column on 'sex,' these documents have no category to record the unique circumstances or needs of women. The manuals prescribed for the training of probation officers focus just on 'professionalism,' and a 'general welfarist approach,' making no mention of gender-responsivity (CHRI, 2013).

Conceptualizing The 'Female Offender'

A two-thirds majority of the probation officers interviewed for my study stated that the existing law and policy on probation is 'woefully inadequate' for carrying out probation work for women. They further said that, in absence of clear institutional guidelines, they have to rely on their 'personal experience' or 'social understanding' while conducting social investigation. Socio-legal scholarship (Hawkins, 2003; Hannah-Moffat, 2004; Hoyle, 2018) has extensively focused on how decision-makers mobilise various knowledges, experiences, values and meanings while exercising discretion. Feminist criminologists have further used the sociolegal framework to highlight 'gendered knowledges,' both explicit and subliminal, that influence the decision-making process (Hannah-Moffat, 2004).

In India, the absence of sophisticated institutional guidance, means that probation work with women reflects the arbitrary and gendered exercise of discretion. Probation officers informed me that they feel 'awkward,' 'restrained,' and 'overcautious' while conducting social investigations for women. An overwhelming majority of probation officers feel that a woman officer would've been better suited for the job, as being male officers, they can't ask 'personal' questions to the women. This internalised apprehension leads most of the probation officers to routinely privilege narratives of the woman's husband or family over her personal narratives while conducting investigations.

The following comments are indicative of how this manifests:

We feel awkward in asking them to open up to us.

(PO Swaminarayan¹, Tamil Nadu cadre)

I'm unable to completely understand the functioning of a female mind, it's the toughest job in the world.

(PO Kamaljeet, Chhattisgarh cadre)

It's hard to develop confidence with female offenders, as we can't pat them on the shoulder, shake their hands, or be in close physical proximity.

(PO Abeen, Kerala cadre)

We can't build trust with female offenders, can't ask them for information on their private needs.

(PO Manoj Yadav, Delhi cadre)

We can't understand how the past trauma of female offenders manifests itself.

(PO Akhilesh, Bihar cadre)

The study identified paternalism (*female offenders can't express freely about their criminality*), gender-related statuses of 'dependency' and 'respectability' (*She needs to take care of her children; what will the neighbours think about her character*), and the responsabilisation of informal control agents (*she's best protected in her family; she must be accepted by her family*) as gendered frames that influenced probation decision-making on women on probation.

This gendered understanding of criminality transcends social investigations and impacts the supervision process. Most probation officers claimed that they focus more on the supervision of male offenders as compared to female offenders, as the latter are '*more compliant*' and can be '*easily controlled by the family*.'

While probation officers followed the same factors for conducting social investigation with men and women, there were considerable differences in how these factors were rationalised. For instance, 'absence of family acceptance' was perceived as an aggravated risk more for women than men (*Solitude will kill her, she'll be subject to scrutiny by society*). Similarly, factors such as 'unwavering character strength,' 'compliant behaviour', and 'mental health' were assessed more severely for women. Therefore, women on probation's 'lack of emotional control' was perceived as a mental health concern which, in turn, resulted in disproportionate referrals to counselling within prisons as compared to male offenders:

Women offenders are more fickle-minded, it's hard to understand what's going on in their minds.

(PO Abid, Kerala cadre)

In terms of post-release rehabilitation, education and employment opportunities were seen as a priority more for male than female offenders. '*Male is a breadwinner, female is the caretaker*', said one of the probation officers in the Maharashtra cadre.

¹ The names of all the probation officers cited in the article have been anonymised

Conclusion

Indian probation policy's gender-neutrality claim conceptualizes women through the looking glass of male criminality. In the absence of gender-responsivity in the legal, institutional, and policy design, gendered and arbitrary frames influence probation practices which results in invisibilizing the unique lived experience of women on probation. There's a need to conduct further research on assessing the qualitative and quantitative harms of such invisibilization on women who are subjected to the criminal justice system. The research shall also develop on the debate highlighted in the present article - whether gender neutrality furthers epistemic, cognitive, and emotional harms against women.

Bibliography

- Annisson, J., Brayford, J., and Deering, J. (2015) *Women and Criminal Justice: From the Corston Report to Transforming Rehabilitation*. Bristol: Policy Press.
- Cain, M. (1990) 'Towards Transgression: New Directions in Feminist Criminology', *International Journal of Sociology*, 18(1), pp. 1-18.
- Carlen, P. (1987) *Gender, Crime and Justice*. Milton Keynes: Open University Press.
- Commonwealth Human Rights Initiative, *Probation Officers Training Program Report* [online]. Available at: <https://www.humanrightsinitiative.org/download/14571575032012%20Training%20for%20Probation%20Officers.pdf>
- Covington, S. and Bloom, B. (2000) 'Gendered Justice: Programming for Women in Correctional Settings'. In: 52nd Annual Meeting of the American Society of Criminology. California, USA
- Fricker, M. (2007) *Epistemic injustice: Power and the ethics of knowing*. Oxford: Oxford University Press.
- Gelsthorpe, L. (2013) 'Working With Women In Probation' In: Ugwudike, P. and Raynor, P. (Eds.) *What Works In Offender Compliance*. London: Palgrave Macmillian.
- Hannah-Moffat, K (2004) 'Losing Ground: Gendered Knowledges, Parole Risk, and Responsibility', *Social Politics*, 11(3), pp. 363-385. <https://doi.org/10.1093/sp/jxh041>
- Hawkins, K. (2003) 'Order, Rationality and Silence: Some Reflections on Criminal Justice Decision-Making' In: Gelsthorpe, E. and Padfield, N. (Eds.) *Exercising Discretion: Decision-Making in the Criminal Justice System and Beyond*. Cullompton: Willan.
- Hoyle, C. (2018) 'Testimony in Wrongful Convictions: A Study of Decision-Making at the Criminal Cases Review Commission', *British Journal of Criminology*, 59(4), pp. 919-937. <https://doi.org/10.1093/bjc/azy066>
- Kivel, P. (1992) *Men's Work: Stopping The Violence That Tears Our Lives Apart*. Center City, MN: Hazelden.
- Ross, R. and Fabiano, E. (1986) *Female Offenders: Correctional Afterthoughts*. Jefferson, NC: McFarland.
- Worrall, A. and Carlen, P. (2004) *Analysing Women's Imprisonment*. Cullompton: Willan.