



Gender, culture and crimes

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Abstract

There is no doubt that in all societies, response to crimes, particularly serious ones, is significantly affected by the gender of the defendants or sometimes the gender of the victims. Within societies, female gender expectations and gender roles are different from those of males. There are some kinds of crimes that can be expected to be committed by women, but there are others that are not. On the one hand, there is no gender role corresponding to the former kinds of crimes, or at least it is not clear. On the other hand, if a woman commits a crime that society does not expect her to commit, such as killing her children, she will invariably be treated harshly by that society. Society's expectations depend on the culture and tradition more than the law. Since regulations, in general, make no difference in dealing with crime on the basis of gender, in practice the situation may be different. The aim of this paper is to consider how gender affects the way the law and society respond to different types of crime and violence. It will argue that gender plays a significant role in dealing with various crimes within the criminal justice system.

Keywords: evil woman, femininity, gender, race, violent crime

Introduction

The relations between gender and crime are deep, persistent and paradoxical.¹ Gender has been recognized as one of the most important factors that play a significant role in dealing with different kinds of crimes within criminal justice systems.² It has long been considered that men and women differ in their offence rates and patterns and in their victimization experiences. Braithwaite (1989)^[6] clearly stated that crime is "committed disproportionately by males."³ Such a statement appears to have a significant effect on the way that both law and society respond to different kinds of crimes.⁴ The idea that crimes are committed primarily by males has had a major effect on criminological thinking and on criminal justice policies. This effect is different from one society to another and from time to time within one society, since gender roles and expectations are changing.

Although as a general statement it can be said that the law does not differentiate between men and women, research conducted in the field of criminology have clearly shown that social characteristics of offenders such as race, gender and class, have influenced the decisions made in the CJS.⁵ For example, Morris (1987)^[30] has considered in his study that women are treated more leniently than men within the CJS, and they are less likely to be arrested, convicted and jailed.⁶ This paper will consider whether society's views about gender roles and

expectations affect the way that it responds to crimes, particularly violent crime. These issues and questions will be examined by using concrete examples (statistics and cases), without focusing on any one country or only one type of crime.

Gender, Crimes and Cultural Views

There is no doubt that in all societies, response to crimes, particularly serious ones, is significantly affected by the gender of the defendants or sometimes the gender of the victims. Within societies, female gender expectations and gender roles are different from those of males. There are some kinds of crimes that can be expected to be committed by women, but there are others that are not. On the one hand, there is no gender role corresponding to the former kinds of crimes, or at least it is not clear. On the other hand, if a woman commits a crime that society does not expect her to commit, such as killing her children, she will invariably be treated harshly by that society. Society's expectations depend on the culture and tradition more than the law. Since regulations, in general, make no difference in dealing with crime based on gender,⁷ in practice the situation may be different.⁸ Even today in some societies, women are perceived as sexual objects and are expected to remain within male-dominated ideologies such as homemaker and nurturer, subordinate to men.⁹ In societies such as Pakistan,¹⁰ women are considered to be the 'property' of men, and domestic violence may be understood as the right of men over the women with whom

¹ Frohmann, L. and Mertz, E. *Legal Reform and Social Construction: Violence, Gender, and the Law*, Autumn 1994, Vol. 19, 4 Law & Social Inquiry. pp. 829-851. P: 830.

² See Edwards, S., S.M. *Sex and Gender in the Legal Process*, 1996, Ashford Colour Press. P: 193.

³ Braithwaite, J. 1989. *Crime, shame and reintegration*. Cambridge, UK: Cambridge University Press. Page: 44.

⁴ Gruhl, J. and Welch, S, *Women as Criminal Defendants: A Test for Paternalism*, (Sep., 1984), Vol. 37, 3 The Western Political Quarterly. pp. 456-467. P: 1.

⁵ See Feinman, C. *Women in the Criminal Justice System*, 1994, Praeger Publishers, Westport. PP: 15-17.

⁶ Morris, A, *Women, Crime & Criminal Justice*, 1987, Basil Blackwell Inc.

⁷ See, Fenman, Supra note 5 and Daly, K, *Discrimination in the Criminal Courts: Family, Gender, and the Problem of Equal Treatment*, 1987, 66 Social Forces. PP: 152-175.

⁸ Methods of responding to crimes in practice will be discussed in detail in subsequent sections of this paper.

⁹ Oakley, A, *Gender and Society*, 1984, Adlershot Gower, London. P: 56.

¹⁰ Approximately 70% to 90% of females in Pakistan are subjected to domestic violence. See *Crime or Custom? Violence against Women in Pakistan*, Human Rights Watch 1999, p. 1.

they live.¹¹ In fact, violence against females by their male relatives is something that may be accepted by the society and the family if she has been considered to have violated the traditional gender roles in her society. Nagina Bibi, a seventeen year old girl from Pakistan, was engaged by her father to her cousin, but her brother wanted her to marry his wife's brother. On April 14, 1999, after her brother saw her talking to the cousin chosen by their father on the street, he and another brother reportedly tied her with a rope to a wooden post in their home, sprinkled kerosene over her and set her on fire. She was taken to a hospital with burns on 75% of her body, and after 23 days, she died. Nagina's family claimed that this was due to a stove explosion, but she told doctors that her brother had set her on fire because she had disobeyed him.¹² In such societies, males believe that if a female is defiant, then there is nothing morally or legally wrong with beating or even killing her. If men do engage in violence, they justifiably believe that they will not be prosecuted.¹³ In such societies, the unequal position of women results from social oppression as well as economic dependency on men. A woman who attacks her alleged batterer in these societies is considered to have violated "not just traditional gender roles of passivity and care-giving, but also a sexual hierarchy that grants men power over her."¹⁴ This is a major cause of violence against women; for instance, five Pakistani women per day are killed, and two women per day, in the region of Punjab¹⁵ alone, are kidnapped.¹⁶

On the other hand, it is commonly accepted that murders of male batterers by female victims of domestic violence be treated more seriously by both the legal system and society.¹⁷ In most societies when a man kills his wife or his daughter or his sister, it is acceptable by the public. While if a woman kills her violent husband, she will be definitely charged. It is widely considered that women who commit crimes have been perceived as males that have the worst characteristics of females. Lombroso and Ferrero (1985)^[26] emphasized that women who commit crimes are seen as genetically more male than female, therefore biologically abnormal.¹⁸ So females who did not act according to pre-defined standards were diagnosed as pathological and requiring treatment; they were to be 'cured' or 'removed'.¹⁹ Moreover, it is commonly believed that women who commit crimes, particularly serious crimes, are either evil or mentally ill when they commit an offense.

In addition, female defendants are viewed differently, as it is believed within some societies that women who conform are pure wives, mothers and respectful daughters who benefit society.²⁰ Therefore, if they commit a crime, they will be

categorized as 'mad,' not 'bad'.²¹ Non-conforming women may be those who engage in activities associated with men, or those who are likely to commit crimes. These women, as Bottoms (1996) stated, are doubly damned and doubly deviant.²² Furthermore, it has been argued that white and black females occupy different rungs on the social hierarchy. Nooruddin (2006) stated that white women in the USA are generally considered more valuable than black women, and they are accorded a different set of values and roles than are black women.²³ Within some societies, white women have been considered as 'gentle creatures' in need of protection, while black women have been characterized as lazy, promiscuous, and irresponsible.²⁴ As a consequence, white and black females are treated differently by their society and within the legal system. For example, white women who 'protect themselves' from violent attackers will be treated with leniency, while black females "are more likely to be blamed for getting into such a situation and for 'bringing it' on themselves."²⁵ Based on these perceptions, it is likely that white women who kill their batterers will be treated less severely than black ones if they have done the same.²⁶ This point will be clear when the relevant cases will be discussed in the next part of this paper.

Gender and the Legal System

As a significant improvement in responding to violent crimes in England and Wales, new instructions issued to officers in a Force Order in June 1987 have been implemented.²⁷ This Order considers assaults that occur in the home to be as serious as assaults that occur in public. Also, it considers the importance of police support to victims and connection with local agencies, and reminds officers of their powers of arrest.²⁸ The Home Office Circular of 60/1990 gave the police guidance that encouraged a quick and effective response in arresting suspects if the protection of the victim required it. However, follow-up studies have not been very positive. For example, in a study conducted in Streatham, London in 1989, only 204 suspects were arrested out of 446 domestic violence-related crimes.²⁹ 105 of those arrested (52%) were charged, 66% received two months in prison, and 5% received no further action.³⁰ Nevertheless, Force Order 1987 has been recognized as an effective tool against domestic violence, since studies conducted prior to the Order showed that domestic violence was regarded by the police as problematic and a waste of time.³¹ Also, the studies considered that arrest was rarely used and was not considered a practical means of dealing with the

¹¹ Nooruddin, I. *BLIND JUSTICE: 'SEEING' RACE AND GENDER IN CASES OF VIOLENT CRIME*. available from: <http://psweb.sbs.ohiostate.edu/faculty/nooruddi/research/nooruddin.pg2007.pdf>. Page: 4. Retrieved Nov 24, 2016.

¹² *Honor Killings in Pakistan*, Amnesty International. From: <http://www.aiusa/women>. Retrieved Nov 26, 2016.

¹³ Bettencourt, A, *VIOLENCE AGAINST WOMEN IN PAKISTAN*, Spring 2000, Human Rights, Advocacy Clinic, Litigation Report. P: 4. Available from: <http://www.wluml.org/node/7334>. Retrieved Nov 24, 2016.

¹⁴ Nooruddin, Supra note 11. Page: 4.

¹⁵ A region where violence against women in Pakistan is common.

¹⁶ Human Rights Commission of Pakistan's 1999 Report, <http://www.hrcp.cjb.net>.

¹⁷ Nooruddin, Supra note 11.

¹⁸ Lombroso, C. and Ferrero, W, *The Female Offender*, 1985, Fisher Unwin, London. P: 43.

¹⁹ Ibid.

²⁰ Feinman, Supra note 5. P: 16.

²¹ Lloyd, A. *Doubly Deviant, Doubly Damned*, 1995, Penguin, Sydney. P: 36.

²² Bottoms, A, *Sexism and the Female Offender*, 1996, Gower Publishing, Sydney. P: 1.

²³ Nooruddin, Supra note 11. Page: 5.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ See Hanmer, J, *Women and Policing in Britain, in Women, Policing, and Male Violence*, 1989, Hanmer, Radford and Stanko, Routledge. Also, Grace, S, *Policing Domestic Violence in the 1990s*, 1995, Home Office Research Study No. 139, HMSO.

²⁸ Edwards, Supra note 2, P: 193.

²⁹ Buchan, I. and Edwards, Susan, S. M, *Adult Cautioning for Domestic Violence, Police Requirements Support Unit*, 1991, Home Office Science and Technology Group, June. P: 84.

³⁰ Edwards, Supra note 2.

³¹ Edwards, S. M and Armstrong, G, *Policing Prostitution: A Profile of the SOS*, July-Sept 1988, Police Journal. PP: 209-219.

problem.³² Many officers believed that women were responsible for male violence, *'because women have sharper tongues than men, and they go on and on.'*³³

Gender's effect on the way that the law and society respond to different kinds of crimes can be seen from the fact that police hold stereotypical attitudes towards females and the crimes they commit. Also, it can be seen from courts practice and sentencing patterns that women are jailed for minor offenses and *"that the 'evil woman' thesis and the 'double deviance, double jeopardy' thesis are used against women in court."* As mentioned above, criminal laws broadly apply equally to women and to men. However, sex and gender sometimes have significance as legal categories in relation to criminal acts. For instance, male homosexual acts have at certain times been defined as criminal in most western countries, while lesbian acts have not. Also, the law often treats the prostitution activities of males and females differently. Under English common law, for example, women charged with an offense committed in the presence of their husbands (except murder and treason) could rely on the presumption that they acted under compulsion³⁴ until this was abolished in 1925. Furthermore, it was widely believed that women must be protected from criminal acts, rather than held responsible for them.³⁵

Women, by and large, are not expected to be violent.³⁶ Women are more in need of protection and they are mostly seen as less culpable and less likely to be recidivists; they therefore should be treated more leniently.³⁷ In accordance with this hypothesis, enforcement officers and judges are less likely to see women defendants as *'posing a threat'* to society and they believe that those defendants need to be protected, thus subsequently affecting their sentencing decision. Many judges think carefully before deciding to send a female to prison.³⁸

In fact, such a hypothesis has been supported by research, which finds that women are less likely than men to commit crimes, especially violent crimes. Perhaps one of the main reasons for the fact that the crime rate for women is very low compared to men is that most law enforcement officers and

judges are men. Men have orthodox views about women and how they should behave. Therefore, they tend to be less harsh with them. Moreover, the main expectation of many studies was that male defendants who were accused of killing women were more likely to be convicted and less likely to receive a reduced charge.³⁹

In considering how gender affects the way that the law responds to different crimes, it is important to consider the practices of the police, the crown prosecutor's service, and the courts. The effectiveness of the criminal justice system remedies depends on their implementation in practice.⁴⁰

■ Gender and Police Practices

In dealing with different kinds of crimes, some studies have suggested that the offenders' character and attitude is a key factor which influences the decision made by the police. For example, women were found to be more likely to show behavior that the police would not consider as offensive.⁴¹ It has been considered in many studies in the UK and in the USA that females see the police as people who will help them, while males see them in a more cynical light.⁴² The police simply categorize women as non-serious and non-persistent offenders; therefore, they are less likely to be arrested by the police.⁴³ It has been demonstrated that the police deal with women more leniently than they do with men; also, it has been found that women are cautioned rather than arrested for indictable offences more often than men.⁴⁴

In accordance with the chivalry hypothesis, on the one hand, women are in need of protection because they are seen as physically and emotionally weak, and are therefore considered to be protected by the criminal justice system rather than punished.⁴⁵ On the other hand, males are considered to be in a protector position for women and therefore should not be expected to harm them. Accordingly, if they do so, they will receive highly punitive sentences.⁴⁶ In fact, a number of researches have supported this hypothesis by finding that men were treated harshly compared with women.⁴⁷ However, although the sex of an offender plays a significant role in police decisions, it has been argued that the fate of women within the CJS in regard to crimes depends on how well a woman can represent the traditional stereotypical female role.⁴⁸ Lloyd (1995)^[25] stated that women often use their *'femininity'* to their advantage, which makes it very difficult to argue equal rights for both sexes.⁴⁹ Moreover, the nature of the offence has been found more effective and beside it the offender sex was found weak. For example, as women, prostitutes complained about being treated seriously and being subjects of harassment.⁵⁰ Also, Heidensohn (1994) has found that rape

³² One Police Officer stated (Interview 12, North London sample 1985) that 'we don't want to take action in these occasions anyway.' Police were concerned that the victim was likely to withdraw the allegation. '...if she withdraws it goes down the drain, that's the job.' (interview 13, North London sample). '...if you were walking in the street and some one smashed you in the eye, I would arrest. If you were walking in the street and your wife hit you, I wouldn't.' (Interview 16, North London sample). Edwards, *Supra* note 2. P: 196.

³³ Edwards, *Supra* note 2. P: 196.

³⁴ Mannheim, H, *Comparative Criminology*, 1965, Vol. 1, London: Routledge & Kegan Paul. PP: 691-693.

³⁵ Bardsley, B, *Flowers in Hell: an Investigation into Women and Crime*, 1987, Pandora Press, London. P: 37

³⁶ Naylor, B, *Women's Crime and Media Coverage: Making Explanations*, 1995. Oxford University Press. P: 78.

³⁷ See Gruhl and Welch, *supra* note 4; Spohn, C, *Gender and Sentencing of Drug Offenders: Is Chivalry Dead?* 1999, 9 Criminal Justice Policy Review. PP: 365-399; Spohn, C and Beichner, D, *Is Preferential Treatment of Female Offenders a Thing of the Past? A Multisite Study of Gender, Race, and Imprisonment*, 2000, 11 (2) Criminal Justice Policy Review. PP: 149-184; Spohn, C, Welch, S, and Gruhl, J, *Women Defendants in Court: The Interaction between Sex and Race in Convicting and Sentencing*, 1985, 66 Social Science Quarterly. PP: 178-185.

³⁸ "Interviews with judges in Massachusetts by Daly in 1989 revealed that judges worried about the social costs of imprisoning women, since they expected that women were likely responsible for caring for any dependents in the family." Daly, K, *Rethinking Judicial Paternalism: Gender, Work-Family Relations, and Sentencing*, 1989, 3 (1) Gender & Society. P: 9-36.

³⁹ Curry, Lee and Rodriguez, *Supra* note 40 and Baumer, E. P, Messner, S. F and Felson, R. B, *The Role of Victim Character and Victim Conduct in the Disposition of Murder Cases*, 2000, 17 Justice Quarterly. PP: 281-307.

⁴⁰ Edwards, *Supra* note 2. P: 192.

⁴¹ Morris, *Supra* note 6.

⁴² Mawby 1980 in *Ibid*.

⁴³ *Ibid*.

⁴⁴ 12% of women aged twenty-one or over received cautions compared to 10% of men in 1985. from: Morris, *Supra* note 6.

⁴⁵ Curry, Lee and Rodriguez, *Supra* note 40. P: 323.

⁴⁶ *Ibid*.

⁴⁷ *Ibid*.

⁴⁸ Nooruddin, *Supra* note 11. P: 6.

⁴⁹ Lloyd, *Supra* note 22. P: 56.

⁵⁰ Heidensohn, F. *Women & Crime*, 1985, Macmillan Publishers Ltd. PP: 101-103.

victims were being disbelieved and aggressively questioned by the police.⁵¹

In addition, it has been considered that police decisions were significantly influenced by the factors of race and class.⁵² In one case a police officer stated, “*We had one Irish fellow living with a black girl, she’s got a baby by someone else, and now she’s expecting his baby. She wanted to go out at night ‘clubbing’. He objected. The house was a tip. I wiped my feet as I walked out. That’s how bad it was. It’s quite obvious she doesn’t want to know. He whacked her and we didn’t arrest him. She was making his life Hell! Nothing to be gained from arresting him.*”⁵³

It is important to bear in mind, moreover, that women who experience domestic violence do not often report it to the police. It has been found that the police are often contacted as the very last option.⁵⁴ The reasons for women’s silence have been widely recognized in the literature. For instance, women are discouraged from reporting from feelings of shame and from a belief that the police will do very little to help. In the UK, it has been found according to research that only 75% of cases are reported to the police by the victims.⁵⁵ Furthermore, it has been found that witnesses respond negatively to the crimes they have witnessed.⁵⁶ For example, Kitty Genovese of New York was killed by her husband, watched by witnesses who thought it was none of their business.⁵⁷

▪ Gender and Courts Practice

In considering the effect of gender on the treatment of defendants in the criminal justice process, female offenders were found more likely to be released even before the trial and they were less likely to be sentenced severely.⁵⁸ The impact of gender in the way that the law and society respond to different kinds of crimes can be clearly seen in court decisions.

First of all, criminality in men was a common feature of their natural character, whereas women’s biologically-determined nature was antithetical to crime.⁵⁹ On the one hand, it has been argued that, because of the fact that women are seen as less of a risk to society, when they do commit a crime, they will be treated leniently.⁶⁰ Albonetti (1991)^[1] considered this as one important impact of offender gender on judges and jury in making lenient decisions,⁶¹ when the offenders are female, there should be no or less certainty.⁶² On the other hand, viewed as more culpable for their crimes and posing a greater risk, males would be treated more harshly.⁶³ For instance, men

are more likely to receive long-term prison sentences.⁶⁴ However, some argue that sentencing patterns of women offenders demonstrate that they are treated harshly. A report published by the National Association of Probation Officers emphasized that in 1994, only 11% of males were jailed for theft compared to 23% of females. Moreover, 35% of the females who were jailed had no previous convictions, compared to 12% of males.⁶⁵ Also, 53% of women prisoners had been convicted of two or fewer offences compared to 23% of men.⁶⁶ One of the main reasons behind this hypothesis is that some offences are not expected to be committed by females. In other words, they are observed to be atypical of offending women.⁶⁷

Because of the fact that it is considered inappropriate for females to commit violent acts such as armed robbery, when they do so, it was found that they were dealt with more punitively.⁶⁸ The thesis that has been used here is that of the “*evil woman*,” which suggests that the female has compromised her role expectations by committing an offense which is not seen as appropriate to offending women. Thus, they are treated more negatively.⁶⁹ In the cases of Sarah Thornton, who is a female, and *R. V. Palmer*,⁷⁰ who is a male, the facts were mostly the same, but the outcomes in court were different. Sarah was convicted and received a life sentence for the offense of murdering her evil husband. She argued that it was an accident; she sharpened a kitchen knife, pointed it at her violent husband, expecting him to knock it away, and accidentally stabbed and killed him. This was interpreted as indicative of her intention to kill him. She told one of her friends that “*I am going to kill him*” a few months before the incident, which was not treated as an expression of exasperation, but as an indication of intent. She stated that, “*I didn’t walk in there with the intention of stabbing him. I just wanted to show him how far he had driven me.*”⁷¹ In contrast, in the case of *R. V. Palmer*,⁷² the appellant stabbed his wife and killed her. He argued that he brought a knife from the kitchen only to frighten her, but accidentally killed her. Unlike Thornton, he was charged with manslaughter, not murder. Then, the Appeals Court reduced his sentence from seven years to five. Thornton, meanwhile, continues to serve her life sentence.

Furthermore, Heidensohn (1985)^[22] argues that extreme harshness is experienced against women in the courts because they are, as offenders, very rare due to their low levels of crime and the rarity of ever appearing in court; therefore, it is likely

⁵¹ Ibid.

⁵² Morris, *Supra* note 6.

⁵³ Buchan and Edwards, *Supra* note 30. P: 85.

⁵⁴ Edwards found that 50% of women in shelters have never contacted the police, and many women tell no one at all. Radzinowicz, L and King, J, *The Growth of Crime*, 1977, London, Penguin. P: 38.

⁵⁵ Mawby, R, *Bystander Responses to the Victims of Crime: is the Good Samaritan Alive and Well?* 1985, Vol. 19, 1-4 *Victimology*. PP: 461-77. P: 461. Also see Edwards, *Supra* note 2. P: 192.

⁵⁶ Witness reporting accounted for 25% of the crimes reported to the police. Radzinowicz and King, *Supra* note 41.

⁵⁷ Mawby, *Supra* note 42. Also see Edwards, *Supra* note 2. P: 192.

⁵⁸ Gruhl and Welch, *supra* note 4. P: 1.

⁵⁹ Lombroso, *Supra* note 19.

⁶⁰ Albonetti, C.A, *An integration of theories to explain judicial discretion*, 1991, 38 *Social Problems*. PP: 247-266.

⁶¹ See Steffensmeier, D, Kramer, J. H, and Streifel, C, *Gender and imprisonment decisions*, 1993, 31 *Criminology*. PP: 411-446.

⁶² Curry, Lee and Rodriguez, *Supra* note 40. P: 324.

⁶³ Ibid.

⁶⁴ Steffensmeier, D, Ulmer, J, and Kramer, J. H, *The interaction of race, gender, and age and criminal sentencing: The punishment cost of being young, Black, and male*, 1998, 36 *Criminology*.

PP: 763-797.

⁶⁵ Cited in *The Guardian* 10.7.95.

⁶⁶ Cited in *The Guardian* 19.9.95.

⁶⁷ In Edwards, S, *Women on Trial*, 1984, Manchester University Press, New Hampshire. Also, see Morris, *Supra* note 6. it was found that females were refused bail because they committed crimes which were not expected to be committed by women.

⁶⁸ Nagal 1981 in *Supra* note 6.

⁶⁹ Ibid.

⁷⁰ (1913) 2 KB 29.

⁷¹ Yarwood, J. D. *DOMESTIC VIOLENCE Selected media references and sources relating to male victimization*, December 2003, Dewar Research. From: <http://www.dewar4research.org>. Retrieved Nov 24, 2016.

⁷² (1913) 2 KB 29.

that more of them will be convicted for their offences.⁷³ He believes that women are understood less than men by the courts, in terms of both their culture and family structure; therefore, assumptions lead to stereotypes about "appropriate" behaviour, and by offending against their traditional sex roles, they are observed as both "rule breakers and role deviants."⁷⁴ Among women themselves, it has been found that divorced and separated women received relatively severe sentences, as did women who came from deviant family backgrounds. This is due to the fact that these women are not considered respectable.⁷⁵ As a concrete example, in the cases of Khoua she and Andrea Yates, there was a general belief that they were treated differently by the criminal justice system in the USA because of their backgrounds. Both of these women are American citizens, but they came from different backgrounds. Khoua her was a twenty-four-year-old working mother separated from her husband and an immigrant who had been living in the United States for several years.⁷⁶ She was sentenced to fifty years imprisonment for the second-degree murder of her six children.⁷⁷ Andrea Yates was a married, thirty-six-year-old, white, middle-class, fundamentalist Christian homemaker. She drowned her five children in a bathtub. She was found guilty of two capital murder charges and not guilty of killing her other three children on grounds of insanity.⁷⁸ Her lawyer argued that she was suffering from postpartum depression at the time of the murders.⁷⁹ In the end, the jury recommended a sentence of life in prison instead of the death penalty.⁸⁰ Her lawyers lodged an appeal⁸¹ and won. She will now be eligible for parole in 2041.⁸² The reduction in penalty on appeal has been seen as a degree of leniency in the punishment of her crimes.⁸³

In addition, it is important, in order to consider how gender affects the way that the law responds to different crimes, to know whether victim gender interacts with offender gender.⁸⁴ It has been found that there was interactive effect between victim gender and offender gender,⁸⁵ in that males convicted of

victimizing females were punished more harshly than any other victim gender/offender gender combination.⁸⁶ Curry et al (2004) found that the longest sentences are meted out to male offenders who victimize females.⁸⁷ Moreover, in the cases where white females were victims of homicide, it has been found that offenders were more likely to receive death sentences.⁸⁸ Also, recent research in the USA found that in most cases where the victim was a white female, sentences were harsher than in other cases.⁸⁹ Nooruddin (2006) stated that "the sexual stratification hypothesis argues that relations between black men and white women violate the dominant group's power most directly."⁹⁰ Accordingly, abuse of white females by black men is considered particularly heinous in the USA, and therefore treated more severely.⁹¹ Thus, a white female who reacts against a black male batterer would be seen as most worthy of 'protection' by society, resulting in the fact that she would be treated least harshly by the courts.⁹² Also, if a white male batterer is killed by a black female, she will be treated harshly by the court, in accordance with such a hypothesis.⁹³ However, some studies found no direct effect of victim gender on length of sentence.⁹⁴ It has been stated that victim gender may not affect the chances of imprisonment, particularly for violent crime, but it may have a significant impact on sentencing length.⁹⁵

Conclusion

Despite the fact that laws on paper deal with men and women equally, it is not guaranteed that male and female defendants will be treated equally. The way that both society and the legal system respond to different kinds of crimes—elements such as political statutes, class, ethnicity, physical and mental disability and age—may play significant roles.

In cases where women are accused, the police distinguish between two kinds of women, 'good mothers' and 'bad mothers'. They find it difficult when the former are accused and the opposite with the latter.⁹⁶ This may justify the argument that it is not the gender of the offender which influences sentencing, but the female's role within the family.⁹⁷ It has been found that in cases where females could prove their respectability by showing that they had no alcoholic or psychiatric history, they often received a less punitive

⁷³ Heidensohn, Supra note 55.

⁷⁴ Ibid. P: 102.

⁷⁵ Morris, Supra note 6.

⁷⁶ Her had been in the United States since 1988. See Lourdes Medrano Leslie & Curt Brown, Mother: Killing Kids Saved Them From Suffering, STAR TRIB. (Minneapolis-St. Paul), Jan. 9, 1999, at 1A [hereinafter Mother: Killing Kids].

⁷⁷ Mother Gets Fifty Years for Killing Six Children, TIMES-PICAYUNE (New Orleans), Dec. 1, 1998, at A8.

⁷⁸ Bill Bickel, Andrea Yates, at <http://crime.about.com/library/blfiles/blandreayates.htm>. Retrieved Nov 27, 2016.

⁷⁹ Therapist: Texas Mom Not Ready for Trial, NEWSDAY, Sept. 20, 2001, at A30.

⁸⁰ Christian, C, Jury Gives Yates Life Term with No Parole for Forty Years, HOUS. CHRON., Mar. 16, 2002, available at: <http://www.chron.com/cs/CDA/story.hts/special/drownings/1298197>. Retrieved Nov 27, 2016.

⁸¹ Teachey, L, Lawyers Submit Notice of Appeal in Yates's Murder Conviction Case, HOUS. CHRON., Apr. 4, 2002, available at: <http://www.chron.com/cs/CDA/story.hts/special/drownings/>. Retrieved Nov 24, 2016.

⁸² Yates Family Points Fingers, (Mar. 18, 2002), at: <http://www.cbsnews.com/stories/2002/03/14/national/main503693.shtml>. Retrieved Nov 24, 2016.

⁸³ Nooruddin, Supra note 11. Page: 3.

⁸⁴ Curry, Lee and Rodriguez, Supra note 40. P: 336.

⁸⁵ Glaeser, E.L. and Sacerdote, B, *The determinants of punishment: Deterrence, incapacitation and vengeance*, 2000, (Discussion Paper 1894). Harvard Institute of Economic Research. Cambridge, MA: National Bureau of Economic Research.

⁸⁶ Nooruddin, Supra note 11. Page: 7.

⁸⁷ Curry, Lee and Rodriguez, Supra note 40. P: 337.

⁸⁸ Williams, M.R and Holcomb, J. H. *The Interactive Effects of Victim Race and Gender on Death Sentence Disparity Findings*, 2004, 8 (4) Homicide Studies. PP: 350-376.

⁸⁹ Stauffer, A. R, Smith, M. D, Cochran, J. K, Fogel, S. J and Bjerregaard, B, *The Interaction Between Victim Race and Gender on Sentencing Outcomes in Capital Murder Trials: A Further Exploration*, 2006, 10 (2) Homicide Studies. PP: 98-117.

⁹⁰ Nooruddin, Supra note 11. Page: 6.

⁹¹ Williams and Holcomb, Supra note 89.

⁹² Nooruddin, Supra note 11. Page: 6.

⁹³ Ibid.

⁹⁴ Myers (1979) has found no effect of victim gender on the sentencing decision at all. Myers, M. A, *Offended Parties and Official Reactions: Victims and the Sentencing of Criminal Defendants*, 1979, 20 Sociological Quarterly. PP: 529-540

⁹⁵ Curry, Lee and Rodriguez, Supra note 40. P: 338.

⁹⁶ Carlen (1983) in her study interviewed 15 Scottish sheriffs and found that all individuals disliked imprisoning women and felt uneasy when a woman was accused; however, to overcome these unsettled feelings, the sheriffs differentiated between "good" and "bad" mothers, stating, "If she's a good mother, we don't want to take her away. If she's not a good mother, it doesn't really matter"(Carlen PG 67 (1983)).

⁹⁷ Morris, Supra note 6.

sentence.⁹⁸ Kennedy (1995) argues that the “*Madonna*” is more acceptable in court than a “*whore*.”⁹⁹ A woman who can show remorse and passivity, which are approved feminine traits, will be treated more leniently than a woman who does not show these characteristics. Furthermore, Morris (1987) ^[30] pointed out that Magistrates’ Courts took into consideration the women’s domestic circumstances, such as the responsibility for children, when they decided sentences against them.¹⁰⁰

From researches and cases that have been discussed, it has become clear that both the conviction and sentencing stages of criminal procedures are affected by the gender of victims and defendants, and, in general, female defendants are treated more leniently by the courts.¹⁰¹ Certain trends and patterns in female criminality, as compared with male criminality, have long been observed. Namely, women commit a small percentage of all crime, crimes committed by females are less serious, rarely professional and less likely to be repeated, and, consequently, women formed a small proportion of prison populations.

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⁹⁸ Women who had previous offenses were given lenient sentences compared to those who had no previous convictions but were not considered decent (Kruttschnitt 1982 in Morris, *Supra* note 6.

⁹⁹ Cited in *The Guardian* 14.9.95.

¹⁰⁰ Morris, *Supra* note 6.

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