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Open Access Law Journal, ISSN (O): 3049-0057

Editor-in-Chief – Prof. (Dr.) Amit Kashyap; Publisher – Reet Parihar

Women In Criminal Justice

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Published on: 2nd June 2025

Abstract

This dissertation aims to investigate the impact that prison has upon female offenders concerning the criminal justice system's treatment of women in England and Wales. Research on this topic is needed because there is an identified gap in the literature about women in prison, and such data that does exist is fragmented and thus fails to adequately address women's needs. This study will undertake a secondary analysis of existing research in order to consolidate current data and bridge the identified gap. The findings of this dissertation are that women have been excluded from criminal justice rhetoric for too long and that, given their complex needs and vulnerabilities, prison as a form of punishment enacts disproportionate harm upon women. Despite the evidence attesting to this, there is still a noticeable lack of public and political will for tangible criminal justice reform. This leads to several gendered and differential inequalities that are systematically imposed upon women at the hands of the prison system and the criminal justice system at large. It is concluded that it is this lack of public will that presents the largest barrier to achieving a more proportionate and appropriate form of punishment for women in the criminal justice system. To tackle these harms and inequalities, this work recommends implementing a policy of decarceration for women and adopting an overall shift towards a female-centred approach to penology.

Keywords: women, criminal justice, gender bias, legal rights, incarceration

Introduction

Women in the criminal justice system have consistently accounted for just 5% of the prison population in England and Wales— as of June 2018, this equated to 3,803 female prisoners compared to 78,970 male prisoners (Ministry of Justice, 2018a). Perhaps due to this relatively low number of female prisoners, compared to men, there appears to be insufficient research within the current academic literature on both women as offenders and the impact that prison has on them. This is not to say that this is a topic that has never before been researched and academically considered; however, one might consider that, given the magnitude of the identified problems, the area is certainly under-researched and under-considered. Thus, having identified a gap in the current literature, this work holds value in its attempt to address these chasms by piecing together the fragmented existing research on women in prison to paint a representative picture of women's experiences as offenders in the criminal justice system.

Chapter one of this work will begin by exploring historical and modern concepts of what it means to be both a woman and an offender, taking a critical approach towards historical concepts of gender and double deviance to situate them in today's landscape. Part of this contextualisation will refer to what it means to be a woman beyond the binary systems of femininity and masculinity. Chapter two will then utilise the findings of chapter one's pairing of gender theory and criminology to provide a more empirical analysis of women in prisons contextualised experiences. Female offenders have several specific vulnerabilities that are not accounted for in current criminal justice practice, which leads to disproportionate harms and deeply embedded inequalities. In this context, 'vulnerability' is not taken to mean weakness, but is rather understood to refer to factors that make women more likely to experience harm. Chapter two will explore these vulnerabilities and provide a critical analysis of how prison provides a disproportionately harmful punishment for women, given the nature of these vulnerabilities. Building upon the work of chapter two, chapter three will aim to provide a larger discussion of how the harms women face in prison and the criminal justice system at large produce a profoundly inequitable experience for women.¹

This chapter will take particular interest in an intersectional approach towards difference and look towards how it provides an excellent framework from which to further explore— and redress— these inequalities about difference amongst women. Having identified that women experience harms beyond those associated with proportionate punishment, and the systematic inequality that prison perpetuates for female offenders, chapter four will look towards the future. The Corston Report's (2007) recommendations and their impact upon following policy proposals and real-world change (or lack

¹ L Baldwin and R Epstein, *Short but not Sweet: A Study of the Impact of Short Custodial Sentences on Mothers and Their Children* (De Montfort University 2017).

thereof) will be explored in depth. Where problems have been identified, chapter four will aim to fill these gaps with adapted and more considered recommendations. Alternatives to prison as a form of punishment will be explored, placing women at the centre of criminal justice practice, so as to work towards a female-centred approach to penology (punishment). Chapter four will also see this dissertation go on to propose that a policy of decarceration is the most effective and proportionate response to women as offenders in the criminal justice system. The term ‘decarceration’ refers to an extensive reduction in female imprisonment, with prison being used only as a tool by which to incapacitate the most dangerous offenders. A policy of decarceration for female offenders is certainly seen as controversial and faces opposition from individuals across all sections of society, including women themselves (Corston, 2007). However, this dissertation sets out that this opposition is formed out of a lack of understanding of the uniquely damaging and disproportionate punishment that prison as an institution provides for women. Here, it is also appropriate to acknowledge that this work in no way is designed or intended to undermine the plight of the male prison population and the injustices that they may face at the hands of the criminal justice system. Whilst this work may not be the overall aim of this dissertation is to provide a critical analysis of female imprisonment to craft suitable recommendations as to how the identified problems associated with female incarceration might be alleviated and treatment of women in the criminal justice system might be improved.²

The objectives inscribed below are not only achievable, they incrementally build upon each other in order to thread together a cohesive and appropriate focus that works to fulfil and meet the overall aim of this dissertation. They are as follows:

- Considering contextual factors, what does it mean to be both a woman and an offender in today’s society?
- What are the vulnerabilities that are almost exclusively attributed to female offenders, and how do they disproportionately impact the harm female offenders experience in prison?
- How does prison as an institution perpetuate inequality for female offenders?
- How can a policy of decarceration be legitimised, and what are suitable alternatives to prison as a form of punishment for female offenders?

This dissertation will conduct a secondary analysis of existing research, given constraints to both time and resources, utilising secondary data facilitates a far more extensive and detailed analysis of female imprisonment than would have been obtainable through primary research (Bryman, 2016). Engaging in further analysis of existing data also allows for “new interpretations” to be gauged from others’ research, re-affirming– or not, as the case may be– the importance of the data and its relevance to

² J Corston, *The Corston Report: A Review of Women with Particular Vulnerabilities in the Criminal Justice System* (Home Office 2007).

women's offending behaviour and subsequent punishment (Bryman, 2016, 312). From this, many conclusions can be drawn and new theories and recommendations can be proposed, which not only add value to this work, but also have the possibility of affecting real-world change.³

Historical Context and Theorising Women as Offenders

For too long, women have been controlled and placed in constraints upon the parameters in which they can exist, both as women and as offenders. Tending to be simultaneously eradicated from embodiments of what it means to be an offender and evaluated through highly gendered lenses that attempt to hyper-feminise women. Such women are constrained by the boundaries of societal expectations and regulations. In today's society, it is easy to assume that women are no longer placed into 'traditional' norms of what it means to be a woman and to some degree this is true— notions of gender and sexuality have made significant leaps and bounds over the past decades (Skewes et al, 2018). Despite this, 'women as offenders' is still a significantly under-researched area, and, when theorised upon, academia shows that perhaps not as much has changed as society would like to believe (Fitz-Gibbon and Walklate, 2018).⁴ This chapter intends to provide an exploration of historical notions of female criminality, drawing upon traditional concepts of femininity and gender theory to contextualise what it means to be a woman— and an offender— in today's society. It is important to consider the historical context and development of the female offender throughout time, to begin to contextualise the current climate for female offenders in the contemporary criminal justice system. Much of the academic literature on women seems to historically exclude them from involvement with the criminal justice system, despite evidence suggesting that in the early eighteenth century, women accounted for a significant proportion of recorded offenders who had some involvement with the criminal justice system (Feeley and Little, 1991).⁵

However, since then, there seems to have been a notable decline in women's involvement with the criminal justice system as offenders, which has led to the concept of 'the vanishing female' (Feeley and Little, 1991). This notion of 'the vanishing female' refers to the systematic eradication of female offenders from history, instead promoting a consciousness that crime is— and always has been— a "male phenomenon" (Feeley and Little, 1991, 723). Of course, over time, laws have changed— laws which were designed to persecute and demonise women specifically, such as laws about witchcraft

³ A Bryman, *Social Research Methods* (5th edn, Oxford University Press 2016).

⁴ M Baca Zinn and B Thornton Dill, 'Theorizing Difference from Multiracial Feminism' in M Baca Zinn, P Hondagneu-Sotelo, M Messner and A Denissen (eds), *Gender Through the Prism of Difference* (5th edn, Oxford University Press 2016) 35–40.

⁵ J Cox and K Sacks-Jones, 'Double Disadvantage: The Experiences of Black, Asian and Minority Ethnic Women in the Criminal Justice System' (Agenda 2017).

and infanticide, acknowledged as “distinctly female offences” (Feeley and Little, 1991, 734). However, whilst there may be some decline in such targeted regulation of female ‘criminality’, which may in turn account for some decline in the recorded and acknowledged presence of women as offenders; there are still many barriers which prevent academics from being able to accept this as a sufficient reason for the decline in recorded involvement of female offenders within the criminal justice system. Not only have women long been charged on account of committing crimes that do not fall under the purview of female offences, but they continue to face criminal repercussions for crimes that do— namely prostitution (Feeley and Little, 1991). When faced with such juxtaposed explanations of why representation of female criminality has declined (or, as the case may be, why it has not), scholars and practitioners alike are faced with searching for an adequate response to the lack of female criminality in societal consciousness.⁶

Gendered Experiences in the Criminal Justice System

Women in the criminal justice system are often characterised by a complex set of vulnerabilities; their patterns of offending often lead to shorter terms of incarceration (Earle, 2017), their lives are defined significantly more by their children (Cox and Sacks Jones, 2017) and their histories are regularly characterised by oppression and abuse (Cabinet Office Social Exclusion Unit and Ministry of Justice, 2009).⁷ This is not to say that men do not experience hardships beyond what may be defined as proportionate in prison, but it regards more of a comment on the characterisation of women as a group that cannot necessarily be applied with such rigour to men. Men and women are treated differently, and their experiences of life, and indeed prison, are gendered accordingly. When the criminal justice system overlooks women in prison, their voices are lost; experiencing imprisonment not only means that women lose their agency, their families and their personhood, but also speaks to a system that is highly and inequitably gendered. This chapter aims to address these losses by giving women in prison their voices back.⁸

Gender Equality in Criminal Justice – Law and Policy

There is no shortage of legislation on promoting gender equality in wider society and within the criminal justice system itself. The Equality Act 2010 incorporated and bound together various

⁶ K Carrington, ‘Postmodernism and Feminist Criminologies: Fragmenting the Criminological Subject’ in P Walton and J Young (eds), *The New Criminology Revisited* (Palgrave 2016) 76–97.

⁷ Cabinet Office Social Exclusion Unit and Ministry of Justice, *Short Study on Women Offenders, May 2009* (Cabinet Office and Ministry of Justice 2009).

⁸ M Bosworth, *Engendering Resistance: Agency and Power in Women’s Prisons* (Routledge 2017).

legislation on gender equality, cementing the principles of the Equality Act 2006 towards taking a more proactive approach in tackling discrimination and advocating for equal opportunity for women. The capacity of such legislation to address the specific needs of women and its ability to provide redress for historic gender inequality is significant in its potential. However, despite the existence of such comprehensive and considered legislative frameworks and indeed multiple policy proposals that would attempt to advance gender equality within the criminal justice system– of which the Corston Report (2007) is perhaps most notable– any action taken in terms of practical change appears to be both intangible and insignificant (Player, 2013), meaning that the true potential of this legislation is not being met. Due to this the focus of this chapter is not so much on the lived experience of a female offender but rather more of a commentary on the criminal justice system itself and its justifications behind female incarceration, culminating in an exploration of what equality means in the current criminal justice climate for women and why attaining it should be a priority across all sections of society. There appears to be a notable difference between “logical and political necessity” concerning prison as a form of punishment for crime (Carlen, 2013, 220). The “state’s ‘power to punish’” and the Government’s political power in the area of criminal justice are derived from a public will for it (Carlen, 2013, 220). Thus, for the state to maintain the current justice system for female offenders and continue utilising prison as a form of punishment for women, there must be some form of public support, giving prison as an institution “popular legitimacy” (Carlen, 2013, 220). However, the conditions for this public support do not exist in isolation– they are subject to differences in the cultural, social and political landscape of the time. These attitudes play a significant role in the experiences that women as offenders in the criminal justice system seem to face, which for this work can be loosely positioned into three key stages: sentencing, imprisonment and release. Each of these stages presents women with unique obstacles based on their gender and can be used to comprehensively highlight how the current criminal justice system provides an inadequate, harmful and overwhelmingly inequitable response to the crimes committed by women. As such, whilst there must therefore be some form of ‘political necessity’ for prison as a form of punishment for female offenders, that does not mean that there is also a ‘logical necessity’. This leads to the question of why there is a public and political will for female incarceration, when it can be posited that, oftentimes, such political necessity is inherently illogical.⁹

Addressing Systemic Failures and Advancing Reform

⁹ P Carlen, ‘New Discourses of Justification and Reform for Women’s Imprisonment in England’ in P Carlen (ed), *Women and Punishment: The Struggle for Justice* (Routledge 2013) 220–236.

What follows addresses a number of societal and systematic failings to provide an adequate and considered response to female offending behaviour. The chapter will provide a synthesis of these failings, specifically with the intent of drawing appropriate recommendations that might address these inequalities in the criminal justice system, with great attention being paid towards creating a model of criminal justice that is fair, equitable and moulded so as to mitigate women's specific vulnerabilities and harms. Despite public perception, the following recommendations are not always new, or indeed revolutionary, but they are significant in their endeavour to provide a female-centred approach to penology. The first identified failing is that of a significantly under-researched and overlooked group of prisoners– women. Here, it can be seen that an integration of gender theory and penology is imperative in order to effect change. The Corston Report is largely understood to be a seminal piece of research that has shaped all following conceptions of this re-focused insight into women in the criminal justice system (Corston, 2007; Ministry of Justice, 2018d). With a focus upon “women with particular vulnerabilities”, the Corston Report identified “the need for a distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated approach” to criminal justice reform (Corston, 2007). The report provided several heartening recommendations, including an emphasis on “reducing the women's prison population”, championing gender equality and devolving prisons into smaller localised facilities for those women who pose a threat to others and as such require some form of incapacitation (Corston, 2007, 81-82). The most promising token of Corston's (2007, 16) work is the recognition that “equal treatment of men and women does not result in equal outcomes”. It is this conviction which lies at the heart of a female-centred approach to penology and incites such passion. The year 2018 saw the recommendations of the Corston Report solidified into the ‘Female Offender Strategy’, which aimed to present a dynamic.¹⁰

Conclusion

This work was structured with the intent to provide a logical and comprehensive response to the identified objectives. This began with a contextual analysis of what it means to be both a woman and an offender in today's society. As a means of addressing the identified gap in research about women as offenders, several vulnerabilities were established that are shown to make women more prone to suffering harm during the terms of their incarceration. With an understanding of the gendered nature towards these harms, research followed that spoke to a systematic perpetuation of inequality for female offenders. Finally, the dissertation reached its final chapter by providing recommendations towards mitigating these harms and inequalities for women in prison. This structure and its facilitation of a successful meeting of the proposed objectives meant that the overall aim of this dissertation was

¹⁰ N Booth, I Masson and L Baldwin, ‘Promises, Promises: Can the Female Offender Strategy Deliver?’ (2018) 65(4) *Probation Journal* 429–438.

effectively and appropriately achieved. This dissertation has provided a critical analysis of female imprisonment and has crafted a set of suitable recommendations as to how the identified problems associated with female incarceration might be alleviated and treatment of women in the criminal justice system might be improved. What follows is a summarisation of conclusions that can be drawn from the findings of this dissertation, as well as a short exploration of both the limitations and the value of this work. To conclude, there is a distinct and notable lack of research into women as offenders, not only into their experiences in prison, but also in their involvement in crime as a whole, from those factors which might be seen to impact offending behaviours, through to insufficient after-care practices upon release. With consideration being taken to avoid adopting an essentialist point of view, the research highlights that there are multiple and significant vulnerabilities that characterise women's offending behaviour and subsequent incarceration. More concern needs to be applied to these vulnerabilities, as low-level offending behaviour too often unjustly results in short-term sentences that entrench women into the criminal justice system. Women's family dynamics, specifically their role as mothers, also need to be significantly considered, as well as their histories of victimisation and abuse. This has led to women in prison suffering disproportionate harms, and with such little attention being shed upon this problem, few evidence-based solutions are considered to be viable and achievable. There is also a lack of understanding, amongst the public and some practitioners and academics alike, that gender equality in the criminal justice system does not mean mirrored punishments. Gendered structures and systematic oppressions mean that when women experience the same form of punishment as men (prison), they are disproportionately more affected

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