Women’s Access to Criminal Justice in Iran with Postmodern Feminist Perspective

farzaneh vahed¹ and shahla moazami²

¹Affiliation not available
²Islamic Azad University of Mashhad

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Abstract

There are inequalities discriminating against Iranian women in the criminal justice system’s processes of enactment and legislation, adjudication, and punishment and enforcement. Postmodern feminist criminologists argue that the main reason is the masculine discourse that prevents women from equal access to justice and this is the main reason for Iranian women’s. The way to deal with this situation is to introduce a feminine discourse against the dominant male discourse, instead of eliminating women’s worldview.

Introduction

Today’s post-industrial society is facing a phenomenon called globalization. Globalization and the capitalist system encompass all aspects of human life. The modern era, with its message of wisdom and rationalism, and relying on experience and history, introduced all outcomes of rational and empirical hypotheses as fact. Today, what is changing societies is the transmission of information through mass media, and truth and reality have lost the sense they had in the modern era. The postmodern era and the information explosion created by post-industrial societies have erased the boundaries of truth, reality, nationality, and geographical borders. In modern times, it was an accepted, certain belief that excluded women from the public sphere and classified them into the private sphere. The pre-postmodern patriarchy had also omitted women from social studies, literary analysis, and even art. Sociological analyses were produced and presented by men for women during this period. Men dominated the public places and the public sphere in general, along with scientific and cultural institutions. Although the modern era cannot be regarded as an entirely patriarchal creation, in the realm of social studies and political structures, the exclusion of women was natural and widespread. Modernity was the period of hierarchical affairs, and women stood inferior to men in these categories. The emergence of postmodernism delivered a message of deconstruction and destruction of hierarchies. The effects of the postmodern school on all social sciences are evident, and feminism’s attention to postmodern doctrines and critical criminology approaches in the field of postmodern criminology has led feminists to study the inequalities in social structures and their effect on crime patterns due to delinquency and victimization, and also examine the status of women in terms of criminal justice. On the one hand, some of the criminal laws are specific to women and criminalization of women’s behavior, and on the other, legal ambiguities that call for interpretation by male prosecutors and their determination of instances of women’s behavior or norms broken by them, affect women’s access to justice. Discourse and dominant language, subjectivity, and hegemony of male power restrict a large population of the world’s, i.e. women’s, access to justice, and create positive and negative discriminations in the legislation and enforcement of laws, despite apparent equality in legal texts, which impede the realization of justice for women. The present descriptive-analytical study aims to address this issue through qualitative method, content analysis, discourse analysis, document analysis, and secondary research. This was an applied-developmental study, investigating the fundamental
theories of postmodern feminist criminology within the criminal justice system and exploring the effect of postmodern feminist criminology. The study also examines elements of power, discourse, and subjectivity in different levels of the criminal justice system to review the quality of women’s access to justice. This is the first Persian study to focus on women’s access to criminal justice from the perspective of postmodern feminist criminology. A few studies in the form of a master’s thesis or article have touched upon the subject, however, the influence of subjectivity, discourse, and power on the status of women at different levels of criminal justice and the quality and extent of their access to justice, warrant further study.

**Access to Criminal Justice in Postmodern Feminism**

Not only gender inequality and discrimination against women constitute a problem that has inflicted women, but the patriarchal and male-dominated laws have inflicted men as well. Patriarchal laws that did their best to eliminate or exclude women have now entangled men. Men are victims of discriminating laws that they themselves have consciously enacted and persistently enforced. The path to progress and civilization in a society is not excluding women, and a healthy movement toward perfection requires active participation of both sexes, in equality. In the late 1960s, Bertrand and Heidensohn, two Canadian and British criminologists, objected to the omission of women from general theories of crime. Katheline Daly, Meda Chesney Lind, 1988, feminism and criminology, justice quarterly, vol5, no5, Academy of Criminal Justice sciences, p:497-538. This was a wake-up call for the traditional male-dominated criminology, and prompted the rapid spread of feminist knowledge in academic and scholarly settings. Sandra Harding divided the methodology of feminist thinking in the social sciences into three epistemological approaches: 1. Feminist empiricism, which emphasizes the production of information and statistics on women for the analysis of female delinquency and victimization and interaction with the criminal justice system. She allowed her criminology studies to suffice to adding information and statistics on women to criminology. 2. Theoretical feminism that, inspired by views of Marx and Hegel, contributed to the expansion of women’s views to criminology, and 3. Postmodern feminism, which regards reality and truth as the product of the discourse of power and knowledge, has been highly influential in criminology through recognition and deconstruction of the fundamental, accepted truths. Ghomashi, Saeed, 2015, From Etiological Criminology to Cognitive Criminology, Law Research Magazine, No. 70. pp. 247-271. The issue of recognition and the effects of subjectivity result in cognitive criminology, which is based on the influence of subjectivity and cognition in committing crimes. However, in the postmodern feminist approach, this issue is examined from the perspective of gender and masculine subjectivity. In this approach, the focus is on the effects of the male-centered gender-subjectivity on discrimination against women and its effects not only in crimes or criminality but at all levels of the criminal justice system. Over time, women became a being that was influenced but could not influence, and their role was either confined to the domain of family, attempting to create an ideal family, raise the children and care for the spouse, or involved negative effects, focusing on women’s destructive role in degeneration and corruption of society’s ethics. Women who enjoyed leadership power in tribal systems lost their authority over time, and became beings, for which others made decisions. Feminists focus all their efforts on the legal and political equality of women in the public and private spheres, and postmodern feminism, in its approach to study of crime, regards cognition and thinking as constructs of language that dominate all those involved in the criminal justice system. Dehghani-Firouzabadi, Somayeh, 2017, A Glance at Critical Criminology of Marxism, Feminism and Postmodernism, 4th National Conference on Law and Legal Efficiency Assessment in the Islamic Republic of Iran, Feb. 2018. One of the key elements in the critical approach of postmodern feminist criminology is attention to the discourse on crime. In this critical view of crime, the moral certainty claim of the modernist period has no external existence, and what is being introduced as truth and ethics results from the legitimization of specific discourses at different times and places. The emergence of the idea of postmodern feminism raised significant issues for feminist and other progressive policies. Eliminating modernist ideas such as truth, justice, and death of the subject, which refers to something beyond feminism, led to misunderstandings in the idea of justice- and equality-based policy. Since social concepts are directly linked to language, subjectivity, and knowledge, in postmodern feminist theory, the methodology is based on women’s paradox, meaning that women are excluded from social discourses, while at the same time, they are strangely ignored by social institutions. Meanwhile, they are imprisoned in these discourses, transforming
into solitary and alien beings in the dominant discourse. How, Adrian, 1994, punish and critique towards a feminist analysis of punishment. Routledge, 2005, p. 150. Considering the predominance of postmodern thought in this approach, legitimate discourse here is a male-centered discourse that explores crime issues in the field of criminology, gives value to certain behaviors using ethical or customary justifications, and regards any violation of these behaviors deserving of condemnation. Language, which was recognized as a means of communication in the modern era, is not seen as impartial and independent in postmodern thinking. Rather, it is a tool to privilege some viewpoints over others. It is the non-neutrality of language that eliminates or excludes some discourse. Language games, which create a different set of activities for using words or attributing meaning, lead to assignment of a label of crime to something or an action, and, relying on ethics or nature, it regard certain offenses as natural or moral. Sadeghi-Fassaei, Soheila, Parvin, Sattar, 2011, Crime: A Construct of Subjectivity, Discourse and Power, Legal Research Quarterly, Summer 2011, No. 33, pp. 213-234. Social control of women can take many different forms. It can be explicit or implicit, public or private, and it can also be idealistic or repressive. The main sources of such controls, although in the form of judicial decisions, can go beyond decision-makers in the criminal justice system. How, Adrian, 1994, punish and critique towards a feminist analysis of punishment. Routledge, 2005, p. 147. Criminalization in postmodern feminism is a masculine cultural practice in which women are consciously eliminated in the process, as if only women are the target of the law. Criminal law is enacted for women, by men, to control their personal lives. In the process of enacting criminal law, there are male-dominated discourses that impose their own beliefs on women in the name of crime and try to regulate women’s way of thinking and social conduct. Women are absent in the process of criminalization for complex reasons of power relations, and their views, insights, experiences, and desires are basically excluded from criminal procedures. Criminology, which is introduced as a masculine science in feminist thought, has neglected the issue of gender and its effects in its studies of crime. If criminological research leads to the criminalization of certain behaviors, women’s views and feminine experiences have had no role in the production of this knowledge, and naturally, when analyzing the necessity of criminalization of women’s behaviors as members of the society, it is the male perspective that has been prioritized. In postmodern criminology, crime is the product of the ruling class’s power exercised on those who have no role in the processes of power and no effective role in the formation of the political system. Crime is also regarded as the discontinuation of unequal “other” discourses in the distribution of power. Criminality is not an inherent and mandatory feature of crimes, rather it is the restriction of the behavior of individuals outside the process of power that may not even have a criminal aspect. Furthermore, crime does not mean doing/failing to do an act specified in criminal law, rather it is the ability of power to impose its views on others, where criminal law is only a reflection of the power’s desire to prohibit certain behaviors. Criminalization or legislation of criminal law is in fact the institutionalization of prohibitions that power has found pleasing. The criminal justice system and legal system exist to guarantee the continuity of the discourse of power. Therefore, law cannot be regarded as the discovery of crime; rather crime is the power to control groups that fall outside the cycle of power. Rahiminejad, Esmaeil, Sedeghi, Salar, 2017, Criminal Law in Postmodern Criminology, Journal of Criminal Law, No. 15. pp. 59-83. Hence, from the standpoint of postmodern feminist criminology, crime is the product of power exercised by men in the ruling class, and it is women who have no role in the governing power relations, also playing no role in the formation of political and governmental systems except as a tool to overthrow or change the cycle of power and government. When examining the ruling male power class who produce a patriarchal knowledge and discourse and eliminate women’s discourse, it is necessary to examine the role of men who have no power in the ruling class but contribute to the production and reproduction of anti-women discourses, thus promoting the patriarchal discourse and helping with the continuation of women’s oppression. In postmodern feminist thought, the criminalization of certain women behaviors stem from the imposition of patriarchal beliefs and views on women, which reflects the group’s desire for continuation of their domination over women, as confirmed by deconstruction of some women-specific crimes that have no inherent criminal aspect, except imposition of hegemony and restrictions on women so as to guarantee the survival of men’s power. In this thought, the effect of subjectivity, which assumes woman to be close to nature, lacking the faculty of reason and wisdom, and requiring support and guardianship, that is, as men’s property, is what results in restrictions of women’s behaviors, where the violation of these restrictions makes them targets of a social treatment in the form of
punishment. This patriarchal discourse can even be seen in the context of the news about crimes against
women and instances of violence against women, which strives to shift the focus on women, introducing them
responsible for the abusive behaviors of the offenders, even justifying domestic violence within the criminal
and social system under the pretext of women’s rebelliousness that necessitates punishment. When explain-
ing the reasons for these kinds of crimes, the focus is more on the victim through such discourses as "gaining
self-esteem" or "giving up on victimization" and "ending their exploitation of men". Whereas the focus must be
on the criminal who has played the main role in perpetrating violence88Berns,nancy,2001,degendering
the problem and gendering the blame: political discourse on woman and violence, gender and society, vol
,15,no2,pp:262-281. In addition to masculine discourses and statements justifying their violent and discrim-
inatory treatment of women, another phenomenon creates and maintains inequality in society, and it is the
discourse of women against women. Women who have accepted their position as second-class through belief
in masculine discourses, and see violence against women as the result of the victim’s deviation from the
criteria of femininity

2. Enactment and Legislation

The criminalization of a behavior, which is sometimes justified in the name of nature, ethics, or public order,
constitutes a much more complicated process than violation of public norms, social life, or ethics in post-
modern feminist thought.Henry and Milovanovic, as the founders of postmodern criminology, defined crime
as "the power to deny others their ability to make a difference". In their view, this is a repetitive produc-
tion, reproduction, and activity that is the product of particular historical and cultural discourses11Cowling,
Mark, 2006. Postmodern Policies? The Erratic Interventions of Constitutive Criminology, Internet journal
of criminology,November,p:1-16. The principle of legality of offenses and punishments as one of the accepted
principles in the criminal justice system expresses the necessity to approve and envisage behaviors that would
be punishable in the criminal law. The legality of a law, however, does not necessarily reflect its morality,
since law is a social construct, and its analysis relates to the interpretation of that law in society and the
understanding of its members. The sum of the interpretations of the society’s members constitutes the
culture of that society. Therefore, in some cases, society members may understand and interpret the law
in different ways, and the laws may not reflect the wishes of all members22Sandu,Antonio,2010,postmodern
approach of philosophy of law, postmodern opening,year1,vol3,p:23-34. In postmodern feminism, enactment
and legislation of crimes or decriminalization of offenses are essentially masculine acts influenced by dom-
ninant discourses. In other words, some crimes in the process of criminalization have no inherent criminal
aspects, and it is the imposition or securing of the opinions of certain groups in society that leads to crim-
inalization or decriminalization. In postmodern feminist criminology, the effect of subjectivity, discourse,
and power from the perspective of gender on the process of criminalization and enactment of criminal laws
is extremely complex, and leads to the persistence of injustice and inequality against women in society.
And, gender characteristics, which are seen as fluid in time and space, in many cases result in the crimi-
nalization of women’s behaviors or even ignoring certain behaviors that violate women’s rights in order to
secure the opinions of men. A study of the history of punishment reveals a double oppression for women,
especially in sexual offense. In the middle Ages, women were sentenced to death for adultery or murder of a
husband, while the same rarely occurred for men. In addition, more public humiliation was involved in
women’s punishment. Historical evidence include forcing women to confess to their crime before their pub-
lie execution33Belknap,Joanne,2015,The invisible woman: gender, crime and justice, fourth edition, cengage
learning,p:216. Feminist criminology believes in scrutinizing all aspects of an action or behavior to provide
a complete picture of the crime and considers the criminal justice system and traditional criminalization pro-
cedures replete with gendered discriminations that lead to the creation and re-enforcement of such structural
discriminations44Farahi, Maryam, 2018, Criminalization in Context of Criminal Schools and Criminology
74-90. Up until the emergence of feminist ideas in criminal law, man-centered and patriarchal views alone
existed in criminal law, which went on to make decision for both sexes. In this type of legislation, women
were not able to echo their wishes or even demand certain protective laws in the process of law-making,
since they were not included in decision-making bodies. In the process of criminalizing women, given the
fundamental meta-narratives that regarded women to be weak, sensitive, and absolutely obedient to men, delinquent women were subjected to the most severe punishments for deviating from the roles expected by society and were introduced as corrupt, sick, and deceitful women. The violations of the law and law-breaking behaviors were interpreted in relation to women’s closeness to nature and they were subjected to the most severe punishments for departing from these natural laws of femininity.55 Sally S., Simpson, 1989, Pun Feminist Theory: Crime and Justice, University of Maryland, Criminology, vol 27, no 4, pp 605-631. Feminism’s main point of conflict with some of criminal laws lies in the hierarchical system and double standards that have resulted in patriarchal classifications in criminal law. In this view, due to their subordination to men, women in some cases do not deserve protection against harm inflicted by men, and the male-dominated, prevailing discourse practically does not allow for the emergence of a pro-women and opposing discourse in the legislation of criminal laws. The criticism of post-modernism on the analysis of subjectivity and its effect on the issue of crime, considering that the concept of truth is a mental construct rather than objective truth, and that the deconstruction of any criminal subject shows absence of any intrinsic and objective truth behind, it can be seen that claiming objectivity for a crime’s truth is a mere political claim and represents personal attempts to force subjective views as truth to others.66 Bruce A., Arrigo, Milovanovich, Dragan, 2016, Postmodernist and post-structuralism theories of crime. Republished by Routledge. p265. By deconstructing some crime categories specific to women criminals/victims, it becomes clear that despite claims of objective and moral truth, it is only the imposition of a masculine belief that has been defined as crime in criminal law. Women and their experiences are not reflected in modern law, as it does not recognize women. And since women are omitted from dominant and influential language and discourse, they have no place in the legal discourse either, as their nature and essence have not been defined in legal discourses. And the distinctions specified in the law are simply based on biological differences to discriminate between men and women, which flows from the relationship between power and gender.77 Dennis Posner, 1992, Postmodern, Feminism and Law, Cornell Law Review, vol 77, issue 2, p 254-316. In postmodern feminist thought, the issue of justice and criminal justice system will continue to diminish so far as there is no comprehensive theory on women and their experiences and the dominant discourses exclude women’s discourse. Postmodern feminism sees law the same way it sees power, discourse, and gender as the product of social institutions, rather than a predetermined, objective, and inherent reality.88 Tracy E. Higgins, 1995, by reason of their sex: Feminist Theory Postmodern and Justice, Cornell Law Review, vol 80, issue 6, p 1537-1594. The role of knowledge and intellectual frameworks in shaping ideas and ways of thinking is also very effective in the criminal legislation process. It is the dominant way of thinking that creates "us" and "others", where others deserve to be punished, and they basically have no place in positions of power. The intellectual frameworks always seek to protect the interests of a particular group of people in society who are in the position of power, and this protection of "us" translates into loss for "others".99 Naffine, Ngaire, 2008 Feminism and Criminology, Trans. Mir Ruhollah Seddig, Raman, 1st Edition, p. 134. Given that most power structures and criminal law mechanisms are occupied by men, and that knowledge and discourse contribute to the production and reproduction of power in society, it is these women who constitute the "other" in the process of criminal legislation, and laws support this group only if it is still in line with the views of men and the exercise of their patriarchal power. While the number of women elected to legislative bodies has increased in the United States among others, the effect of gender on legislation has been minimal. Given the differences between the two genders, women in the legislative bodies are expected to lead the way in protecting women rights and enacting better laws compared to their male counterparts. The implications of women’s effective presence in the process of lawmaking include addressing women’s issues, ideas, worldviews, and experiences. Moreover, female representatives have the ability to propose laws that lead to the improvement of women’s status, which, unfortunately, due to the low number of female representatives in such bodies, they primarily constitute a minority group in the process of legislation.1010 Saint, Germian, Michelle A., 1989, and dose their differences make a difference? The impact of women on public policy in Arizona legislature, annual meeting of American political science association, while also lacking the capacity to convince public opinion for easier passage of their proposed laws, do not participate in parliamentary speeches, and yield weaker lobbying power to persuade other representatives and gain their support for passage of their proposed laws or regulation of women’s issues. As a postmodern feminist theorists, Carol Smart argues that a social and legal feminist theory can bring about
dramatic changes in many fields, whereas it will struggle when it comes to law with political, intellectual, and social problems, which are resistant to accepting the idea of postmodern feminism, likely due to the centralization of the patriarchal discourse. She believes, rights and law are no longer a mere tool of struggle for feminists, and therefore introduces existing laws and rights as gendered in her theory and proposes a distinction between men and women in law to justify it. By allocating fewer material resources to women, judging them by irrational and inappropriate standards, denying equal opportunities, and not recognizing certain harms inflicted on women, especially since they are harmful to women and in the interest of men, she describes law as gendered, and sees sexism in law with varying degrees and different complexities created by those who introduce language and gender in law as neutral. This creates a discrimination that benefits its producers. The idea of gendered law, and that law and rights are masculine issues, makes one think that most lawmakers are male, and when it comes to ideals of impartiality or justice, it is really masculine values of impartiality and justice, which are referred to as universal values.

Aside from this alleged impartiality of law and legislators, especially considering that after modernity legislators pass laws on behalf of the people, the number of female representatives and adoption of protective women’s laws in a masculine group indicates that women’s experiences and views are not included in the legislation process. Feminist legal theory that has recently spread in many countries, such as Canada, Britain, Australia, the Netherlands, Norway, Germany and Austria, includes a critical examination of the law by feminist views. Since most laws have been written by men, by investigation of legal literature used in various legal cases, it appears that law is essentially based on men’s issues and masculine standards, where legal materials are in fact a reflection of men’s ideas.

The criminal law is not only a powerful mechanism for the control of social order by the state, but also a powerful source for the production and reproduction of dominant ideologies. Thus, law uses a dividing line in society to create public and private spheres. In the past, the public sphere belonged only to men, and the private sphere to women. Legislation, as a means of determining behavioral and intellectual policies in the public domain, was tasked to the undertakers of this sphere. The consequence of dividing society into public and private spheres leads to the oppression of women and their deprivation from a sense of equality in society. This type of division is called the male-centered movement by Mary O’Brien, which is consistent with the dominant way of thinking. Western intellectual tradition with scientific theories based on biology or nature prohibits women from public sphere jobs. The epistemological limitation of intellectual traditions is undeniable, and since linguistic contradictions create the public and private spheres, this seemingly neutral language and discourse have become law. The theory of division was shaken by the emergence of Marxism and the emphasis on the role of women in capitalism and production. With the emergence of liberal thought, governments were forced to retreat from their positions on women’s participation in social work. Postmodernist feminist studies point to the prevalence of this duality in liberal thought, which, despite its claims of equality, plays a key role in production of inequality (with emphasis on gender duality), and this duality-based system still belongs to, rather is owned by, men, despite its slogan of human equality, objectivity, rationality, and culture and power. It is clear that liberal criminal law too is drafted with masculine propensities, and the mixing of universal ideas, created by specific people through knowledge management, and the idea of maintaining public order has led to the objectification of law, denying the fact that the law is the product of fallible humans. By promoting the meta-narrative of unconditional acceptance of law, this man-made construct assumes an imaginary, supernatural power that, with a claim of moral or natural power, does not tolerate any opposition or criticism.

One of the criticisms of postmodern feminist criminology is concerned with the criminological foundations of certain crimes, where the reason of the criminalization lies in the dominant discourse, the masculine thought involved in the adoption of laws, as well as the influence of subjectivity and power of patriarchy that assumes women to be victims of certain crimes, while expanding the idea so far that it has become the truth over time. It is the responsibility of postmodern criminology to deconstruct such universal truths. In her book
Offending Girls: Kerry Carrington formally uses the concept of power, knowledge, and government officials to define women’s offenses officially, believing that women are not always passive, oppressed or controlled. She sees more complexity in gendered issues defining crimes, which results from masculine knowledge and power relations. Naffine, Ngaire, 2008 Feminism and Criminology, Trans. Mir Ruhollah Seddigh, Raman, 1st Edition, p. 146. In the case of rape or adultery, which feminists call the most serious violent crime against women, everything is directly related to gender, and the existence of such a crime reveals criminologists’ different perceptions of the existential nature of men and women. Rape is not a natural crime and its origin cannot be found in nature, rather it is a construct of culture and human beings, and the human being who created it was a man or a group of men, not a woman. The dominant, latent idea of rape is a masculine idea that arose out of heterosexuality as a general masculine view. The real meaning of rape and its criminalization comes from culture. It is not a mere sexual behavior, but a kind of language, discourse, and dialect, which represents a particular type of sexual expression. The enactment of rape laws expresses the male-dominated and patriarchal discourse of the legislators, who always see men as the initiator of sexual relations, thus establishing a sexual cultural structure. Meanwhile, the dominant culture sees women as mere tools and victims of rape, due to their weaker physical strength compared to men and their constant fear of rape. The implicit message in criminalization and the enactment of rape laws is that men are monopolistic and possessive, and it is the nature of women to be owned by men. Postmodern feminism showing the invalidity, unreality, and non-objectivity of the universal facts and claims in crimes, shows that in rape, it is not only the violence of the offense that forces the legislators to criminalize it, it is also the patriarchal subjectivity that women are weak and properties of men. Due to their weaker physical strength, women should always be afraid of men’s sense of possession, and men are inevitably forced to criminalize offenders in defense of their possession. In legislation of rape-related crimes, the masculine discourse pays no attention to women’s experiences and concerns itself with men’s view of rape. If these laws were motivated by countering men’s violence against women, more instances of rape should have been criminalized and protected by law. Even though feminist movements in some parts of the world have resulted in criminalization of any form of sex without consent, the ignorance, or sometimes resistance, of the legislators in criminalization of sex without consent in marital relations points to the patriarchal subjectivity and discourse that see women subordinate and owned by men. In the same way that Foucault believed in a strong connection between knowledge and power and discourse, postmodern feminist criminologists emphasize how criminology discourse creates crime as a social construct, and point to the effect of dominant discourses in society in the production of crimes. They see the enactment of the general penal code for the prediction of behaviors and risk assessment (as one of the ways to prevent crime) the result of a positivist criminological thought that is carried out for the sole purpose of verifying scientific methods. Such information provided to the criminal justice system for the purpose of enacting or reforming laws or harsh treatment of perpetrators may not be consistent with reality, in other words, merely reflecting the thoughts and wishes of a particular group of individuals who are more involved in the cycle of power and knowledge production. Austin, Liz, Cowburn, Malcom, 2013, postmodernism and criminological thought: whose science? Whose knowledge? Values in criminology and community justice, Bristol, policy press, vol 3, pp 21-38. In recent years, there has been extensive research on gender politics, and consequentially an evolution in our understanding of the nature of political partnerships based on gender and gender gap. Still, we have little understanding of the presence and influence of women representatives on legislative policies towards women. Substantial evidence show that one of the main differences between male and female legislators on various issues is the difference in the priorities of these two groups. Women are making more changes in women’s rights issues and fulfilling feminist goals and children’s rights, whereas men are mostly focused on economic issues. Thomas, Sue, 1991, the impact of women on state legislative policies, The journal of politics, vol 53, no 4, pp 958-976. As it was mentioned before, one of the key factors in the formation and adoption of criminal laws is the effect of the dominant discourses in the society. It is worthwhile noting that discourses work effectively, consistently, and also intangibly in shaping the thoughts of legislators; the effect of dominant discourses on legal orientations against criminal behaviors or non-criminal behaviors that are criminalized by the discourse, and the (de)criminalization of an act or behavior is very subtle similar to the effect of power in this area. It can be argued that many lawmakers fail to realize this
effect on the process of legislation, and that power operates in such a way that, with implicit or explicit motives, it can represent ordinary behaviors as criminal. Legislations can not only be influenced by the complex relations of power and knowledge production and discourse of power, but can also have a direct effect on the production and reproduction of power. More so than being a legal phenomenon, law is a linguistic phenomenon and so it can be the subject of language philosophy and linguistics discussions. In law, legislation, interpretation and enforcement of law involve lingual processes and the law is essentially created through language\cite{18}Shojaei, Ali, 2014, Interpretation of Criminal Law in the light of Exegetics and Discourse Analysis, Dadgostar Publications, 1st Edition, p. 156. The role of language and discourse in law is undeniable, and the words used in the legislative process and legal texts are not arranged accidentally, that is, a specific thought or movement can be found behind each of sentence that is now turned into law. Although the existence of dominant discourses is a major obstacle to the emergence of opposing, marginalized, or minority discourses such as women’s discourse, feminist discourses and movements have led to reformation and recognition of women’s rights in the criminal law of a few countries, including woman’s right to their body or the amendment of abortion laws. The US history concerning the raising of the age of criminal responsibility in 1800 and 1900 is a serious example of the intersection of law and gender. The raising of the age of criminal responsibility for girls from 7 to 10 years and then to 16 and 18 years was the result of efforts by those who were concerned about the delinquency and victimization of girls. Many gender laws were amended in the US from 1970 to 1980, however, there are no assurances for non-discrimination in sexist/gendered laws that seem neutral and both genders appear to have equal rights\cite{19}Belknap, Joanne, 2015, The invisible woman: gender, crime and justice, fourth edition, cengage learning, p:183-194. Reformation of seemingly gender-neutral laws that in practice discriminate against one of the sexes involves a much more difficult process than reforming gendered laws. Moreover, the differences in law-in-action and law-on-the-books lead to inequalities that are hard to reform given their unbiased appearance and the public opinion supporting them. One, and possibly the most important, effect of the enactment of criminal laws is the power of the governing body to regulate the personal lives of individuals in the community. The existence of criminal sanctions guarantees strict enforcement against violation of these social rules. It is these legal sanctions that guarantee life or death for individuals. Postmodern feminism studies on many criminal laws and the process of their adoption indicate that women’s views are not accounted for in this area. In other words, the most important sanctions of social life involve no female worldviews, and the seemingly protective laws for women are derived from men’s worldview. The concept of law changes over time, and this change depends on its evolution and the cultural context of that society\cite{20}Sandu, Antonio, 2010, postmodern approach of philosophy of law, postmodern opening, year1, vol3, p:23-34. One of the barriers to reforming the laws is the solidarity between morality and law or law and religion. Law is interpreted in the heart of the society and culture, and with changes in cultural norms and values, it becomes essential to revisit and revise them. Meanwhile, the increasing presence of women in different social arenas, the need for equality despite differences, equal opportunities for women, and inclusion of women’s experiences in criminal law and its legislation process are the main sanctions of social life.

3. Judgment and Punishment

Although the assumption of equality before the law, same as the rule of law, is one of the accepted principles in criminal matters, studies suggest that there is a form of inequality and difference in the legal punishment of female offenders compared to men. Eliminating gender discrimination in the legal life, focusing on women’s rights, is now central in most international treaties and declarations\cite{11}Ghorbannia, Naser et al , 2005, Re-investigating Women’s Rights, Vol. 1. 1st Edition. Rouz-e Nou, p. 11. Foucault’s theory of power, knowledge of the judicial system, the effects of creating order, and the concept of control in his thought led to the re-examination of the structures of the criminal justice system by postmodern feminist criminologists. His book *Discipline and Punish: The Birth of the Prison* presents the concept of power in criminal justice systems and criminology institutions. Some writers believe that in Foucault’s theories, the power to impose punishments has masculine features. Although these theories are not dealing with women and their issues, when this gendered power is translated into action, it has masculine features. In the field of women’s rights, feminists propose two issues, namely equality and change. For equality, they seek equal rights between
men and women and in law-in-action. As for change, they seek to create women’s rights in law-in-action. The former originates from liberal ideas and the later from radical feminism, which has achieved many successes in changing national laws and international regulations. According to postmodern feminism, equality is not limited to the same treatment of individuals. Pluralism and respect for differences requires us to make decisions appropriate for each individual in accordance with their conditions and circumstances. One of the instances of equality can be creating an equal opportunity for defense before the law. Equality before the law does not mean adopting the same attitudes, behaviors, and decisions. In postmodern thought, equality means taking into account differences and making the right decisions using different criteria. In postmodern feminism, equality before the law and at legal hearings is to account for all the differences between men and women on the one hand, and the differences between different women with different conditions and characteristics, on the other. In the dominant thought, equality before the law, at hearings, and in criminal sentencing means treating all victims or offenders the same regardless of their conditions, however, this attitude will lead to discrimination and inequality. The feminist movements can be studied from two approaches: descriptive and normative. In the former women are studied as real subjects, whereas in the later approach, women are studied in terms of how they should be, and equality is not limited to equal treatment as men, but equality between women and their differences from other women and men. Feminist efforts have exposed the discriminatory attitudes of law enforcement and judicial bodies against women offenders, by examining the court reaction and conventional attitudes toward women offenders. It is a common belief that criminal courts and institutions of the criminal justice system are more lenient in their treatment of women offenders and impose lighter punishments or forgive women’s wrongdoings because of their gender. They raise the question of whether women are treated in a similar way to men or whether this difference means different institutional treatments compared to men, who are the universal criteria for natural norm. Discriminatory attitudes toward women, be it positive or negative discrimination, can be seen in criminal courts more than any other establishment. The idea of women as the subordinate and the effect of judges’ subjectivity generally lead to the perception that women must have been subordinate to and followers of their male partners, and consequently they are treated less strictly since they were victims and under the command of men. This can result in leniency toward or even impunity for women. Still, this is not always the case for all crimes. In some crimes, women are considered as the main motivator and perpetrator. With these ideas passed into law against certain female behaviors, the judgment will result in harsher sentences for women compared to men. For example, in financial offenses women are considered victims of their economic circumstances or the orders of their spouse or partners in crime based on narratives of women’s inferiority or lower intelligence, whereas, under the influence of the same meta-narratives introducing women as corruptive, they receive harsher sentences in sex crimes. In crimes against women such as violence against women, the effect of subjectivity, power, and discourse is such that the traditional view of women as weak and unintelligent leads to male violence by making them thinks they can treat their property however they like. This male subjectivity and power lead to behaviors that would remain unsolved in the judicial process even if they were criminalized. Dealing with male offenders in crimes considered violence against women and the sentencing process are closely tied to the subjectivity and biases of judicial authorities. The attitude of the police, judges, social care providers, and even lawyers along with all those involved in the process of dealing with the crime is highly dependent on their thoughts on woman and their place in society. The effect of dominant male-dominated discourses blocks female victims from justice. The patriarchal discourse and its combination with the male-dominated power of the judicial system lead to denial of justice for the victims of these crimes, and, inevitably, the dominant discourse discourages women from demanding their rights when they find themselves in the same situation. The definition of the society and social structures of women has a great effect on the treatment and punishment of perpetrators of crimes against women and the women offenders. The social actions of human beings are not influenced just by social events, but also by their mental
beliefs and stereotypes, which can push individuals toward acts that are categorized as crime in the law. If these beliefs and expectations are based on human rights, they will result in peace; otherwise they will lead to criminal acts that are justified for the actors by their subjective stereotypes. The Charter of the United Nations enshrines respect for personal rights and freedoms regardless of race, gender, language, and religion. The Articles 1, 6, and 7 of Declaration of Human Rights also stress equality before law. The Convention on the Political Rights of Women (1952), and the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1969) stress equality between men and women. Moreover, the Convention on the Elimination of All Forms of Discrimination against Women (1979), adopted by the UN General Assembly, requires all member states to eliminate discrimination against women. Despite all these treaties and conventions, all of which emphasize individual equality regardless of race, gender, etc., as well as the enactment of many national laws in different countries, the combination of masculine discourse and subjectivity triggers unequal and discriminatory treatment of women in criminal proceedings. In order to examine the extent of women’s aggression and/or delinquency, we need the society’s definition of women. Myths, meta-narratives, and assumptions about women affect the process of their delinquency, sentencing, conviction, or even acquittal for committed crimes. Rape, power and the media, science, and the law are dominated by men, and this is the image of rape and violence that is imposed on women. Even men advocating for women’s rights try to provide a masculine and enlightening interpretation of women’s behavior. One of the meta-narratives about women is that women should not be aggressive or short-tempered and that women’s criminality is abnormal and requires a social and criminal response. As long as gender, cultural and religious stereotypes against women are present in social texts and society is not aware of them, gender binary will increase in society. Theorists and specialists call women’s reaction to these norms aggression. With the spread of such discourses, stereotypes lead to women’s criminality. The injustice, myths, and meta-narratives influence the judgment of the actors in the criminal justice system. The criminal system created for men and by men becomes a reference for assessment of women’s behaviors. And, finally, women who are identified as alien and the “other” in laws and the structure of the criminal system and play a subordinate role in the meta-narratives face masculine criminal sentences. The way society members think about women can shape public policies and the way women involved with the criminal justice system are treated. The emergence of alternative discourses against dominant male-centered discourses on crime, conviction, and criminal procedure for women in the criminal justice system can help reduce inequality in this area.

Patriarchal discourse affects the women involved in the criminal justice system in various ways. Women experience many inequalities whether as victims, offenders, or even witnesses in the process of judgment and punishment. For example, in criminal courts, female witnesses usually do not experience an equal treatment as men, o their testimony may not be accepted because of the meta-narratives that describe women as intellectually inferior to men, where their statements are regarded as the result of their feelings and emotions. Moreover, women offenders are treated differently due to the male-centered elements in courts, and are deemed deserving of more condemnation because of their deviation from expected social roles and stereotypes. Evidence suggests that one of the instances of discrimination and inequality in the criminal justice process is the effect of gender, with more death penalties for men who have murdered the spouses or children of others. And they usually do not receive such punishments for the murder of their own spouses and children. According to studies from the US state of Ohio, men are more likely to be convicted when the victim is a white woman.

There is a patriarchal, resisting view on women’s victimization and domestic violence, which argues that women are violent just like men, citing statistics on women’s violent crimes against men to prove their claim. In other words, they even introduce blameworthiness as a gendered issue. Sometimes, women are deemed responsible even for violence committed against them, by provoking male violence through disobedience and deviation from norms of femininity. The blaming is justified by introducing women as responsible for crimes against them, the society’s intolerance of aggressive women, and viewing of their aggression as abnormal.

A great deal of news today in concerned with
violence against women, its reasons, analysis, and its criminal procedures, however, the dominant discourse is still repression of women rather than the analysis of masculine discourses that encourage women’s crimes. Investigating gender inequality in court sentences has recently been studied thoroughly, with most studies focusing on the social context in which judicial decisions are made. Religious and political conservatism has a profound effect on condemnation and gender inequality, while gender inequality is also closely linked to racial and religious inequality. In general, studies on criminal convictions and judicial decisions in this area point to environmental gendered differences in courts, i.e. the atmosphere and intellectual mood of the judges and the criminal justice system and the political and religious elements governing the courts. The investigation of women in criminal courts, and the criteria/variables influencing leniency or strictness in convictions must be taken into account in relation to the defendant’s occupation, race, crime type, crime time, and social and family circumstances. Research studies indicate that women are more likely to receive rehabilitative or remedial sentences than men. Theorists, however, still believe that the political and social context has a direct effect on women’s convictions, because they do not see social control separate from politics. Politics is embedded within the framework social contracts, and at the national level, it can have different effects on criminal conviction, which is basically a political issue, while the local culture is also effective in the criminal response to women offenses. As such, public policy prompts the criminalization/decriminalization of certain feminine behaviors as noted earlier, and politics at the local culture level helps appoint actors to the criminal justice system in line with norms expected by general policies. Meanwhile, local culture connects the committed act to the violation of the community’s norms and values. A comparison of the level of conservatism in societies reveals different convictions for women committing the same crime. In societies with less political and religious conservatism, women’s conviction is different from those with conservative judges who adhere to political and religious principles. This may be due to political and religious mechanisms and influence of discourses. Religious conservatism on criminal convictions, by guiding gender stereotypes through the roles defined for women in religion, has a direct effect on the severity of conviction as decided by a judge committed to religious principles. For example, the religious views of the Protestant school on women and their traditional roles can have a significant, though indirect, effect on the conviction of women living in such societies. Byngbæe.Kim,Xiz wang,Hyunjung, Cheon,2018,Examining the impact of ecological contexts on gender disparity in federal sentencing, justice quarter, Routledge, academy of criminal justice science, pp:2-38. In societies with less political and religious conservatism, judges can recognize that men and women have different social realities and look at life in a different way, and so account for the offenders’ social conditions when imposing a punishment, and look beyond political and social gender norms. The influence of conservative political and religious views on the gender gap and criminal decisions has many consequences on increasing or reducing gender inequality. The effect of gender, ethnic, and racial stereotypes and beliefs about women not only leads to different sentences but also has a direct effect on women’s victimization. In the case of women’s victimization in minority groups, in addition to the male-dominated discourses in the justice system, women are also discriminated against by racial, religious, or political discourses, in the form of a double oppression. Meanwhile, female victims are required to retell the events in criminal trials that are mostly made up of men, or face their attackers or offenders, which can worsen their suffering, making them even unable to speak. Results of recent studies propose taking advantage of modern facilities and technologies such as video conferencing instead of direct speech in courts. Heimer,Karen, Kruttschnitt, Candace, 2006, gender and crime, new York and London university press, pp:256-258. Even though these women are the victims, the dominant discourse does not regard them as ”us”, and they even have no place in the small circle of women, due to ethnic, religious, or racial criteria. In other words, since they are not ”us” or religiously virtuous, they deserve criminal penalties. Moreover, female victims are forced to describe the events of the crime based on the justice system’s dominant discourse; otherwise it might decrease the chances of conviction. Behind this dominant legal discourse used by all criminal system actors, a large portion of the truth is not retold or is distorted, since retelling the story can decrease the culprit’s blameworthiness or even make the victim blameworthy. Another manifestation of the influence of male-dominated subjectivity, discourse, and power in the judgment and punishment process can be seen in judges’ interpretation of law. Law should be written in such a way that precludes the need for interpretation. However, this is not always the case due to different intentional or unintentional reasons including the protection of particular interests and groups in
society, expediency, the interests and views of supervisory bodies, maximum inclusion by using non-specific terms, or even failure to predict all cases and instances of the law. As a result, prosecutors are forced to interpret the law, and their preconceptions and biases can affect their interpreting of law. Given that the interpreters cannot completely free their mind from the environment or interpret the law in a mental vacuum, the interpretation becomes dependent on the judge’s understanding and prejudice. Some of these biases stem from their social status, which is itself dependent on the social class, family status, economic status, and patriarchal thinking, and the judge interprets the law under the influence of these assumptions. Difference presuppositions and prejudices leads to different interpretations. The collection of these interpretations makes up the judicial procedure, which, even though non-binding, forces the judge to follow it unless in the presence of strong, opposing argument that can resist it.\footnote{Shojaei, Ali, 2014, Interpretation of Criminal Law in the light of Exegetics and Discourse Analysis, Dadgostar Publications, 1st Edition., pp. 197-236.}

These patriarchal interpretations of vague criminal law materials and the extension of criminal acts to match criminal categories lead to a patriarchal approach that quashes the emergence of other or feminist discourses. Inequalities against women will increase with the spread of such processes. The way to counter them is providing different interpretations of legal materials and accounting for women’s views.

4. Enforcement and Sentencing

Feminist approaches to punishment emerged in recent decades, focusing almost exclusively on women’s prisons. Even though there are differences between men and women in criminal punishment, feminist studies on criminology and penal regimes suggest that there are in fact differences, even in punishments of the same kind, e.g. imprisonment. The authors of the criminal law are responsible for trying to maintain gender inequality, and the criminal law is used as an example and criterion for gender inequality. Although criminal laws are written in a gender-neutral way and no apparent distinctions are made between the two sexes, three types of inequality can be found in law: gendered laws, adoption and enforcement of gendered laws against one of the two sexes, and the use of impartial laws that treat victims of different crimes differently.\footnote{Belknap, Joanne, 2015, The invisible woman: gender, crime and justice, fourth edition, cengage learnings, p: 170.}

With this introduction, it must be said that even supposedly neutral laws are enforced differently for the two sexes. Criminal laws at the stage of enforcement deviate from impartiality and lead to inequality. In the pre-industrial revolution period, men’s and women’s punishments were equal, and common punishments of the time such as execution, burning at stake, and amputation were used for both sexes. The most female-exclusive and conventional punishment in the 14th-17th centuries was the execution of witches. In the 19th century, imprisonment as punishment was the same for men and women. The Netherlands established the first private prison for women in 1597. From late 1970, biological and psychological views were used in studies of female inmates. Some feminist hypotheses argue that women were sent to prison to create a potential workforce and to train disciplined workers, following patriarchal ideas.\footnote{Howe, Adrian, 1994, Punish and critique towards a feminist analysis of penalty, Routledge, 2005, p135-140.}

Prison, as the most common punishment forms that deprives one of the basic rights of individuals in society, has been closely studied by criminologists. In light of gender inequality in criminal law, the study of prison sentence for women is of key importance, and can offer insight into the existence and extent of discrimination between the sexes in the enforcement of prison laws. Failure to follow the standard models of female life can lead to imprisonment for women. A woman can end up in prison in three ways: detention while awaiting trial for any reason, failure to provide bail, and any sentence of imprisonment. The last one constitutes the main function of prisons and is a product of capitalism, introduced less than two centuries ago. Considering the increasing number of female prisoners and the prison population in general in recent decades, its study has become particularly important for feminists.\footnote{Heidensohn, Francis, 2010, Women and Crime, Trans. Mohammad Taghi Nouri, Majd Publishing, 1st Edition, p. 69.}

Another key factor in disregarding women’s condition in prison in the last century is the lower number of crimes committed by women, leading to their lower incarceration rate. Low female crime rates mean that women are less of a threat to the social order, and hence they have not been studied as a social problem. Since the early 1980s, social analysis of punishment has gravitated toward criminology, and those interested in the social and political analysis of punishment shifted from empirical foundations of criminology to social studies and exploration of practices governing the punishment-related
institutions. Meanwhile, recent studies in their criticism of women’s punishment shifted away from mere empirical study and became more creative. Foucault’s *Discipline and Punish: The Birth of the Prison* is the most important work in the social history of prison. In this book, Foucault discusses the emergence of prison and the establishment of punishment in Europe since 1757. Feminist studies of the punishment are largely driven from his views. Sociological studies in Britain, in particular the works of Pat Carlen, and the call for historical revision of imprisoned women have created a process leading to critical analyses of the punishment regimes. Still, little progress has been made in this regard.  

Criticisms of postmodern feminism about women’s punishment focus on two issues: first, the classification of women into the category of female offenders in general and without regard to their personal and social conditions, and second, the exercise of masculine power in the re-socialization of women through patriarchal power when training women prisoners. Women have no place in the social world and social discourse and hence they are not seen as a serious social risk. The only risk posed by women’s crimes is exercising their powers and moving away from the expected norms of a patriarchal society, which is still not a serious threat considering the low crime statistics. This norm-breaking is contrary to the expectations of dominant men, and forces them to re-educate women based on masculine standards and criteria. Prison was created to punish men, rehabilitate and socialize them. The laws too were written for their punishment by other men. Meanwhile, women are judged and punished based on this masculine regime. There are two paradoxes about the punishment of women prisoners: women who are excluded from social and legal discourse but are punished by the social and legal institution of prison, and the punishment itself, which is designed for male punishment and enforcement of masculine discipline. The principle of crime and punishment is well accepted in modern criminal law, from the criminalization process to the execution of punishment. The principle of rule of law is inviolable in criminal law, however, it has not been successful in the enforcement of law and punishment, and, in many cases, the existing contradictions, ambiguities, and being open to interpretation, exacerbate the situation. The public opinion and pressure groups influence various criminal processes from the ratification, judgment, and sentencing to the punishment. Sometimes the pressure is so high that it violates the law and principles of criminal law.  

Examples include public punishments and delaying and expediting the punishment process. Feminist criminologists have recently identified differences in the type of conviction or punishment of women belonging to different social, economic, political, religious, and racial groups. Evidence suggests that these social criteria that place women in minority female groups, result in more severe penalties compared to other women. Studies, for instance, show a stricter attitude toward women of color compared to white women in prisons, suggesting that in addition to the inequality they face against men, certain groups face double inequality and discrimination on the grounds of their gender, race, and political and social orientations. The imposition and enforcement of a prison sentence on women means using a masculine punishment in a facility used for women. A prison has all the traits of a masculine establishment and female views have no place in the rehabilitation of women. The majority of rehabilitation trainings provided for women prisoners in Scotland, North America, and the UK include housekeeping and maternal skills, basically re-educating them on maternal and gender roles. In Carlen’s studies, women’s prison, in the general sense, is a place with all the organizational and repressive features of men’s prisons, which also included a special type of imprisonment that does not exist in men’s prison and for men. In other words, in addition to the general meaning of incarceration with all its masculine features, women’s imprisonment includes restrictions that are not even found in men’s prison. Housekeeping and maternal training, which seek to re-socialize women and bring them under social control, are a reflection of the male-centered discourse, subjectivity, and knowledge realized in women’s
punishment in prisons. Although some alternative prison regimes have misleading appearances, even the alternatives tend to impose masculine views of femininity. The effect of the masculine discourse and power in women’s prisons involves reconciliation and re-socialization of women based on masculine models, thus creating new and social identities for women prisoners using masculine standards. The social control that aims to readjust women through imprisonment is completely influenced by male-centered discourse, and all prison training processes are limited to creating good women and housewives. According to recent studies, there are two types of sexism in the society, from which the criminal justice system is not exempt. Benevolent and hostile sexism, with the former offering privileges to women to protect them, and the latter seeking to counter and punish women who are after masculine roles and power or distance themselves from feminine standards. Psychologists such as Sarlet and Dordenne described the symbol of this benevolence as positive and persuasive attitudes for women, which are in fact hostile and, despite their pro-women appearance, contribute to a process that promotes inequality between men and women. The hostile or benevolent attitudes and positive or negative discriminations are all denounced in postmodern feminism. Although the public opinion and even women perceive this benevolent or positive discrimination as harmless or a privilege for women, they reinforce gender inequality.

Francis, 2010, Women and Crime, Trans. Mohammad Taghi Nouri, Majd Publishing, 1st Edition, p. 69. The repressive features of the patriarchy are readily enforced in women’s prisons. Women’s prisons insist on re-socializing women by retraining them on femininity and family norms. Discourses of family life for women, they reinforce gender inequality. Some general rules can affect the domain of punishment and its enforcement by establishing a structure of domination, and they can even surpass documented, binding laws in importance. There are many discourse and non-discourse methods in western societies to control and monitor women and girls. Still, it is the feminist analysis of women’s social control and masculine analysis of crime that lead to the expansion of the legal scope for women’s traditional punishment and conviction, transforming punishment into a paradox. Critical research on punishment should seek to examine it as a scientific subject, also examining the discourse on punishment. Most critical investigations on punishment, however, are limited to the study men’s prisons.

Belknap, Joanne, 2015, The invisible woman: gender, crime and justice, fourth edition, cenage, learning, p. 168-170. Inequality in punishment or commuting the sentences based on gender, even if adopted to support women, are frowned upon and seen as unjust. The difference in types of punishments, which are seen as incompatible with women’s frail and delicate bodies as justified by biological reasons, despite its supportive appearance, is in fact the exercise of masculine domination and the spirit of chivalry to satisfy men’s desire for power. Insistence on such supportive measures only widens the institutionalized inequality in the criminal justice system. With the beginning of the twentieth century, in the modern legislation era, when all legislators, founders, and managers of correctional centers and prisons were male, delinquent and incarcerated women were forgotten, and the punishment of imprisonment was concerned with men alone. Frey was the first to realize the difference between the needs of male and female prisoners. He created a new system for female inmates, where they were able to work, study, and receive religious education, and the physical appearance of the prison was changed. Female prisoners were ignored for various reasons, including the prevailing notion that imprisoned and delinquent women were incorrigible and incapable of rehabilitation, as well as the double standard of morality and promiscuity that saw women submerged in corruption, with prison as the only option for morally corrupt women. Despite this prevailing thought, women were regarded as second-rate in the prison system and their interests were overlooked because of the mentioned reasons, the low number of prisoners, and their low likelihood of rioting.

Heidensohn, Francis, 2010, Women and Crime, Trans. Mohammad Taghi Nouri, Majd Publishing, 1st Edition, p. 69. The repressive features of the patriarchy are readily enforced in women’s prisons. Women’s prisons insist on re-socializing women by retraining them on femininity and family norms. Discourses of family life for women have been institutionalized in penal institutions, and prison is no exception. Definitions of legitimation of masculinity in prison are influenced by the man-centered discourses, which have imprisoned women through legislations in the first place. Women in prison have no choice but to accept masculine definitions of femininity produced by masculine discourses, and the incapacitation begins with criminal processes. Research findings suggest that women imprisoned and sentenced to short prison terms are monitored more closely than their male counterparts. This control is reinforced through discourses on family and femininity, allowing for even stricter monitoring, and the female prisoners are molded accordingly. The attitude toward women in prison and the educational and training programs offered to them are usually such that the prisoners are not
taken seriously. Although this may be true in men’s prisons as well, there are serious differences regarding the training and occupational opportunities between males and females, leading to inequality. The discrimination against women in the prison system, the strict monitoring and control over women prisoners, and violent attitudes towards them flow from the effects of masculine subjectivity and the dominant discourse. They are seen as abnormal, rebellious, and rude women who have deviated from the norms expected in society as defined by men and inevitably accepted by women, which make them unworthy of the respect of prison authorities. Human dignity is less observed for women prisoners, as delinquent women are seen unworthy of respect or training because of their violation of public values. In general, the attitude toward women in prison regarding training or education is far from suitable. There are fewer training programs for them, as they are seen less intelligent, and the program type, quality, and diversity are much lower than those in men’s prisons. Many of the work opportunities available to men in prison are unavailable to women. Historically, this is justified by the notion that women are not breadwinners and they do not need employment. Even though, this mindset has, more or less, changed today, the programs offered to women inmates still reflect social prejudices about women as spouses and mothers, which stems from a man-centered discourse. Despite all the reforms, studies show that all elements assessed as low-quality in men’s prison are worse in women’s prisons. An example is the situation of female inmates in the US who have less access to medical care and their physical and mental health has been reported to be worse than men’s.\textsuperscript{12}Belknap, Joanne, 2015, The invisible woman: gender, crime and justice, fourth edition, cenage learning, p:240-253. There is an unwritten rule in women’s prisons that links women and girls to serving and nursing, and therefore programs are focused on such areas. Gendered difference can be seen even in educational programs in prisons. Basically, women are not trained for jobs considered masculine, such as electrical wiring or plumbing, while men can learn jobs considered feminine, such as sewing, which provides them with more job opportunities outside of prison, while women’s programs are limited to housekeeping and childcare. In some prisons today, women can be trained in masculine occupations. Still, the male discourse dominates most prisons. Another inequality in punishment can be traced in the level of social condemnation. In other words, women become subject of criticism by the society and social structures merely for being accused or involved in the criminal process, even if they are acquitted. Although, this might be true for men as well, this discourse mainly targets women, blaming them for deviation from the good-woman stereotype. In addition to criminal punishment, women experience a social punishment, usually being rebuked by the public opinion even after enduring their punishment and receiving what is called social rehabilitation. In some cases they cannot renew their identity and social life. Even though public opinion is always sensitive to the criminal background of both men and women, the patriarchal discourse aggravates its effect for women.

Conclusion

Many criminologists have explored the issue of crime and its relation to gender. In postmodern feminist criminology, however, gender is only one of the effective elements involved and it is studied alongside the effects of subjectivity, power, and discourse on crime. Following the principles of postmodernism, postmodern feminist criminology sees wisdom, intelligence, ethics, and masculine tradition as effective elements in the victimization and delinquency of women, and by challenging the facts presented by masculine knowledge and criminology, it seeks to present an alternative and relative truth rather than absolute and scientific truth. In criminal law, women are in a hierarchical system based on dual oppositions that result from the exercise of power over them. Meanwhile, the physical differences between men and women pave the way for seeing women as second-rate, imposing male-centered views, and also forbidding feminine behaviors or, in the most extreme cases, the femininity itself as crimes. By scrutinizing some of the criminal categories, it seems that mere femininity and being a female constitute bases for criminalization. Hierarchical power systems in criminal law place women at a lower rank than men, and despite the appearance of impartiality, create a sense and experience of deprivation in women by marginalizing, eliminating, and excluding the feminine discourse. In this approach, crime is the imposition of suffering on women due to their gender. Many of the criminal laws are the main cause of crime. That is, the linguistic dominance and dominant male discourse force women to commit certain crimes. The role of man-centered and patriarchal discourse in criminal law is the omission and rejection of non-dominant feminine discourse that resists the dominant discourse.
In the dominant discourse, crime is women’s norm-breaking, which is responded to by criminal penalties. Women play no effective roles in the ratification and legislation processes, and face many limitations in the punishment and judgment processes. In many cases, pro-women legal materials are in fact a positive discrimination for women, which eventually contribute to inequality between the two sexes. There is a difference between men and women in the process of punishment, and the corrective prison system, as the main type of punishment for women worldwide, is affected by masculine discourse. Women suffer from a type of inequality and a sense of being second-rate both against and within the criminal system, which makes their access to justice limited to impossible. For equal access to justice free of all kinds of positive and seemingly supportive discriminations, and to eliminate negative discriminations, there is a need not only for revising, reproducing, and redefining the concept of gender as a socially produced content, but also to create pluralistic, feminine discourses that can protect women’s rights and views and end inequalities in the criminal justice system, thus paving the way for the realization of social justice. This noble goal cannot be achieved unless though revision of the gendered concepts and discourse resulting from them.

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