

Are men discriminated against in the criminal justice system?

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1. Introduction

A superficial examination of sentencing patterns suggests that women offenders are being treated more favourably than men. A lower proportion receive immediate custody and a higher proportion receive a conditional discharge. Besides this, a higher proportion of women than men receive a caution as opposed to being prosecuted. However, the explanation for the differences may be that the men have committed more serious offences, or that they had a worse criminal record, which is usually taken into account on sentencing. Only very detailed studies, controlling for these and other factors which affect sentencing, such as mitigating or aggravating circumstances can begin to supply the answer. In this article, the data that are available will be examined, together with problems of interpretation.

It is worth pointing out, at this stage that there have been some misconceptions that have led people to believe women are in fact discriminated against rather than favoured. The most well-known one is that "three times as many women as men go to prison for a first offence". (Guardian, 16.9.91, quoted by Kennedy, 1992 p.33. See also Mawby 1977). This conclusion, which is based on prison statistics and not on sentences is shown to be incorrect.

A second myth is that women convicted of killing their partners are less likely than men to have the charge of murder reduced to manslaughter on the grounds of provocation. The Home Office have produced statistics showing this is not the case.

Of course, the statistics, however refined, are only part of the story, and even if these showed that the men and women involved did have the same sentencing patterns for the same offences and criminal record, this could in effect be discrimination against women because the impact (of prison, for example) on the lives of most women may be very different. The impact may of course, also be different for different women who receive the same sentence, and it may not be at all clear who is being 'discriminated against', who is being treated unfairly - and what that can mean.

We will here be concerned with data from official statistics and research studies that have been carried out which are relevant.

2. Sentencing patterns for indictable offences

In order to refine the comparisons between males and females, the data here is given for those aged 21 and over. There were similar patterns for those aged 17-20, although some of the disposals available are different. The distribution of sentences are given in Table 1. The first 2 columns show that in 1991 a greater proportion of women received a discharge or probation than men, who had more fined and more receiving immediate custody. These differences have been consistent over the years, as can be seen from the third and fourth columns giving 1977 figures, although in 1977 more were fined, (and fewer men than women) and fewer received a discharge. Community Service Orders (CSO) have increased over the period, but have always been more used for men. They were introduced as 'alternatives to custody', so their lesser use for women cannot really be regarded as discriminating against them, as has been argued by Dominelli (1984), unless correspondingly more women received custody, which is not the case. However, it has been pointed out that Community Service is often not available for women, and is more difficult to organise. (Women have even been given a prison sentence, because their children could then be put into care, whereas if they had been given CSO, arrangements for the children would have been more difficult to make).

The fact that men tend to be fined whereas more women receive a conditional discharge suggests, at first sight, that women have lighter sentences. However, it can be argued otherwise. If the condition (usually of not committing another offence within 6 months) is breached, the disposal for the next offence may be a probation order, and if this is followed by another offence, the sentence may go 'up tariff' to prison (if sentence is based on previous convictions). So those receiving a discharge (who are usually women and unemployed men) may fare worse in the end. The sentencing progression for those fined, who are more likely to be men, may simply be incurring greater fines. (The use of 'unit fines' introduced in CJA 1991 but now abolished might have changed this, in making a fine more available for women). The end result therefore could be that women were more likely to go to prison after fewer previous offences than men.

It is usually agreed that an immediate prison sentence is the most severe disposal. In both the magistrates' courts and the Crown Court proportionately more men receive immediately custody, the figures for those aged over 21 or over in 1991 being 6% of men and 2% of women in the magistrates' courts and 48% of men and 23% of women in the Crown Court. In addition, a greater proportion of men are sentenced in the Crown Court, thus increasing the differences between men and women.

3. Prison Sentences

An analysis of 1977 sentencing patterns was given in Criminal Statistics 1980, based on a 1% sample. This included some comparisons by offence group, and distinguished

first offenders from the rest. Some of the data is given in the last 6 columns of Table 1. These give figures for first offenders. The figures for those with previous convictions are not given here, because the men and women would not be comparable in that the men tend to have more previous convictions, on average so would be expected to have more severe sentences. It is interesting to note (bottom line) that roughly two-thirds of the women were first offenders, and one-third of the men. The pattern of sentences (columns 5,6) still shows that men were more likely to get an immediate prison sentence (5% v 1%). This could still be on account of their offences being more serious. The numbers in some offence groups for women were too small for a further breakdown, except for shoplifting and 'other theft'. These show the same tendency (last 4 columns) but again, this could have been because the men's offences were more serious. This does indicate however that first offender women were less likely to go to prison for shoplifting and theft. (Although 1977 is a long-time ago there are few changes in offender and sentencing patterns over the years).

Table 1 - Sentences, selected groups, aged 21 and over (% distribution) All courts.

	1991		1977		1977 (1st offenders)					
	All		All		All		Shoplifting		Other theft	
	M	F	M	F	M	F	M	F	M	F
Discharge	15	34	8	20	14	21	15	18	15	27
Fine	39	28	53	57	70	66	80	75	70	57
Probation	8	17	5	12	3	9	4	5	2	12
Community Service	8	4	2	1	1	-	0	-	1	0
Suspended Sentence	10	8	12	6	6	2	-	1	8	2
Prison (immediate)	19	6	17	3	5	1	1	0	4	2
Other (2)	(2)	(1)	(1)	-	-	-	-	-	-	-
n = 100%										
(thousands)	190	29	182	45	67	31	12	19	22	6

Source: Home Office Criminal Statistics, 1991 and 1980.

However, it is clear that, ignoring offence type (as did Mawby and others quoting prison statistics), first offenders, who were male had a greater chance of receiving custody than first offenders who were female. The fact that, of those in prison, a greater proportion of men who were first offenders says nothing about the proportion of first offenders who went to prison. For both sexes these groups may well be in prison because they have committed serious drug or violence offences. Regardless of this, the actual number of women prisoners could be very small indeed, but still have a higher proportion of first offenders simply because there were few with multiple previous convictions.

4. All Homicide

Homicide consists of murder, manslaughter and infanticide. The latter can only be committed by women, there are only about 6 cases per year and will not be counted here. Another form of killing is 'causing death by reckless driving', which was defined as an offence in 1956 to distinguish it from manslaughter. (It was evidently not kind to convict 'respectable' men of this offence).

On average (of 3 years, 1989, '90 and '91), 176 men and 9 women were convicted of murder, all of whom had to receive a life sentence. Numbers and disposals for other offences in the group are given in Table 2. Only a small number (24 men and 3.7 women on average) had the murder charge reduced to s.2 manslaughter (diminished responsibility). It can be seen that men were much more likely than women to receive an immediate prison sentence (81% cf 37%) for 'other manslaughter', and proportionately fewer men received probation. Too few women (about 8) caused death by reckless driving to analyse; of the large number (about 300) of men the sentences tended to be lighter than those convicted of manslaughter 10% receiving a fine, an 71% immediate custody.

5. Domestic Homicide

Of those victims of homicide who were aged 16 or over, for about half (100) the women were killed by their spouse or lover and about 10% (30) of the men. We will here only look at how the offenders we dealt with. Following the publicity of two cases of women who killed their husbands being convicted of murder, rather than manslaughter on the grounds of provocation, the Home Office have released the statistics based on domestic homicide (including lover, former lover etc) for the years 1984-1992 (personal communication).

The total number of women convicted of domestic homicide (in the 9 years) was 124; 20% were convicted of murder, 27% of Section manslaughter and 53% of 'other manslaughter'. On the other hand, of the 742 men convicted of domestic homicide 38% were for murder, 32% for Section 2 manslaughter and 30% for 'other manslaughter'. It is clear that women were more likely to have the charge reduced to

Table 2

Disposals for manslaughter and death by dangerous driving ('89, '90, '91)*

	S2		Other		Death by	
	Manslaughter		Manslaughter		Dangerous Driving	
	M	F	M	F	M	F
Discharge			0		0	
Hospital Order	47	(73)	9	7	0	
Fine					10	(8)
Probation	7	(18)	4	42	1	(4)
Community Service Order			0		8	(20)
Suspended Sentence			5	13	10	(12)
Immediate Custody	46	(9)	81	37	71	(56)
n = 100 (mean 3years)	24	3.7	193	28	311	8.3

* 0 = less than 1/2%; blank = none

manslaughter, and of those where the reason was known, 23% of men and 30% of women had the charge reduced on the grounds of provocation.

When convicted for manslaughter, men were more likely to receive a prison sentence and it was likely to be longer. Between 1986 and 1989, 70% of men received a prison sentence compared to 45% of women - the average lengths of sentence were 59 months for men (excluding life sentences) and 33 months for women (no life sentence).

Women were also more likely to receive probation order or a suspended prison sentence. Between 1986 and 1989, these sentences accounted for 27% of decisions for women and 8% of decisions for men.

6. Remands in custody

Another misconception is that women are more likely to be remanded than men and are more likely to be remanded in custody rather than bailed. Detailed figures are not available in Criminal Statistics, but is estimated that in the magistrates' courts about 23% of women were remanded, of whom 4% had a custodial remand, while more men were remanded (26%) of whom 8% were remanded in custody. Of those held in custody and convicted three-quarters of the women received a custodial sentence, compared with 62% of men. However, this does not necessarily mean the women were

unfairly or unnecessarily remanded in custody. They are usually remanded for reports, and the magistrates may have decided that having given them a 'a taste of prison' they could now be released, with a lesser sentence. A somewhat similar situation holds for remands in the Crown Court. (See Table 3).

Of those committed to the Crown Court for trial 19% of males were remanded in custody and only 7% of females.

It is worth pointing out that although women are less likely to be remanded custody, as opposed to bail, those that are remanded in custody are likely to be far from their homes, as there are only 5 remand centres for women in the whole country and this presents difficulties of consulting with solicitors and meeting families, and is clearly to their disadvantage.

Table 3

Outcome of remand on bail or in custody 1985, figures in thousands (percentages)

Magistrates' Courts	Females				Males			
	Types of remand				Types of remand			
	Bail		Custody		Bail		Custody	
Acquitted	4.3	(14)	0.1	(10)	33.5	(16)	2.7	(14)
Convicted: non custody	25.9	(83)	0.9	(70)	164.2	(76)	10.0	(53)
custody	0.9	(3)	9.3	(20)	17.2	(8)	6.0	(32)
Total	31.1	(100)	1.3	(100)	214.9	(100)	18.7	(100)
	custodial remand 4%				custodial remand 8%			
Crown Court	Females				Males			
	Types of remand				Types of remand			
	Bail		Custody		Bail		Custody	
Acquitted	0.8	(27)	—	(7)	5.9	(28)	0.7	(8)
Convicted: non custody	1.7	(57)	0.2	(28)	10.1	(42)	1.5	(17)
custody	0.5	(17)	0.3	(65)	7.8	(30)	6.5	(75)
	3.0		0.4		23.8		8.7	
	Custodial remand 11%				Custodial remand 27%			

Date extracted from Appendix to Cropwood Conference 1988 and Criminal Statistics 1986.

This is also a factor in prison sentences, which are therefore more punitive for women than for men. The smaller number of women's prisons results in more difficulty of access by their families.

Other studies

Farrington & Morris (1983) carried out a small study in the Cambridge magistrates' court to compare the sentences of men and women, controlling for as many factors as possible, incorporating previous convictions, seriousness of offence and domestic circumstances. They found there was virtually no difference in the sentence.

Moxon (1988) in a study of 18 Crown Court centres found that women had a lower proportion receiving a custodial sentence, controlling for a large number of factors.

Hood (1992) incorporated comparisons between men and women in his study of race and sentencing in Crown Courts in the West Midlands. He also controlled for a large number of factors, and found that women were consistently less likely to go to prison than men.

More recently Wilczynski and Morris (1993) have examined the statistics of parents who kill their children. Unlike most other offences (except shoplifting) a high proportion (47%) of the suspects are women. Mothers are less likely to be convicted of murder, and if convicted of manslaughter they are less likely to get a prison sentence and more likely to get probation or psychiatric disposition.

Conclusion

It is clear that, overall, women are less likely to go to prison than men, and the indications are that this is the case, when factors such as offence and criminal record are controlled for. Whether this shows that women are favoured or men discriminated against (or for that matter, the other way round) cannot easily be answered. However, as was pointed out earlier, it is not satisfactory to completely ignore sentences lower down the scale - notably conditional discharges, probation and fines, the relative severity and impact of which can be disputed and indeed may vary according to the perception and circumstances of the offender.

Some people argue that, in giving women lighter sentences sentences are being 'chivalrous' or 'paternalistic', and that this is unsatisfactory. Others have thought there is concealed discrimination against women. Undoubtedly there are many cases, both for men and women where the sentences are unnecessarily harsh. It is perhaps meaningless to try and compare sentences holding constant 'other factors' affecting sentence, because all other factors can never be controlled and the circumstances of the offences and the impact of the sentences for men and women are usually different. It is not very sensible to try and compare sentences of men and women "other things being equal" when "other things" never are equal.

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