



Feminism in Handcuffs? The Paradox of Gender-Sensitive Legal Frameworks for Female Offenders

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Abstract

*The concept of gender-sensitive legal frameworks aims to address systemic biases against women in the criminal justice system, yet its implementation often creates paradoxical outcomes. **Feminism in Handcuffs?** critically examines whether these reforms genuinely protect female offenders or inadvertently reinforce punitive control. While policies such as diversion programs and gender-responsive sentencing seek to acknowledge women's unique vulnerabilities—such as histories of abuse or caregiving roles—they risk essentializing women as inherently "victims" rather than autonomous agents. This study assesses the tension between protection and punishment, questioning whether gender-sensitive approaches challenge patriarchal structures or merely repackage paternalism under progressive rhetoric. By analyzing legal reforms and policing practices, the paper reveals how well-intentioned policies may perpetuate carceral feminism, leaving women trapped between paternalistic "protection" and enduring criminalization.*

Keywords: *Feminism, The Paradox, Gender-Sensitive, Legal Frameworks, Female Offenders.*

Introduction

Women in conflict with the law face unique challenges within criminal justice systems that remain predominantly shaped by masculine perspectives. Despite global progress in gender equality, many legal and law enforcement frameworks fail to account for women's specific needs. When women become involved in criminal activities whether as offenders, victims, or

witnesses they often experience double discrimination: first as lawbreakers, and second as women judged against rigid social and cultural norms (Yohannes, 2023). This reality raises a critical question: Does the criminal justice system function as a protective mechanism or, conversely, as an instrument of punishment for women? Historically, criminal justice systems were built on the assumption that offenders are male, resulting in policies and enforcement practices that frequently overlook women's lived experiences (Okbandrias, 2023).

The criminal justice system often traps women in a paradox of protection versus punishment. On one hand, laws exist that claim to protect women, such as domestic violence legislation (Apsani, 2018). On the other hand, when women become offenders particularly in cases related to poverty, domestic abuse, or exploitation they frequently face harsher treatment. A stark example is impoverished women who commit petty theft to support their families but receive prison sentences without consideration of their socioeconomic circumstances (Demir, 2024). Deep-rooted gender stereotypes among law enforcement officials lead to the criminalization of women for actions often driven by structural inequalities. Women involved in minor offenses like theft or drug-related crimes are frequently punished more severely for violating expected gender roles as caregivers or moral pillars of society.

National legal frameworks in many countries continue to show significant gaps in protecting women's rights. Although international conventions such as CEDAW and the Bangkok Rules have been ratified, their practical implementation remains weak (Shanker, 2024). Justice systems often lack specialized protocols for handling cases involving women, from insensitive investigative procedures to the absence of non-custodial sentencing alternatives (Holmes, 2022). Conditions in women's correctional facilities are frequently inadequate, with limited access to reproductive healthcare and maternal rights. Female inmates also face heightened risks of sexual violence from both staff and fellow prisoners (Fiano, 2023). The lack of gender-responsive approaches in penal systems further exacerbates women's vulnerability within the criminal justice system.

Gender-sensitive policing emerges as a crucial solution to address these systemic injustices. An ideal criminal justice system should not focus solely on punishment but must adopt restorative justice approaches that consider the root causes of women's conflicts with the law (Rahayu, 2025). Key measures include training law enforcement personnel on gender bias and trauma-informed practices, reforming criminal laws to incorporate gender-specific considerations, and improving access to legal aid and psychosocial support. Without these systemic changes, women will continue to face multilayered discrimination whether as offenders, victims, or witnesses—within criminal justice processes. A comprehensive evaluation

of legal frameworks and law enforcement practices is urgently needed to ensure a criminal justice system that is truly equitable and just for all genders.

Methods

This study aims to examine and evaluate the national legal framework and Islamic law on women in conflict with the law, with a focus on the Police. The focus of this study includes evaluating the Police in handling women's cases as reporters, victims, witnesses, and suspects. This study uses normative juridical (Gurusi et al., 2024) which combines legislative, comparative, and conceptual approaches. The legal approach is used to describe how cases of women in conflict with the law are handled by the Police according to the framework of positive law and Islamic law. The comparative approach analyzes the comparison of the reality of women in conflict with the law between positive law and Islamic law, while the conceptual approach focuses on exploring the ideal concept of guidelines for women in conflict with the law in the Police. This study uses primary legal materials (Criminal Code, Perma Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims), as well as the concept of women in conflict with the law from an Islamic perspective, such as the Al-Quran and the principles of Dar' al-Mafasid fiqh, secondary legal materials (literature, journals, books), and tertiary legal materials (dictionaries and legal encyclopedias to explain the principles of non-discrimination in Islam). Data analysis involves qualitative analysis with analytical descriptive methods. Systematic and grammatical interpretation.

Results and Discussion

Gender Sensitive Policing Model: Protection of Women in Conflict with the Law in the Police

The police as the front line in law enforcement have a crucial role in providing protection and justice for women in conflict with the law. However, in practice, women often face various forms of discrimination, stigmatization, and even re-victimization when interacting with the criminal justice system, including at the police level. To address this, a gender-sensitive policing model is needed, namely an approach that considers the needs, vulnerabilities, and special rights of women both as victims, witnesses, and perpetrators of crimes. This model not only emphasizes fair legal procedures, but also psychological and physical protection for women. Thus, the police can become an institution that is more inclusive and responsive to gender issues, while supporting the realization of equal justice for all parties (Henry & Powell, 2016).

One important aspect of a gender-sensitive police model is the provision of women-friendly services from the early stages of the legal process. This includes the provision of a comfortable and private examination room, examination by a female police officer if requested, and assistance by a psychologist or social worker during the investigation process. In addition, the police need to be equipped with gender sensitivity training to avoid victim-blaming or stereotyping attitudes that can worsen the victim's trauma. For example, in cases of sexual violence, victims are often questioned about their behavior rather than focusing on the perpetrator's actions. With a more empathetic and gender-sensitive approach, the police can create a safe environment for women to report their cases without fear of being judged or shamed (Basile, 2015).

In addition to protection for victims, a gender-sensitive police model must also pay attention to women who are perpetrators of criminal acts. Many women are involved in criminal acts due to economic pressure, domestic violence, or exploitation by other parties. In this case, the police need to conduct an in-depth assessment to understand the root of the problem before taking legal action. A diversion approach, namely a diversion from the formal justice process to a non-penal settlement, can be a solution for minor cases involving women as perpetrators. For example, women who steal due to poverty or are forced to become drug couriers by their partners should not be immediately criminalized, but rather given assistance and recovery-based solutions. Thus, the police can act as a facilitator of restorative justice that focuses on problem solving, not just punishment.

Inter-agency coordination is also key to success in implementing a gender-sensitive police model. The police must work together with other institutions such as the National Commission on Violence Against Women, LPSK, safe houses, and social services to ensure that women in conflict with the law receive comprehensive protection and recovery. For example, victims of domestic violence not only need a legal process, but also protection from threats from the perpetrator, legal assistance, and psychological and economic support. A structured referral mechanism between the police and related institutions will ensure that women get access to the services they need. In addition, supervision by independent institutions and civil society is also needed to ensure that the police's commitment to implementing gender justice principles is carried out consistently and transparently.

Finally, to realize a truly gender-sensitive police model, changes are needed to the regulations and internal policies of the National Police. This includes the issuance of a Decree of the Chief of Police or a Regulation of the Chief of Police that specifically regulates the handling of cases of women in conflict with the law, including standard operating procedures (SOPs) with a gender perspective. Continuous socialization and training for all levels of the police, from the central to regional levels, must also be carried out so that understanding of gender justice can be properly internalized. With the support of regulations, human resources, and adequate infrastructure, the police can become a fairer

and more humane institution in serving women in conflict with the law. Ultimately, a gender-sensitive police model is not only about protecting women, but also about building a more inclusive and just legal system for the entire community (Waechter & Ma, 2015).

In Islamic law, women who come into conflict with the law must be treated with the principles of justice, equality, and protection from all forms of harm (*mafasid*). Surah Al-Hujurat verse 13 is the theological basis that emphasizes that human dignity is not determined by gender, ethnicity, or social status, but by piety and moral integrity. This verse states, "O mankind, indeed We created you from male and female and made you into nations and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most pious." This principle requires the justice system, including the police, to avoid gender discrimination and ensure that women are treated fairly in the legal process.

One of the main challenges that women face in the legal system is stigmatization and marginalization, especially in cases such as sexual violence, infidelity, or other moral violations. This is where the principle of *Dar' al-Mafasid* (avoiding harm) plays an important role. Islamic law teaches that legal policy must prioritize preventing greater harm (*jalb al-mashalih wa dar' al-mafasid*). For example, in the case of accusations of adultery, the Qur'an requires very strict evidence (four witnesses) to prevent slander and violation of women's rights (QS. An-Nur: 4-5) (Fikri & Fahrurrozi, 2024). If the evidence is inadequate, the principle of *Dar' al-Mafasid* requires law enforcement officers not to be hasty in handling the case so as not to cause worse social impacts, such as public disgrace or ostracization of women (Toyibah & Riyani, 2025).

In addition, Islam recognizes the mechanism of *sulh* (peace) and restorative justice as alternative dispute resolution that is more humane. In cases of domestic violence, for example, mediation through a family approach and involving religious figures can be a better solution than taking the case directly to court. This approach is in line with the principle of *Dar' al-Mafasid*, because the long legal process and media exposure often worsen the suffering of the victim. However, mediation should not sacrifice justice for women; protection of victims must remain a priority (Jamaludin, 2025).

The ideal model of women in conflict with the law in Islam also includes protection for witnesses and victims. In QS. Al-Baqarah verse 282, the Qur'an provides guidance on women's testimony by ensuring that they are not harmed in the legal process. If a woman feels threatened or uncomfortable giving testimony in public, the Islamic justice system should provide a safe and non-humiliating mechanism. This is relevant to the principle of *Dar' al-Mafasid*, where the confidentiality and security of victims must be maintained to prevent continued trauma, the model of women in conflict with the law in an Islamic perspective must integrate the values of equality (QS. Al-Hujurat: 13) and the principle of *Dar' al-Mafasid*. The legal system must be designed to protect women's rights, avoid stigmatization, and choose the solution that causes the least harm. The restorative justice

approach, witness protection, and strict requirements for evidence in sensitive cases are concrete examples of how Islamic law can be adapted in the modern justice system to create inclusive and gender-sensitive justice.

Conclusion

Gender-sensitive legal frameworks for female offenders present a paradoxical duality: while designed to protect women from systemic biases in the criminal justice system, they risk reinforcing paternalistic control under the guise of progressive reform. Policies such as gender-responsive sentencing and diversion programs recognize women's unique vulnerabilities—such as experiences of trauma or caregiving responsibilities—yet may inadvertently strip them of agency by framing them primarily as victims rather than autonomous individuals. This tension between protection and punishment highlights the limitations of carceral feminism, where well-intentioned reforms may still perpetuate punitive logics rather than dismantle structural oppression. A truly transformative approach must move beyond essentialist assumptions and address root causes, such as socioeconomic marginalization and gendered violence, without relying on expanded criminalization. Future reforms should prioritize decarceration, restorative justice, and community-based support to ensure that gender sensitivity does not become another mechanism of control, but a pathway toward genuine equity and justice.

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