Gender Bias in The Criminal Justice System

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Introduction

The criminal justice system is meant as a way to bring people to justice and to treat everyone fairly ignoring external factors such as race, gender, sexuality, appearance, age, or personality. However it is possible that there is still bias that enters the court system, as the court is made up of common citizens and law practitioners, who are all people. It would be extremely unlikely, if impossible, to find a person that is not biased for or against anything that is not relevant to the case or guilt of the defendant. This is evidenced by the many biases in the court that are already known, such as racial bias, attractiveness bias, personal bias from past experiences, all of which fall under implicit bias. This research is about gender bias, and seeks to answer the question: Does gender and gender bias affect the outcome and severity of different criminal cases?

Background

In the criminal justice system there are four different groups that affect the outcome of the case. The first is the defense, which is there to support the defendant and prove their innocence. The second group is the prosecution, who is representing the government, and their purpose is to prove the defendant's guilt. The third group is the judge, whose purpose is to instruct the jury and to decide on the sentence length if the defendant is found guilty. The last group is the jury, a group of people made up of normal civilians who are there to judge the guilt or innocence of the defendant. The court is meant to be based on facts and reasoning, but many factors and biases can still enter the court in every group. In the past only property holding white men could be involved in the law, but that changed over time until in 1973 women gained the right to be in all juries across the country. This does not mean that gender bias had been eradicated however, as biases can remain hidden in people. Their biases may affect how people are perceived, sentencing length, or even overall guilt. These destroy the integrity of the courts as a place for equal and judgment for all.

Methodology

The reason I chose this topic for my research is because the criminal justice system is supposed to serve justice for everyone the same, and yet that almost never happens. I thought to research a bias in the courts and found that racial bias was quite well known already. The way I found the information was by using resources provided by the Duke Library such as Academic Search Complete and Google Scholar to find research papers and studies that had been peer reviewed and published. They in turn helped find more research and studies about mock jury experiments and similar studies. For statistics I used official reports from the Department of Justice and the FBI. This research is qualitative because it is based on how people perceive people in the courts, not just statistics and data even those are good proof.

Data

Percentage of Convicted Offense Separated by Gender

Most serious offense	All prisoners[a]	Male	Female
Total	100%	100%	100%
Violent	58.2%	59.7%	39.6%
Murder[d]	13.3	13.5	11.5
Negligent manslaughter	1.6	1.5	3.0
Rape/sexual assault	13.7	14.6	2.5
Robbery	12.4	12.8	7.4
Aggravated/simple assault	13.6	13.8	10.7
Other	3.6	3.6	4.4
Property	15.3%	14.7%	22.6%
Burglary	8.2	8.4	6.4
Larceny/theft	3.0	2.7	7.2
Motor vehicle theft	0.8	0.8	1.1
Fraud	1.6	1.2	5.6
Other	1.6	1.6	2.3
Drug	14.0%	13.1%	26.0%
Possession	3.8	3.4	8.8
Other[e]	10.2	9.6	17.2
Public order	11.9%	12.0%	10.9%
Weapons	4.0	4.2	1.3
DUI/DWI	1.7	1.6	2.4
Other[f]	6.2	6.1	7.1
Other/unspecified[g]	0.6%	0.6%	1.0%
Total number of sentenced prisoners[h]	1,221,288	1,131,100	90,200

Length of Sentence Separated by Gender

TABLE 4. COMPARISON OF SENTENCE LENGTH IN YEARS BY GENDER (AS A PERCENTAGE)

Sentence Length	Male	Female	Total	
1	11.4	15.4	13.4	(N = 333)
2	20.1	23.0	21.5	(N = 536)
3	40.0	38.8	39.4	(N = 982)
4	11.4	10.2	10.8	(N = 269)
5	11.6	10.2	10.9	(N = 272)
6–10	5.0	2.1	3.5	(N = 88)
11–15	0.7	.2	0.4	(N = 10)
Totals N	1249	1241	2490	
%	50.2	49.8	100	

Findings

A study by Dragiewicz (2012) suggests that in cases involving domestic violence the defendant, usually a mother, is thought to be making up allegations or something similar and is therefore not trusted in the court. There are not enough reported cases of male victims in domestic violence to say if they would be treated good, or also bad but as it stands injuries women sustain are thought to be less valuable than men's injuries by a jury. In custody mother's are found to be judged harsher as parents than fathers, but fathers also struggle because gender stereotypes suggest that the mother is a better parent than the father in all cases. In sexual assault cases it is found that female defendants are treated far better than male defendants, with juries giving far more forgiving sentences, and having more sympathy with the victim if female (Winters, 2020). The defense is also shown to be biased against their own clients, with defense counsel treating male defendants harsher than female defendants (Ahola et al, 2010). They are also more likely to suggest legal insanity as a defense tactic in violent cases for female clients (Yourstone etal, 2009). The reason for this could be the stereotype that women are less violent than men, and if they are aggressive something is wrong. The prosecution is found to be more likely to charge male defendants with harsher sentences, as well as charges with a mandatory minimum sentence. They also treat defendants that are the same gender as them with more sympathy (Didwania, 2022). Judges are interesting, as different studies have found different results for bias. Some have found that they are more less likely to support someone of the same gender as them (Ahola et al, 2010), but it has also been found that in assault cases male judges may relate to male defendants, and let them off easily. Lastly, juries are shown to be bias in all cases but overall are more lenient with female defendants (Doerner et al, 2012). The reason for all of this could be gender stereotypes that exist in our society, and sneak into the legal system through the people that exist in it.

Conclusions

There were many examples of bias in the courtroom, and differing results for each type of case. In cases such as domestic violence female victims are treated worse, and in property cases female defendants are treated harsher. In cases that contain sexual assault and similar charges male victims are seen as less believable, and in violent cases male defendants are treated as more likely to be guilty. The gender of the defense, prosecution, jury, and judge all affect their biases, and can lead to harsher or lighter criminal sentences. The solution to this could be having the law professionals keep records of their reactions for every case, and holding true to their previous decisions in similar cases. In the case of the jury it may be advisable to hide the defendant's gender from them, through some sort of blind judgment process. This means that they would have to judge the case on facts alone. We could not stop there however, as it would just be the first step in removing gender bias in the criminal justice system.