

**How to cite this article:**

Fahimitabar, S., Ekrami, R., & Janipour, K. (2025). Examining the Reasons for the Necessity of Supporting Offending Mothers in the Criminal Law of the Islamic Republic of Iran. *Journal of Historical Research, Law and Policy*, 3(1), 1-19. <https://doi.org/10.61838/jhrp.152>



Article history:  
Original Research

**Dates:**

Submission Date: 20 November 2024

Revision Date: 13 February 2025

Acceptance Date: 20 February 2025

Publication Date: 10 March 2025

# Examining the Reasons for the Necessity of Supporting Offending Mothers in the Criminal Law of the Islamic Republic of Iran

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## ABSTRACT

One of the fundamental issues in all societies is the equality of rights between women and men and the prohibition of discrimination based on gender. Offending mothers are vulnerable in all societies due to their gender and the specific conditions under which their conduct is criminalized; however, in certain regions of our country, because of some misguided traditions, lack of security, the influx of Western culture, and similar factors, they have been and continue to be exposed to greater harm. This is while the victimization of offending mothers, in view of the key role of mothers in the family system and society, the physical, emotional, and psychological characteristics of women, their social, familial, and individual status, and the fact that the mother is the foundation of the family and the guarantor of the upbringing and continuity of the human generation, is of particular importance. Crime against offending mothers, on the one hand, causes direct harm to them, and on the other hand, results in indirect harm to the family as the primary foundation of society; therefore, it was necessary to study criminal protection of offending mothers in Imami jurisprudence and Iran's criminal laws and to examine the criminal responses adopted. Accordingly, this study examined the foundations and obstacles to offending mothers' access to criminal justice, and the findings indicated that the principal foundations of criminal justice, derived from Islamic Sharia, take into account the aspects of victimization of mothers and their conditions; however, noticeable shortcomings exist that have led to misuse and the discriminatory nature of certain criminal laws.

**Keywords:** *criminal law; criminal protection; offending mothers; obstacles to criminal protection; criminal justice*

## Introduction

One of the major social problems of societies is the phenomenon of crime and delinquency, which emerges as a result of social problems such as poverty, unemployment, economic and social crises, transformations in laws and social patterns, the weakening of religious beliefs, and, overall, the disruption of balance in the social order. Crime and delinquency are not confined to men; women are also not immune to social problems, and their lives may become subject to crisis and disorder, sometimes leading them to commit crimes. Although the number of female offenders may be lower than that of men, the social and cultural impact of female delinquency is far greater than that of male delinquency. Women, due to their significant maternal and educational role and their position as the foundation and pillar of the household, exert extensive negative effects on the family when they commit crimes. When a mother is absent from the home for any reason, including death, divorce, delinquency, and similar



circumstances, the upbringing of children becomes impaired. In many cases, mothers who fall into forms of delinquency such as addiction, prostitution, and related behaviors also jeopardize the future of their children. As demonstrated by scientific research, one of the most important causes of juvenile and youth delinquency is the lack of a suitable family environment for proper upbringing (1).

If the phenomenon of female delinquency is examined from a sociological perspective, it can be argued that in contemporary society the problem of women's delinquency has reached a stage where the threat to the cohesion and disintegration of the family unit—and consequently the increase in delinquency among children and adolescents in these families—is alarming. Accordingly, women's delinquency should be regarded as a social disease requiring treatment. Undoubtedly, in order to combat any disease, it must first be identified, the factors contributing to its emergence must be recognized, and then the affected individual must be rehabilitated and the recurrence of the disorder prevented. Conducting such research provides the groundwork for identifying the causes of female delinquency and assists policymakers and officials in implementing preventive and counteractive measures against women's crimes (2).

On this basis, Farajiha conducted a study examining criminal protection for women who are victims of rape in Iranian law. The analysis of the findings, using interview methods, investigated the attitudes of a number of judges of criminal courts and prosecutors of general courts. The scope and limits of traditional criminal interventions in cases of rape, as well as the failure to observe the principle of proportionality in determining criminal sanctions, have resulted in the violation of victims' rights and even secondary victimization. Mothers, as half of society, due to their vital role in raising children and nurturing future generations, on the one hand, and their high capacity to bring about transformation and change in society, on the other hand, can significantly influence social structures if they display deviant behavior or commit any form of offense (3).

Principles Nineteen and Twenty of the Constitution of the Islamic Republic of Iran refer to one of the fundamental legal principles, namely equality before the law. Individuals, whether women or men, if they commit a crime, are punished equally in accordance with the law and, based on the principle of the personal nature of punishment, are held accountable for their own criminal acts. Given that the purpose of punishment is the reform and resocialization of the offender, consideration is given to the severity and manner of the committed crime, the prevailing circumstances, and the offender's personality, with the aim of ensuring proportionality between crime and punishment, or in other words, applying the principle of individualized sentencing. To this end, the legislator has defined the limits of punishment through mitigating and aggravating circumstances. Nevertheless, the principle of equality in punishment is more theoretical than practical, as various factors such as the offender's personal characteristics, social status, the judge's disposition, public opinion, and other considerations restrict the realization of equality. Consequently, the fate of two offenders who have committed the same crime may differ substantially in two criminal courts, resulting in the imposition of different punishments (4).

Imami jurisprudence, in the course of supporting offending mothers, generally provides comprehensive protection for women in all aspects of life and extends its support to children—who are the result of months of maternal hardship and effort—from the very moment of conception (5). On this basis, all forms of physical and psychological abuse are condemned. In Iranian criminal law, various forms of protection for women have been enacted, and similar protections are reflected in the Constitution as the supreme law of the country, particularly in Articles Twenty and Twenty-One, as well as in the Penal Code.

When the issue of women—especially mothers—is concerned, examining the foundations and obstacles to their access to criminal justice becomes particularly important due to their key roles as spouses and mothers. It is therefore necessary to assess the physical and psychological conditions of victimized mothers, given their greater vulnerability in all dimensions of life and the consequent effects on the family system, particularly on children, and to examine the barriers to access to criminal justice. Women constitute half of humanity, yet throughout history they have endured extensive male-dominated oppression and injustice. Not only were they deprived of their fundamental rights, such as the right to life, freedom, and property, but in certain historical periods and societies, even their very human nature was questioned. Historical marginalization and persistent oppression fostered a sense of frustration and collective resentment, giving rise to feminist movements as expressions of anger and protest. These wide-ranging movements, which have influenced the modern world since the eighteenth century, have transformed the lifestyles of women and even men. In this context, Islam, as a comprehensive worldview and ideology encompassing all stages of life, is expected to articulate its intellectual and legal system concerning women (6).

On the other hand, the science of jurisprudence, which structures the Islamic way of life, is based on limited and specific texts and naturally lacks explicit guidance on many emerging issues. Accordingly, it is necessary to extract general principles from the existing textual corpus that can encompass a wide range of new cases and respond to contemporary human needs. In other words, the dynamism of jurisprudence and the derivation of rulings for newly arising issues require general rules that are independent of temporal and spatial characteristics and capable of addressing numerous subsidiary issues. In the field of criminal law, the establishment of a jurisprudential rule concerning women is unavoidable. First, without distinguishing between individual and social crimes and without attention to the explicit and effective criteria in sentencing women, it is impossible to achieve a coherent and unified system of religious protection for women. Second, only a limited category of crimes carries fixed punishments such as hudud, qisas, or diyat, whereas a wide range of crimes fall under discretionary punishments (ta'zirat), which are not textually specified and are determined by the judge. Consequently, ta'zirat constitute a major field for the application of such a rule. Moreover, the rule of supporting women in criminal procedure and in cases of legislative silence can resolve many challenges and ambiguities and help secure their neglected rights.

Therefore, women's delinquency does not merely affect an individual woman; it may lead an entire family generation toward delinquency and ruin. Furthermore, female offenders who commit crimes such as prostitution, pimping, and related acts facilitate unrestrained relations between women and men. This phenomenon, in addition to reducing the inclination toward marriage and responsibility among youth, weakens the foundation of the family, lowers societal moral standards, undermines faith and piety, opens the way for vice and corruption, and generates numerous other social harms. Hence, identifying women's crimes and methods of preventing their occurrence contributes to social health and family stability. To this end, it is first necessary to identify the factors contributing to women's delinquency and seek to eliminate them. Given that women are the primary educators of children within the family, greater attention must be paid to women's specific crimes, efforts to remove their underlying causes, and the provision of adequate support (7).

### Conceptual Clarification

"Delinquency, as a form of human behavior, is an individual reaction exhibited by a person with a specific physical structure and distinct psychological and emotional conditions. While influenced by these characteristics, the individual, as a social being, is also affected by environmental and external factors. This reciprocal influence

undoubtedly varies among individuals. Children and adolescents are more affected by these factors than adults, and their behaviors evolve in response to physical, psychological, and social motivations and causes. Depending on circumstances, these factors can exert diverse effects on children and lead to different reactions. In criminal motivation analysis, which constitutes one of the most important research axes in criminology, the relationship between individual and social factors and delinquency is well established. Ultimately, the role of each factor varies across individuals and produces different effects depending on age, gender, place of residence, family background, and other variables. The emergence of deviant behavior may sometimes be influenced by one of three factors: physical, psychological, or environmental. The significance and position of these three factors in the phenomenon of delinquency and the extent of their influence are among the central topics of criminology. However, scholars across different disciplines have not reached consensus regarding the precise impact and role of these factors in the process of delinquency. Each group of scholars, based on its scientific perspective, emphasizes one of these factors. Studies of juvenile offenders in various societies demonstrate that children's personalities and identities are shaped by a combination of physical, psychological, and environmental factors, and that, in most cases, the coordination and interaction of multiple causes give rise to anti-value behaviors. Therefore, reliance on a single cause cannot justify neglecting the importance of other contributing factors." Numerous factors influence the occurrence of juvenile and adolescent delinquency, and various issues exert direct and indirect effects on its nature and extent. No single, exclusive cause can be identified. Rather, social, economic, physiological, and other factors collectively contribute to the manifestation of delinquency among children and adolescents (8).

Crimes committed by children encompass a set of acts anticipated by law for which punishments have been prescribed. This definition includes all criminal acts committed by children, similar to those committed by adults. Nevertheless, establishing a comprehensive classification of juvenile delinquency is not an easy task. However, children's crimes can generally be categorized into four groups. The first group includes property crimes such as theft and vandalism, which may be considered the distinguishing feature of juvenile delinquency. The second group consists of crimes against persons, with homicide and assault as prominent examples. The third group involves crimes against chastity and public morality, and the fourth group relates to drug addiction and drug trafficking. Other significant juvenile offenses, which are also statistically notable, include vagrancy, begging, and crimes committed in cyberspace (9).

### **The Necessity of Supporting the Mother**

A child's needs can be adequately met only when the child is placed under the special care of a compassionate, intimate, and self-sacrificing person. This person can be none other than the mother. A nurse, an orphanage, a domestic servant, or a wet nurse can never take the mother's place. The one who, while being a complete human being, can also harmonize with her beloved child, and—because her daily dealings are with the child—can “speak the language of childhood,” and at the same time can communicate effectively with adults, is the mother. Insofar as the mother can serve as an intermediary between other adults and young children, and insofar as her physical and psychological constitution is such that she can bond both with other adults and with minors, she should be regarded as one of the wonders of creation.

## Necessity Assessment Based on Sharia Requirements

At the outset of this section, the necessity of supporting the mother is addressed; thereafter, the argument for the non-necessity of supporting the mother from a Sharia perspective will be presented.

### *The Necessity of Supporting the Mother from a Sharia Perspective*

There is no doubt that the mother has had—and continues to have—a dignified and exalted status in all religions, and that all people view her with respect and speak of her greatness and eminence. Every religion and creed that has emerged throughout history has attended to this matter and has called upon people to serve the mother. Just as religion expresses views regarding other phenomena in the world, it has not remained silent about the mother and her rank and standing; rather, it has regarded motherhood as a supremely lofty and valuable position and honors her status. Despite their differences, various religions have reached a consensus on this point, and all regard the mother respectfully and consider her rank superior to that of anyone else. Although all divine religions accord the mother a valuable status and respect her, Islam has paid greater attention to this matter than other schools of thought and has conferred particular dignity upon the mother. The rights Islam has specified for mothers extend far beyond the rights it recognizes even for the father, because the mother is the educator of the human being and, in reality, the nurturer of society; it is she who can lead the individual and society to felicity or, conversely, to misery and misfortune (10).

### *The Non-Necessity of Supporting the Mother*

Just as religion, with respect to other worldly phenomena, depicts the world as it is for us, introduces values in the sphere of normative judgment, and assesses and adjudicates those values, it has likewise not remained silent about the mother and her rank and standing; rather, it has regarded motherhood as a highly exalted and valuable position and honors the mother's status. However, these considerations do not constitute proof of the legal necessity of supporting the mother. These points pertain to the eschatological dimension of the matter and do not, in themselves, establish a basis for supporting the mother.

## Necessity Assessment Based on Human Rights Requirements

In this section, the necessity of supporting the mother is examined on the basis of human rights requirements, which itself falls into two subparts: the necessity and the non-necessity of supporting the mother.

### *Background of Mothers' Status in Human Rights*

After the French popular revolution and the issuance of the "Declaration of the Rights of Man and of the Citizen" on August 26, 1789, the international arena witnessed congresses and global conferences in each of which states assumed commitments in favor of their nationals, such as the Congress of Vienna (1815), the Congress of 1871, and the Hague Peace Conference (1899). A reality that must not be overlooked is that prior to 1945 and the adoption of the Charter of the United Nations, there existed no international text or instrument indicating the existence or definition of these rights. Even treaties concluded from 1919 between the Allied Powers on the one hand and Poland, Czechoslovakia, Greece, Romania, and Yugoslavia on the other were essentially dedicated to minority rights and, in this respect, themselves entailed a form of inequality between minority and majority (11).

In certain other cases—such as agreements prohibiting trade, prohibiting slavery, instruments of humanitarian law, and other international agreements within the domain of international humanitarian law—the scope was very limited, because in that era the principle of “non-intervention in domestic affairs of states” was the foundational principle whose unconditional observance was deemed necessary. Prior to this date, if foreigners were entitled to certain rights, those rights accrued to them under the title of “foreigner,” rather than under any other designation (12).

One of the challenges confronting mothers is that many behavioral, cultural, and social patterns—as well as the traditions and customs of societies—practically deprive them of numerous privileges, prevent their genuine participation in public life, and ultimately produce de facto discrimination against them. It is therefore necessary, by adopting specific measures, to take steps to confront such discrimination and to strive to eradicate and eliminate it. Human rights, by virtue of its nature and inherent character, is free from the constraints of time and place. Accordingly, on the one hand, it has contributed to the emergence of systems that have been effective in liberating human beings from dogmatic assumptions and guiding them toward their authentic station; and on the other hand, in the contemporary period, through internal developments, it has introduced transformations in the classical foundations of “sovereignty” (13).

Because the human rights framework today compels states to be accountable for the manner in which they treat their nationals, and given the number and scope of human rights instruments, it reduces the absoluteness of sovereignty and moves toward a rational authority accompanied by responsibility and commitment. This is among the major achievements of the international community's efforts to guarantee and respect human dignity and to limit the absolute sovereignty of states in the realm of human rights. After the Second World War—and even during the war—consultations and initiatives began to develop appropriate and effective mechanisms for ending violations of human rights; and only after the war, especially as a result of the 𐎧𐎶𐎵 induced by the use of the atomic bomb in Hiroshima and Nagasaki, international protection of human beings rapidly expanded. The debate was no longer about protecting individuals on the international stage merely as members of a group; rather, the focus became the protection and safeguarding of human beings as individual persons (14).

### *The Status of Women in the Universal Human Rights Framework*

In studying the historical evolution of international instruments concerning the rights of mothers and women, three distinct periods can be identified, each reflecting different perceptions of mothers and different approaches to their rights and status in society. The first period, referred to as the “protective period,” viewed mothers as a group that should not—or could not—engage in certain activities, and treated mothers as followers. Regulations in this period were applicable only to mothers. Women, as wives and mothers, were assigned primarily internal and traditional roles. Thus, because mothers—like children—were considered unable to fully protect themselves, the law was expected to play a protective role on their behalf. For example, the convention concerning night work for mothers employed in industry, drafted in 1934 and 1948 by the General Conference of the International Labour Organization, adopted this approach. Accordingly, as can be observed, the instruments of this period sought to protect mothers against certain harms by prohibiting them from some activities, rather than recognizing specific rights for them (15).

In the second period, mothers were regarded as a “distinct group” requiring special treatment and particular care. The prevailing view was that, in certain cases, mothers were not treated fairly. Hence, this period is referred to as



the “reform period,” meaning that laws should be modified or reformed to ensure special protection for mothers. In this period as well, laws addressed women as a class without considering men, because men were not treated as victims of rights violations. For instance, victims of prostitution were not men but women. The same applied to the loss of nationality due to marriage, which was specific to women. For example, the 1957 Convention on the Nationality of Married Women, which entered into force on August 11, 1958, the 1952 Convention concerning Maternity Protection, and the 1952 treaty on women’s political rights, which entered into force on July 7, 1954, reflected this approach.

The third period is the “non-discrimination period,” meaning that women and men are treated neutrally from a gender perspective. The norms of this period reject the view that women constitute a separate group distinct from men and emphasize equal treatment of women and men. Although international instruments reflecting this view treat certain matters as specific to women, they explicitly reject gender discrimination or differential standards based on sex. The Charter of the United Nations is a prominent example, explicitly emphasizing this matter in Articles 55 and 56 and, through Articles 13, 62, and 76, establishing various organs—including the Economic and Social Council—to pursue these objectives. Likewise, many provisions of the 1979 Convention on the Elimination of All Forms of Discrimination against Women, affirming the third period, replaced the two earlier perspectives. For instance, trafficking in women and their exploitation through prostitution are prohibited in Article 6, and Article 9 obliges States Parties to treat women and men equally with respect to the acquisition and change of nationality. Similar non-discrimination approaches appear in many other international treaties and instruments. For example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (the two Covenants), both adopted in 1966 and entering into force in 1976—of which Iran is a member—also emphasize this principle. It should be noted, however, that the 1979 Convention adopts the non-discrimination approach more explicitly and in greater detail than other instruments, especially in Articles 1, 2, 3, 7, 10, 11, and 16. In summary, whereas the principal concern at the beginning of the twentieth century largely centered on issues such as trafficking, forced hiring, sexual exploitation of women, and infanticide—problems that the global community has still not fully eradicated—one of the reasons for drafting the Universal Declaration of Human Rights was that the peoples of the world proclaimed their faith in the human right to enjoy fundamental rights and their faith in the dignity and worth of the human person and in the equal rights of women and men, and they resolved to contribute to social progress and to establish conditions of freedom under which a better life would be attainable. Naturally, assisting social progress, creating conditions of freedom, and enabling access to a better life are not possible without equality between women and men in all social domains, including equality in economic activities (16).

Based on the Universal Declaration of Human Rights, women and men are born free and equal in dignity and social rights; therefore, they cannot be prevented from choosing an occupation on grounds such as race, color, sex, language, religion, belief, wealth, or status. Likewise, women—of whom mothers constitute a part—should not be barred from holding occupations they desire, or compelled into occupations they do not desire, due to the political, administrative, judicial, or political status of the country or territory in which they live or to which they belong, whether that country is independent or subject to restrictions (for example, under colonial rule). Every woman has the right to a desired economic life, freedom of occupational choice, and job security; she cannot be forced into slavery, nor may she be compelled to participate in the trade of slaves, and she has no right to engage voluntarily in such trafficking. Women must not be subjected to torture or cruel punishment, deprived of having children, or—contrary

to humanity and human dignity—forced into a particular job or deprived of choosing their preferred occupation. Their professional legal personality, as recognized by law, must be acknowledged. Women have the right to refer to national courts for redress against acts that violate their occupational rights and privileges recognized by constitutional or other laws. No one may arbitrarily prevent a woman from working, imprison her, or exile her for engaging in a lawful occupation. Mothers have the right to bring their claims concerning their occupations before an independent, impartial, and fair court in a public hearing. Mothers may, on equal terms, have access to public employment in their country and be the lawful owners of the fruits of their labor. No one may prosecute or punish a mother for engaging in work recognized by law. Thus, she has the right to work, to freely choose her employment, and to demand fair and satisfactory conditions of work. She must receive equal pay for equal work without discrimination. A mother must receive adequate remuneration consistent with her dignity for the work she performs. Joining labor unions and similar bodies that defend the rights of working mothers is her legal right. She has the right to rest, leisure, and recreation in relation to work, and may benefit from periodic paid leave. In cases of unemployment, she must be protected by law and enjoy dignified living conditions (17).

### *The Alleged Non-Necessity of Supporting Mothers*

Human rights does not view women merely as wives, mothers, or a “second gender,” but recognizes multiple other rights of women at home, in the workplace, and in society. Articles 1 and 2 of the Universal Declaration of Human Rights declare that all human beings are born free and equal in dignity and rights and enjoy all rights and freedoms set forth in the Declaration. Clause 15 of the 1968 Tehran International Conference on Human Rights Declaration explicitly rejects sexual apartheid and states that “the discrimination of which women—mothers included—are still victims in different regions of the world must be eliminated; assigning an inferior status to mothers is contrary to the Charter of the United Nations and the standards of the Universal Declaration of Human Rights.” In the human rights framework, the emphasis is on protecting the status of women rather than motherhood specifically. Therefore, a careful reading of human rights suggests that being a woman, in itself, is the basis of protection. However, careful attention to the foregoing materials indicates that human rights also regards support for mothers as necessary. Women, as half of the active population of any country, have consistently demanded equal rights compared to the other half of the human community (men), a demand that appears legitimate, fair, and just. Evidently, as human civilization has advanced, societal perceptions toward this segment of the population have changed, and today special attention is devoted to women worldwide. According to general rules, women and men have equal rights, and this rule is reflected in Principle Twenty of the Constitution of the Islamic Republic of Iran as follows: “All individuals of the nation, whether women or men, are equally protected by the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria” (3).

In Principle Twenty-One of the same Constitution, it is stated that “the government is obliged to guarantee women’s rights in all respects, in conformity with Islamic criteria, and to create favorable conditions for the growth of their personality and the restoration of their material and spiritual rights.” In this regard, examining the status of women across different dimensions can serve as a pathway toward restoring their rights and fostering the development of their personality.

Criminal procedure, or the principles of criminal trials, refers to the arrangements and rules governing the discovery of crimes, the determination of offenders’ responsibility in accordance with regulations, and the enforcement of judgments. The use of these rules and arrangements does not create limitations for mothers in the



position of complainant or accused. In the articles and paragraphs of the Criminal Procedure Code, the legislator's approach is equal and non-discriminatory, though particular protections for offending mothers have been considered at the stage of enforcement of judgment.

For example, Article 288 of the Criminal Procedure Code provides that the punishment of discretionary flogging is not carried out, until the impediment is removed, in the following cases:

- (a) a mother who is in pregnancy, postpartum bleeding, or istiḥāḍah;
- (b) a breastfeeding mother during the period in which her child is an infant, for a maximum of two years.

As can be observed, the legislator has only postponed the punishment of discretionary flogging during pregnancy, postpartum bleeding, istiḥāḍah, and breastfeeding (up to two years). However, pursuant to Article 501 of the new Criminal Procedure Code, the enforcement of punishment is postponed in: (a) the period of pregnancy; (b) after childbirth for up to six months; (c) the period of breastfeeding until the child reaches two years of age; and (d) the enforcement of flogging during menstruation or istiḥāḍah. Therefore, under the new law, any type of punishment with respect to women in these situations is postponed, and flogging is also postponed during menstruation or istiḥāḍah.

Article 296 of the Criminal Procedure Code provides that a breastfeeding infant must not be separated from a mother who has been sentenced to imprisonment or exile, unless the mother, with her consent, entrusts the child to the father or other close relatives.

In Article 484 of the former Criminal Procedure Code, clauses 2 and 3 recommended that, in observance of pregnant women and mothers, enforceable judgments not be implemented immediately: (1) and (2) in the case of pregnant mothers or women who have recently given birth, until three months after childbirth; and (3) in the case of mothers nursing their infants, until the child reaches the age of two years. However, this applied where enforcement of the punishment would harm the child.

Article 2 of the 1928 Law on the Enforcement of Death Sentences recommended that the execution of a death sentence be postponed until 40 days after childbirth (noting that, pursuant to Article 484 of the former Criminal Procedure Code, the period of 40 days was changed to three months). Article 488 of the former Criminal Procedure Code, further supplementing these special protections for convicted women, provided that an infant would not be separated from a mother sentenced to imprisonment or exile unless the mother wished to entrust the child to the father or other near relatives. The foregoing examples are among the few instances in which, due to the absence of a specific criminal policy and legislative approach toward offending mothers, the legislator has neglected the fundamental differences between female and male accused persons and offenders, and has failed to incorporate those differences into criminal procedure legislation (18).

### **Barriers to Women Offenders' Access to Criminal Justice at the Stage of Enforcing Different Sentences**

Crime, as a natural and persistent phenomenon, has afflicted human beings since the dawn of creation and continues to pose a danger to human society. The difference is that the manner of committing crimes was initially simple; this simplicity and clarity made it easier to identify offenders more quickly, and consequently the methods of arresting and punishing them were also comparatively simpler. However, punishments were often severe and accompanied by violence. Over time, as societies developed—alongside inventions and advances in science and technology—forms of crime became more diverse and complex. In proportion to this complexity, changes occurred in identifying and apprehending offenders and in the methods adopted toward them. As a result, through

fundamental and comprehensive reassessment, responses to offenders (through extensive and profound inquiry and investigation) became more humane and rational. This depth of viewing toward offenders has been made possible by the continuous, prudent efforts and well-founded theories of various scholars across scientific fields, especially the human sciences (19).

In the beginning, human beings reacted to defend their rights, freedom, life, and property and to preserve order and tranquility through security measures, intimidation of others, and especially the punishment of offenders, often by imposing harsh and ruthless penalties. Initially, the origin of punishment was revenge, which knew no limits and extended beyond the offender to include the offender's family, with penalties often far heavier than the committed crime. Over time, societies moved beyond primitive and tribal forms and settled in cities, which led to moderation in retaliatory practices. Retaliation was replaced by qisas, reducing collective family liability; later, in some cases, periods of voluntary reconciliation and then compulsory reconciliation replaced qisas.

With the development of society, the emergence of central powers, and the formation of governments, societies enacted laws and regulations to preserve their structures, although the foundations of criminal policy in that era centered on severe punishment, intimidation of others, and exclusion of the offender from society. Gradually, with the emergence of new ideas and teachings in the field of criminal law and the spread of waves of scholarly criticism, the groundwork was laid for statesmen to become compelled—so as to preserve stability, order, and their own authority—to introduce reforms in drafting and enforcing penal laws. In the wake of these trends, thinking about combating delinquency changed in a way that emphasized attention to its generating causes. At this time, influenced by such ideas and by the establishment of international congresses and associations concerning the emergence and trend of crime, the causes of delinquency, approaches to it, and how to combat it, various bodies were formed, including associations in Geneva and Paris, and especially the United Nations international congresses on crime prevention and the treatment of offenders. These congresses are held every five years in one of the UN member states and propose necessary recommendations, which are submitted to the General Assembly; if adopted, they are sent to member states so that, at their discretion, they may implement them in their programs, particularly in criminal policy and penal legislation. Despite such intellectual advances—especially after the Second World War—the views of the “new social defense” school, led by Gramatica and Marc Ancel, altered thinking about offenders, yielding the conclusion that the offender is not merely a result; combating the symptom without addressing the cause is, to some extent, ineffective. Therefore, the cause must first be identified, and then addressed; the goal of this approach is prevention, reform, treatment of offenders, and their resocialization.

Punishment is the response to crime and an inseparable part of the judicial system; it must be determined and imposed in every dispute that results in the proof of criminal culpability and penal responsibility of the offender or offenders. The predominant punishments applied in Iran for women and mothers include execution, imprisonment, flogging, and monetary fines. In the present study, it was observed that other punishments may also be implicated, and, moreover, at the stage of enforcing judgments there are numerous problems and deficiencies, including the lack of specialized and trained personnel in the female and maternal delinquency, and the presence of a traditional cadre with traditional beliefs and training, especially within the prison sector.

### **The Inappropriateness of Monetary Fines in Light of the Situation of Women and Mothers Who Offend**

When imposing a monetary fine, as with other punishments, all characteristics and conditions of the accused and the offense committed by the accused must be taken into account, and a punishment proportionate to the

situation of this group of offenders must be issued—one that fulfills the objectives of punishment, including rehabilitation and prevention of recidivism. Although imposing such a sanction on women offenders and girls may appear useful in some offenses and may seem easier than imprisonment and flogging, if it is not proportionate to their circumstances, it will not have positive effectiveness; rather, it may also entail harmful consequences.

According to conducted studies, most female offenders and delinquent girls lack financial independence and suffer from economic poverty and the absence of a guardian or breadwinner. A monetary fine is a heavy sanction that is not proportionate to their financial position and economic situation.

For example, one interviewee accused of possessing narcotics was a homemaker suffering from economic poverty, and her primary reason for committing the crime was financial hardship; for her, a monetary fine was no different from imprisonment. In another observed case, two offenders—both arrested for narcotics possession—were each sentenced to a fine of 4,000,000 rials, despite the fact that the woman was a homemaker without financial independence, whereas the man was financially independent with adequate income.

By synthesizing the foregoing points, it can be concluded that issuing monetary fine judgments without considering the economic and financial situation of offending girls and mothers and their families either imposes pressure on all family members to secure the imposed fee—which violates the principle of the personal nature of punishment—or leads to imprisonment of the offender, with the harms and problems and subsequent consequences of imprisonment, including learning methods for committing other crimes, fostering a anti-law mindset, eroding the stigma and deterrent fear of imprisonment in the eyes of female offenders, and even the breakdown and loss of family life and social position.

### **Imprisonment and the Defects of This Punishment at the Enforcement Stage for Women Offenders**

Throughout history, delinquency and the commission of crimes and offenses have been recognized as an inhumane phenomenon and as contrary to moral and social values, and criminality has been regarded as one of the most disruptive social harms in the relationship between the individual and society. Individual and social reactions to criminal and wrongful acts have consistently manifested in defensive and punitive forms and have taken shape through the imposition of various punishments. This approach was chiefly considered in order to compensate, at least in part, for the material and moral harms resulting from such undesirable conduct.

With transformation and change in societies and the legalization of punishments for offenders, the issue of penalization has also undergone diverse changes. At present, the principal objective of most criminal systems worldwide, including Iran, in imposing punishments on offenders—beyond punishing the offender, which today is characterized more by educational and moral dimensions—is to emphasize creating the conditions for offenders' return to society.

The concept of prison has been expressed in Persian through multiple terms such as *sijn*, *habs*, and *emsāk*. Prison is a place where accused persons and convicted individuals are held, and in formal lexicography, the term “zindān” has been accepted as the equivalent of *habs*. In the Amid Dictionary, “zindān” means a detention house, a prison, or a place of confinement—where convicts and criminals are kept.

According to statistics presented by Iran's Prisons Organization, Iran, with 1.5% of the world's prison population, is among the top ten countries globally in terms of the number of prisoners. The global average is 140 prisoners per 100,000 persons; by this measure, Iran's number of prisoners is 200 per 100,000 population, which exceeds the global average, and in Asia, with 2.5% of the continent's prison population, Iran ranks third. However, no precise

statistics have been provided regarding female prisoners, and the announced figures do not correspond with existing realities.

When “imprisonment was accepted as the principal punishment after execution, it was regarded as a moderation in the severity of punishments; yet it did not take long for the corruption and harms of imprisonment to become apparent due to the failure to implement corrective, educational, or therapeutic methods in prisons. Although in contemporary societies imprisonment, after execution, remains the most important weapon and instrument of social defense in combating delinquency and establishing order and security, research and examination continue in order to propose the best corrective and educational methods and to modify the types of punishments stipulated in criminal laws; however, no punishment that can replace imprisonment and be accepted by the general public has yet been identified”. Consequently, other methods such as conditional release, weekend imprisonment, suspension of punishment, and community service are used to reduce the harms of general imprisonment.

Based on conducted research, for women, the sense of shame and criminal stigma resulting from imprisonment is far more intense than for men. Their bodies become the primary site for expressing complaint and distress; due to psychological and emotional pressure, they become ill, suffer from malnutrition, and the issue of personal safety becomes more salient for them than for others. Physical weakness, severe depression, and rates of attempted suicide or self-harm among these women are significantly higher than among men.

Prison functions as a simple mechanism for managing inequalities and causes extensive disintegration of family relations. It undermines a woman’s identity, which is typically framed in roles such as family manager, mother, and spouse, and through which she experiences a sense of worth. Unfortunately, given prevailing public culture, a woman who bears the stigma of having been imprisoned and labeled as a criminal is seen as unworthy of attention; to the extent that serving a sentence under non-standard conditions in women’s prisons becomes unbearable and tormenting, the post-release climate is equally hazardous for them (18).

### *The Criminogenic Nature of the Prison Environment*

Prison or confinement, as its very name suggests, should be a place where offenders are detained and kept so that they may undergo reform, rehabilitation, and educational care. In addition, their weaknesses and negative and deviant behaviors should be corrected, and they should return to their families and society with a sense of responsibility toward the family and the community, refraining from reoffending and becoming desirable and useful members of society. “The prison environment must be arranged in such a way as to achieve the goals mentioned above; however, this purpose is realized only when the period of incarceration during the sentence is organized through a program proportionate to the person’s condition and circumstances, aimed at restoring and reviving their abilities and talents.” However, unfortunately, in most prisons in Iran, due to a lack of facilities, insufficient space and facilities, and the shortage of specialized and trained personnel, classification of prisoners—through personality files and other methods—based on offense type, criminal history, physical and psychological condition, younger age, first-time offenders, offenders convicted of less serious crimes, and temporary detainees, is not adequately implemented, and these categories are often mixed with other offenders and recidivists, effectively turning prisons into “higher schools of corruption,” where inmates can easily and freely transfer their experience and “expertise” to others.

Inmates with particular conditions—such as economic, educational, and cultural poverty; those rejected by their families; those from unstable and disintegrated families without emotional attachment; runaway youths; children of

divorce; and individuals with families that have criminal histories—become prime targets for those who run corruption networks. Such individuals, even after arrest and during imprisonment, remain focused on their “work” or profession. Likewise, leaders and members of criminal bands—such as organized groups and drug dealers—seek to recruit, bribe, and deceive other inmates, preparing the groundwork for cooperation after release or introducing them to external associates. For example, during the present study it was observed that a ten-year-old girl detained for theft spent two weeks in prison socializing with adult inmates convicted of various crimes such as theft, narcotics offenses, and morality-related offenses, and despite correspondence conducted by the prison social worker, her transfer to a juvenile rehabilitation center had still not been determined after two weeks.

The lack of coordination and cooperation among organizations and officials, the absence of suitable and supportive alternative laws for offenders, and the negative attitudes of judges toward female offenders all combine to ensure that women and girls—especially those with a low average age in certain offenses, often around puberty, or those who have committed a correctable mistake largely under the influence of social, familial, and economic factors—must spend time in custody in an unsuitable and criminogenic prison environment alongside other inmates. After serving their terms, they may enter society as “recorded offenders,” and in some cases their life trajectories change significantly after release and take a downward course. One interviewee stated that she ran away from home due to family reasons, became acquainted with a man, was later arrested and sent to prison, and there met a woman; after release, she and that woman and her friends began engaging in fraud, forgery, and extortion. She claimed that her only intention had been to run away to frighten her family, and that the subsequent events were beyond her will and control, and that she was unwillingly drawn into that path.

### *The Ineffectiveness of Imprisonment as a Punishment*

The historical background of imprisonment dates back to distant times, when “prisoners were kept in dark and damp dungeons and subterranean chambers, shackled in chains, and left to be forgotten. Over time, however, with the advancement of civilization, and through the enlightened efforts of intellectuals and scholars, conditions of prisons and prisoners were organized and improved. In our country, from the late Qajar period and with the prescence of foreign advisers, the initial steps were taken in this field, and during that period the first regulations for prison administration in a modern form were drafted and implemented” (20).

- The ultimate purpose of implementing any punishment—especially imprisonment—is to maintain order, tranquility, and security; to secure social interests; and to prevent the occurrence or recurrence of crime. However, changing an individual's way of thinking and behavior requires the implementation of corrective, educational, and therapeutic methods over a relatively long period, whereas, unfortunately, the majority of the prison population consists of individuals serving short sentences.
- Prisoners and offenders must voluntarily and willingly submit to rehabilitative, corrective, and therapeutic methods and prepare themselves to return to normal life and society; yet in many cases this willingness and firm resolve does not exist.
- “Collective and general imprisonment, which is currently applied in most prisons in the country, by allowing convicts to freely interact with one another, leads to inadequate monitoring of their conduct by prison officers and guards. This results in the spread of sexual deviance, the formation of delinquent bands, the bribing of other inmates for cooperation after release, and the teaching of skills and techniques for committing various crimes.”

- The lack of interaction between prisons and prisoners' families in implementing corrective and educational programs, and the absence of a prepared context for the prisoner's reintegration into the family and society, means that the factors contributing to delinquency remain in their prior state.
- A lack of familiarity among officials, and officers responsible for implementing corrective, educational, or therapeutic methods with modern criminal sciences—particularly modern and scientific prison administration, criminal psychology, and criminology—as well as inadequate in-service training and continuous, correct, and scientific enhancement of staff knowledge.

The above points constitute general deficiencies underlying the ineffectiveness of imprisonment, which are common to all incarcerated groups. However, different offender groups (women, men, adolescents, and children), depending on age, gender, offense type, sentence length, and other factors, have particular needs and characteristics. In prison administration, executives, administrators, and trainers must take these differences into account—especially gender-based differences—and design and implement specific corrective, therapeutic, and educational programs appropriate to each group. Yet, unfortunately, administrative and executive prison staff mainly focus on establishing security and are often unable to maintain meaningful engagement with prisoners' families, provide counseling to inmates and their families, and create motivation and a genuine desire for change among inmates. As a result, after serving their terms, prisoners are again sentenced to imprisonment after a period of time and, in many cases, commit more serious crimes and return to prison.

For example, one interviewee had been convicted of illicit relations resulting in the birth of a child and was sentenced to flogging and imprisonment. Even during and after her term, she continued the same relationship and was again arrested following a complaint by her family; this time, she was sentenced to one year of discretionary imprisonment and again to flogging. After nine months of incarceration, she stated that “after release, she will still continue her relationship with the aforementioned person.”

#### *Insufficient and Inadequate Health, Educational, and Economic Facilities Specific to Women Offenders*

With the progress of civilization and evolution in penology and the science of prison administration, the proper and scientific design of prisons has acquired particular importance, and efforts have been made to pay careful attention, in prison construction, to local customs, the requirements of time and place, prisoners' family life conditions, and their social environment. “Formerly, in order to preserve tranquility, appease public opinion, and prevent the escape of the accused or the convicted, prisons were built primarily with full protective measures and with an emphasis on physical strength and fortification, without adequate consideration of the methods to be implemented within them. From the early twentieth century in advanced countries, especially in Europe, prisons, in addition to fortification, security, protective, and sanitary principles, were also designed with attention to the methods that should be implemented there” (21).

However, unfortunately, in constructing most prisons in the country, building plans are not aligned with the scientific principles of modern prison administration, particularly in the case of old and worn-out prisons.

In principle, Iran's judicial and adjudicatory system was established primarily to address the crimes of a particular gender group (men), and this is evident in institutional structures, concepts, specialized explanations, human resources, organizational resources, locations, and tangible resources. The prison organization is not an exception. The most fundamental classification in prison administration is based on the gender of offenders. According to the prison organization's statistics, the number of women prisoners is increasing day by day, but facilities, financial



resources, human resources, and accessible spaces (libraries, places of worship, recreation and sports halls, technical and vocational workshops) do not expand commensurately with the growth of the female prison population. This problem has become a major challenge in prisons with old, worn infrastructures, making living conditions inside prisons difficult.

Observing personal and public hygiene in prisons is among the issues closely tied to the prisoner. Yet, one cannot overlook the effects of old prison infrastructures, acceptance inmates beyond prison capacity (women's ward), the male-oriented nature of environments and locations and its effects on health facilities and prison medical services, the inability of some inmates to financially provide personal and hygienic items, and certain gender-specific problems and illnesses.

One of the tools families use to further punish prisoners is financial non-support and social rejection—something more commonly observed among female offenders—which ultimately leads to psychological and economic problems. Although it must not be forgotten that those who commit crimes due to economic hardship should not be expected to have their financial problems resolved during the period of imprisonment.

On the surface, it may appear that prisoners do not have financial needs during incarceration; yet, for various reasons, prisoners must personally cover certain needs, including some pharmaceutical items not available in the prison clinic, clothing and personal hygiene products, some food items—especially fresh fruits and vegetables—educational resources (books, handouts, magazines, technical and vocational training tools, and learning aids), and access to counsel. Consequently, economic problems compound psychological distress, separation from family, eliminating ties with the outside environment, friends, peers, exclusion from society and family, fear of consequences, confusion, shame, humiliation, and similar burdens. Moreover, this creates an opportunity for families to impose their demands in exchange for assistance. One interviewee stated that in exchange for posting bail to obtain prison leave, depositing money in her prison account, and hiring a lawyer, her family demanded that she divorce her husband and entrust her child to the husband's family, because her family considered her husband the primary cause of her imprisonment and conviction—whereas, even if she hypothetically accepted separation, she strongly wished to keep and raise her child. Families often propose various demands, such as acquiescing to forced marriage, remaining confined at home, and refraining from communication with the outside world upon release.

## Conclusion

Today, it is widely acknowledged that attitudes toward crime can no longer remain grounded in traditional and punitive approaches. In light of the profound transformations that have occurred across social, economic, cultural, and political dimensions of contemporary societies, a fundamental shift in criminal policy and criminological thinking is required. Crime prevention should primarily focus on proactive and structural strategies rather than reactive and punitive responses. This necessitates the enhancement of public education through continuous learning, the proper cultivation of individual capacities, the strengthening of moral and ethical values, and the reinforcement of religious and social responsibility in order to prevent tendencies toward criminal and deviant behavior.

Simultaneously, the establishment of appropriate economic, social, political, recreational, and occupational conditions—within reasonable and socially acceptable limits—is essential for the realization of social justice. Alongside these measures, the adoption of a coherent and well-founded legislative, judicial, and participatory criminal policy is indispensable for ensuring individual and collective security. In essence, crime must be addressed

before it occurs; prevention should precede punishment. At the same time, in order to mitigate the consequences of crime, therapeutic, corrective, and rehabilitative strategies must be employed so that social disruptions are remedied and a stable order based on human dignity, fundamental rights, justice, and respect for human rights principles is restored.

Achieving these objectives is contingent upon the principled drafting of criminal laws that take into account the social structure, cultural norms, religious beliefs, economic and political conditions, and the practical enforceability of such laws. Moreover, those entrusted with the enforcement of criminal laws—particularly law enforcement authorities, courts, and prison institutions—must conduct themselves in a manner consistent with the dignity and status of individuals in society. Failure to do so will render even the most carefully designed criminal policies ineffective.

Delinquency is the product of multiple interacting factors, including psychological and personality disorders, dysfunctional family environments, economic and educational deprivation, adverse social surroundings, peer influence, and the negative impact of mass media. Women and mothers are not exempt from these influences and may engage in criminal behavior under such pressures. However, due to their unique and sensitive role within the family structure and Iranian society, as well as their distinct physical, psychological, and social characteristics compared to other offender groups, they require a differentiated and specialized criminal policy approach.

Special and tangible attention must be devoted to women offenders at all stages of the criminal justice process, including arrest, prosecution, adjudication, sentencing, and enforcement of punishment. Nevertheless, the findings of the present study demonstrate that Iran's criminal justice system suffers from significant deficiencies at various stages of this process. During the arrest and prosecution stage, shortcomings include the absence of specialized police units for women offenders, negative and stereotypical attitudes among traditional law enforcement officers, excessive use of force, abuse of authority, violations of human dignity, lack of age differentiation between young female offenders and adult women, insufficient use of diversion and restorative mechanisms, limited access to legal counsel and social support services, inappropriate pretrial measures that disregard the economic conditions of women offenders, and violations of privacy.

At the adjudication and sentencing stage, additional deficiencies are observed, such as the influence of judicial ideology and personal attitudes—particularly in morality-related offenses—the disproportionality of conventional punishments (imprisonment, flogging, monetary fines), insufficient use of personality assessments, the absence of female advisors and social workers during judicial proceedings, and inadequate reliance on alternative sanctions, restorative justice measures, mediation, and reconciliation. Although recent legislative reforms have partially addressed some of these shortcomings through the introduction of alternatives to imprisonment, structural gaps persist.

The enforcement stage is likewise marked by serious challenges, including the lack of trained and specialized personnel in modern penology, criminology, psychology, and prison management; the inefficiency of traditional punishments; the criminogenic nature of prison environments; insufficient attention to rehabilitation, education, vocational training, and treatment of incarcerated women; weak interaction with prisoners' families; neglect of the specific needs of women and mothers; and the dominance of male-centered prison management practices. Overall, insufficient emphasis is placed on the rehabilitation and reintegration of offenders, and cooperation between prison authorities and academic or research institutions remains limited.

Modern criminal sciences—such as criminology, penology, criminal sociology, and psychology—offer effective tools for replacing purely punitive responses with evidence-based therapeutic and rehabilitative approaches. Through appropriate planning and resource allocation, prison environments can be transformed from crime-producing spaces into settings that support correction and social reintegration. Although such transformation requires substantial investment and institutional commitment, it is both necessary and achievable.

Finally, an overall evaluation of the new Criminal Procedure Code indicates progress toward fair trial standards, including legality of proceedings, the presumption of innocence, the right to defense and access to counsel, the right to remain silent, reasonable time requirements, proper notification of charges, and compensation for unlawful detention. Nevertheless, the need for a coherent, comprehensive, and gender-sensitive legal framework governing all stages of the criminal justice process remains evident.

## Recommendations

1. Enact comprehensive legislation aimed at protecting women offenders, taking into account their specific needs and differences from male offenders, in accordance with constitutional principles and international standards, to ensure equal access to criminal justice for all women, including those who are economically disadvantaged or illiterate.
2. Establish specialized women's police units nationwide and provide systematic training on appropriate interaction with women offenders, particularly young girls, and deploy trained personnel in police stations across the country.
3. Create specialized crime-prevention units to educate families and collaborate with educational, cultural, recreational, and social institutions—especially regarding drug-related offenses, addiction, and behaviors associated with developmental stages in young women.
4. Utilize criminal psychologists, criminologists, lawyers, legal advisors, and social workers to support women offenders during interrogation, investigation, and assessment stages, including the preparation of personality profiles to reduce psychological pressure and protect mental health.
5. Ensure strict respect for privacy at all stages of criminal proceedings and train law enforcement and judicial personnel to avoid intrusion into the personal sphere of women offenders.
6. Reform negative law enforcement attitudes toward women offenders and prevent abuse of power, excessive force, and unethical conduct; establish specialized mechanisms for receiving and addressing complaints by women who have been subjected to such misconduct.
7. Institutionalize restorative justice mechanisms—such as mediation, facilitation, and out-of-court settlement—through explicit legal provisions and provide the necessary organizational infrastructure and trained personnel for their effective implementation.
8. Introduce alternative and restorative pretrial measures proportionate to the economic and social conditions of women offenders, particularly as substitutes for pretrial detention.
9. Ensure the presence of social workers and advisors alongside judges during sentencing, require the preparation of personality assessments, and apply sanctions that are proportionate and appropriate to the circumstances of women offenders.
10. Allocate specialized court branches exclusively for handling cases involving women offenders to ensure focused, consistent, and sensitive adjudication.

11. Provide continuous training for judges and judicial staff to promote impartiality, reduce ideological bias, and prevent prejudgment, particularly in offenses related to morality.
12. Conduct a fundamental reform of prison administration with particular attention to women's wards, including infrastructure, health services, accessible facilities, and management practices, and move away from male-centered models in order to reduce the harms of imprisonment and support rehabilitation.

### Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

### Authors' Contributions

All authors equally contributed to this study.

### Declaration of Interest

The authors of this article declared no conflict of interest.

### Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

### Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

### Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

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