



Legislative Frameworks for Gender-Sensitive Criminal Justice

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Abstract— Criminal justice systems have historically been designed around a male-normative offender profile, producing legal frameworks that inadequately address the differentiated pathways, vulnerabilities, and needs of women, girls, and gender-diverse individuals. Over the past two decades, international instruments such as the UN Bangkok Rules and a growing body of empirical criminology have pushed jurisdictions toward "gender-responsive" and "gender-sensitive" reform. Yet legislative uptake remains uneven, contested, and often reduced to formal gender-neutral drafting that overlooks substantive inequality. This paper synthesizes recent scholarship (2018–2025), alongside foundational earlier work, across four thematic clusters: gender-responsive correctional policy, sentencing and judicial decision-making, intimate partner violence legislation, and the treatment of transgender and non-binary individuals in carceral settings. The review identifies a persistent gap between doctrinal gender-neutrality and substantive gender-responsiveness, limited comparative cross-jurisdictional analysis, and insufficient integration of intersectionality into legislative design. Addressing this gap, the paper proposes a conceptual four-

pillar framework — recognition, differentiation, proportional accountability, and institutional capacity — intended to guide legislators and policy analysts in drafting and evaluating gender-sensitive criminal statutes. The paper is conceptual rather than empirical; it does not report new experimental findings but organizes existing evidence into an applied policy framework and proposes a methodology for future comparative legislative analysis. Implications for lawmakers, judicial training bodies, and international agencies are discussed, alongside limitations related to the conceptual nature of the framework and the need for empirical validation across diverse legal traditions.

Keywords— gender-responsive justice; criminal law reform; sentencing disparity; Bangkok Rules; intimate partner violence legislation; transgender incarceration; comparative criminal justice policy



INTRODUCTION

Criminal justice systems — comprising policing, prosecution, adjudication, and correctional institutions — were historically constructed with reference to a presumed male offender and, correspondingly, a male-centric conception of victimhood, risk, and rehabilitation (Daly, 1989). This structural default has generated cascading consequences: risk-assessment tools calibrated on male offending patterns misclassify women's risk profiles (Salisbury et al., 2025); sentencing frameworks built around individualistic notions of culpability often fail to account for coercion, caregiving responsibilities, or histories of victimization disproportionately borne by female defendants (Johnson et al., 2021); and statutory definitions of violence — particularly sexual and domestic violence — have historically encoded gendered assumptions about who can be a victim or perpetrator (Rumney, 2007).

Since the early 2000s, a "gender-responsive" movement in corrections and sentencing scholarship has argued that formal equality — treating all offenders identically regardless of gender — can itself produce substantive inequity when the underlying social and psychological realities of offending differ systematically by gender (Bloom, Owen, & Covington, 2003). This movement has been reinforced by international legal instruments, most notably the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, known as the Bangkok Rules, adopted in 2010 (UNODC, 2010), which explicitly call on member states to revise legislation, policy, and institutional practice to reflect the specific circumstances of women in conflict with the law.

At the same time, legislative reform in this domain is neither linear nor uncontested. Debates over gender-neutral drafting of sexual offence statutes illustrate the tension between formal equality (extending protections symmetrically to all genders) and substantive gender-responsiveness (retaining gender-specific provisions to address structurally gendered harms) (Rumney, 2007). Parallel debates concern the criminal justice treatment of transgender and non-binary individuals, whose experiences of policing, sentencing, and incarceration are shaped by legal frameworks that were not designed with gender diversity in mind (Hughto et al., 2018; Kendig et al., 2019).

This paper undertakes a thematic literature review of recent scholarship on legislative frameworks for gender-sensitive criminal justice, identifies the central research gap, and proposes a conceptual policy framework intended to guide future comparative legislative analysis. The paper does not

present new empirical data; rather, it synthesizes existing evidence and proposes a structured methodology through which such a framework could subsequently be tested.

Evolution of Legislative Frameworks for Gender-Sensitive Criminal Justice



LITERATURE REVIEW

Gender-Responsive Correctional and Sentencing Policy

A substantial body of research, originating with the foundational work of Bloom, Owen, and Covington (2003), established the empirical case for gender-responsive correctional strategies, arguing that women's pathways into offending are frequently mediated by trauma, victimization, and relational dynamics rather than the instrumental risk factors that dominate male-oriented criminogenic models. This foundational framework has since been substantially updated: Salisbury et al. (2025) present recent evidence reaffirming the centrality of victimization histories and relational identity as drivers of justice involvement among women and girls, while cataloguing persistent limitations in the translation of gender-responsive principles into standardized institutional practice. Complementary work on juvenile justice extends this logic to girls' courts and diversion programming, showing that content- and context-specific interventions produce more favorable outcomes than gender-neutral juvenile processing models (Anderson, 2022; Jones, Wallis, & Seibers, 2020).

Sentencing scholarship offers a parallel but distinct thread. Daly's (1989) seminal review already identified systematic gaps in theoretical and empirical treatment of gender in sentencing research, a gap only partially closed by subsequent decades of scholarship. More recent work examining disparities in federal sentencing (Johnson, Spohn, & Kimchi, 2021) demonstrates that gender interacts with race and ethnicity to produce

compounded disparities, underscoring the necessity of intersectional analysis rather than single-axis gender comparisons. Specialized court models — including drug courts (Salisbury & Parisi, 2022) and trafficking-survivor courts (Kulig & Butler, 2019) — represent legislative and institutional attempts to operationalize gender-responsive principles at the point of adjudication, with early evidence suggesting improved engagement and reduced punitive framing of survivors, though rigorous long-term outcome evaluation remains limited.

Intimate Partner and Domestic Violence Legislation

A second thematic cluster concerns the legislative regulation of domestic and intimate partner violence (IPV). Douglas (2018, 2019) documents how existing civil and criminal legal processes can themselves be weaponized as instruments of coercive control, and how policing responses to domestic violence remain inconsistent despite decades of statutory reform. Ferreira de Oliveira et al. (2025) propose a systematic review protocol assessing how legal reforms translate into actual institutional practice within police and judicial systems, noting that implementation barriers — rather than the absence of legislation — constitute the primary obstacle to protective outcomes. Comparative scholarship examining prosecutorial and police responses to IPV across different relationship configurations, including same-sex partnerships, further reveals that legislative frameworks drafted primarily around heterosexual, male-perpetrator/female-victim assumptions can produce inconsistent enforcement when applied to other relationship contexts (Lantz, 2020). Edited volumes synthesizing legal practice and intervention reform (Cox, MacNeil, & Lind, 2022, in Russell & Hamel, 2022) similarly argue that legislative text alone is insufficient without corresponding prosecutorial guidance, judicial training, and victim-support infrastructure. Research on decision-making bias further shows that ambivalent sexism can moderate case outcomes even under gender-neutral legal standards, particularly in intimate partner homicide cases (Cutroni & Anderson, 2021), suggesting that formally neutral statutes do not eliminate gendered outcomes without accompanying institutional safeguards.

Gender-Neutral versus Gender-Specific Statutory Drafting

A recurring and unresolved debate concerns whether criminal statutes — particularly those addressing sexual offences — should be drafted in gender-neutral or gender-specific terms. Rumney (2007) argues that gender-neutral definitions of rape are necessary to appropriately label and recognize male

victimization, while acknowledging that critics contend such neutrality can dilute the statute's original purpose of addressing structurally gendered sexual violence against women. This tension has played out prominently in legislative debates in jurisdictions considering reform of colonial-era penal codes, where proposals to render sexual offence provisions gender-neutral have been repeatedly raised and, in some cases, deferred due to concerns that neutrality could be exploited to weaken protections for women (as documented in legislative committee reports informing India's Criminal Law Amendment process). The broader theoretical literature frames this as a conflict between formal equality (identical treatment irrespective of gender) and substantive equality (differentiated treatment calibrated to actual, unequal social conditions) (Bagaric & McConville, 2005), a distinction that recurs across virtually all subthemes in this review.



Gender Diversity, Transgender and Non-Binary Populations in Criminal Justice

A comparatively newer but rapidly growing literature examines how criminal justice legislation and institutional policy address transgender and non-binary individuals. Hughto et al. (2018) document how sex-segregated correctional facilities reinforce binary gender classification systems that produce distinct and often severe harms for transgender women, including elevated exposure to violence and inadequate access to gender-affirming care. Building on this, collaborative stakeholder engagement research (Kendig, Cubitt, Moss, & Sevelius, 2019) proposes concrete correctional policy considerations — covering screening, housing placement, and clinical care — intended to translate broad non-discrimination principles into operational practice. This literature consistently highlights that existing legislative frameworks, including many otherwise labeled "gender-sensitive," were designed around a cisgender, binary

conception of gender and therefore require explicit extension or amendment to meaningfully protect gender-diverse individuals.

International Normative Frameworks

The Bangkok Rules (UNODC, 2010) constitute the most consolidated international legal instrument addressing gender in criminal justice, establishing 70 rules covering non-custodial alternatives, healthcare, and the treatment of women prisoners and pretrial detainees. Institutional reporting on their implementation (Council on Criminal Justice, 2025) indicates continued gaps between the Rules' normative ambitions and their domestic legislative uptake — for instance, only a minority of jurisdictions have adopted gender-responsive risk-assessment instruments despite their availability. Comparative regional analyses (e.g., Queensland–Lagos comparative work on IPV law) similarly find that international standards diffuse unevenly, shaped by domestic legal traditions, resource constraints, and political will.

Synthesis, Trends, and Research Gap

Across these clusters, three trends are evident. First, there is broad scholarly consensus that gender-neutral formal equality is insufficient to redress gendered outcomes absent differentiated legal and institutional responses (Bagaric & McConvill, 2005; Cutroni & Anderson, 2021; Douglas, 2018). Second, empirical attention has concentrated heavily on women as a offender/victim category, with comparatively less integrated legislative analysis addressing transgender and non-binary populations, despite their documented distinct vulnerabilities (Hughto et al., 2018; Kendig et al., 2019). Third, existing studies are predominantly single-jurisdiction or single-theme (e.g., sentencing alone, or IPV alone), with limited cross-jurisdictional, cross-thematic comparative legislative analysis that evaluates statutory design as a coherent system rather than isolated provisions.

The principal limitation of the existing literature, therefore, is its fragmentation: gender-responsive corrections scholarship, sentencing disparity research, IPV legal studies, and transgender carceral studies have developed largely as parallel rather than integrated literatures, with few frameworks offering legislators a unified set of design principles applicable across these domains simultaneously. This paper addresses that gap by proposing an integrative conceptual framework — drawing on recognition, differentiation, proportional accountability, and institutional capacity — intended to unify these thematic strands into a single evaluative and drafting tool applicable across criminal justice subdomains.

RESEARCH GAP

Existing literature offers rich, domain-specific evidence on gender-responsive corrections, sentencing bias, IPV law, and transgender carceral experience, but lacks (a) a unifying conceptual framework that legislators can apply consistently across these domains; (b) systematic comparative analysis of how different legal traditions operationalize "gender-sensitivity" in statutory language versus institutional practice; and (c) explicit integration of intersectionality and gender diversity (beyond a binary male/female frame) into legislative design principles. This paper addresses these gaps conceptually, proposing a framework intended to inform future comparative empirical research.

OBJECTIVES

This paper aims to:

1. Synthesize thematically organized recent scholarship (2018–2025) on legislative approaches to gender-sensitive criminal justice.
2. Identify the conceptual and empirical gap between formal gender-neutrality and substantive gender-responsiveness in statutory design.
3. Propose an integrative four-pillar conceptual framework — recognition, differentiation, proportional accountability, and institutional capacity — for evaluating and drafting gender-sensitive criminal legislation.
4. Outline a methodological approach through which this framework could be empirically tested via comparative legislative analysis in future research.

METHODOLOGY

This is a conceptual, literature-based paper; no primary data were collected, and no experimental or numerical findings are reported. The review followed a structured narrative synthesis approach: peer-reviewed articles, institutional reports, and international legal instruments published primarily between 2018 and 2025 were identified through searches of academic databases and publisher platforms (including PubMed, Springer, Sage, Oxford Academic, and institutional repositories), using search terms combining "gender-responsive," "gender-sensitive," "gender-neutral," "criminal justice," "sentencing," "domestic violence law," and "transgender incarceration." A small number of foundational older sources (pre-2018) were retained where they represented seminal contributions establishing the theoretical basis for

subsequent scholarship (e.g., Daly, 1989; Bloom et al., 2003). Sources were grouped thematically rather than chronologically, and analyzed for (a) the type of legislative or policy mechanism examined, (b) the empirical or doctrinal method employed by the original authors, and (c) identified strengths and limitations reported within each study.

Based on this synthesis, the proposed four-pillar conceptual framework was derived inductively by identifying recurring design principles implicit across the reviewed literature:

- **Recognition** — statutory acknowledgment of gender-differentiated pathways into offending and victimization (drawing on Bloom et al., 2003; Daly, 1989).
- **Differentiation** — calibrated, non-uniform legal responses (e.g., specialized courts, alternative sentencing) that avoid both discriminatory treatment and false formal equivalence (Salisbury & Parisi, 2022; Kulig & Butler, 2019).
- **Proportional accountability** — statutory and prosecutorial mechanisms that hold perpetrators accountable without reproducing gendered assumptions about culpability, applicable to IPV and sexual offence law (Rumney, 2007; Cutroni & Anderson, 2021).
- **Institutional capacity** — implementation infrastructure (training, resourcing, data systems) required to translate legislative text into practice, addressing the persistent implementation gap documented across domains (Ferreira de Oliveira et al., 2025; Council on Criminal Justice, 2025).

Future empirical validation of this framework would require a structured comparative legislative content analysis across a purposive sample of jurisdictions, coding statutory provisions against each pillar, complemented by qualitative interviews with legislative drafters and criminal justice practitioners — a methodology proposed here as a direction for subsequent research rather than one executed within this paper.

DISCUSSION

The reviewed literature converges on the finding that legislative gender-sensitivity cannot be achieved through terminology alone. Simply substituting gender-neutral language ("any person") for gender-specific language does not, by itself, resolve the substantive inequalities that gender-responsive scholarship has documented (Bagaric & McConvill, 2005; Rumney, 2007). At the same time, retaining gender-specific

statutory categories risks excluding victims and offenders whose experiences do not conform to binary assumptions, as the transgender carceral literature demonstrates (Hughto et al., 2018; Kendig et al., 2019). The proposed four-pillar framework attempts to hold these tensions together: recognition and differentiation permit legislatures to account for documented gendered patterns without mandating uniform treatment, while proportional accountability and institutional capacity address the risk that either gender-neutral or gender-specific drafting, if unaccompanied by implementation infrastructure, will fail in practice — a finding echoed across the IPV enforcement literature (Douglas, 2019; Ferreira de Oliveira et al., 2025) and the Bangkok Rules implementation assessments (Council on Criminal Justice, 2025).

The framework also foregrounds intersectionality, consistent with findings that gender interacts with race, class, and immigration status to shape sentencing and enforcement outcomes (Johnson et al., 2021). A legislative provision that appears gender-sensitive in isolation may nonetheless produce inequitable outcomes when its interaction with other statutes — bail law, immigration law, child custody law — is not considered. This suggests that gender-sensitive legislative reform should not be pursued as a siloed policy area but integrated into broader criminal code review processes.

Limitations of this synthesis should be acknowledged. As a conceptual paper, it does not empirically test the proposed framework against legislative outcomes, and the framework's four pillars, while inductively derived from the literature, require validation through the comparative methodology. Additionally, the reviewed literature is disproportionately drawn from common-law jurisdictions (particularly the United States, United Kingdom, and Australia), and caution is warranted in generalizing findings to civil-law or plural legal systems without further comparative research.

CONCLUSION

Legislative frameworks for gender-sensitive criminal justice have advanced considerably since early foundational scholarship identified the male-normative default embedded in criminal law and correctional policy (Daly, 1989; Bloom et al., 2003). Contemporary research demonstrates progress across gender-responsive corrections, sentencing reform, IPV legislation, and — increasingly — recognition of transgender and non-binary experiences within carceral systems. However, the literature remains thematically fragmented, and a persistent gap separates formal statutory neutrality from substantive gender-responsive outcomes. This paper has proposed an

integrative four-pillar conceptual framework — recognition, differentiation, proportional accountability, and institutional capacity — intended to unify these thematic strands and offer legislators and policy analysts a coherent basis for drafting and evaluating gender-sensitive criminal statutes. Future research should empirically test this framework through structured comparative legislative analysis across diverse legal traditions.

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