

Sentencing in Maltese Courts: A gender based analysis

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Abstract

Miriam Farrugia

Sentencing in the Maltese Courts: A gender based analysis.

This thesis is set to explore whether discrepancies exist between male and female offenders who appear in front of the Court of Magistrates (Criminal Judicature) and to explore the reasons why this occurs. Another aim of this study is to identify which types of crimes are mostly committed by females in Malta and whether aggravating factors and/or mitigating factors as well as sympathetic life circumstances can influence the type of sentence meted out. In order to answer the research questions a comparison and analysis between similar crimes committed by females and males was performed. The theoretical framework used in this research is that of the Focal Concerns Theory which attributes the more lenient sentences received by female offenders to the fact that the judiciary see female offenders as less blameworthy, less dangerous to society and to practical constraints both on an individual level as well as on a logistical level. The other theory to be tested is the Paternalism/Chivalry Theory which states that the judiciary views female offenders as naïve and therefore in need to protection. Hence they are meted out lenient sentences. This theory also includes the Evil Woman Hypothesis which states that when female offenders commit a crime which is usually perpetrated by males, the female offender will be met with harsher penalties because she is breaking the law and most importantly, she is going against socially accepted gender norms.

The research method used in this thesis is that of a Mixed Methods approach. The quantitative research method consisted of gathering data of female offenders who were found guilty of a crime from criminal court sentences published online from the year 2005 to the year 2020. Subsequently the crimes were compared with similar crimes committed by males in the years 2005, 2010, 2015 and 2020. The factual information gathered through the quantitative approach helped in formulating the semi-structured interview guide which was used to interview ten professionals working/or used to work in the criminal justice field. A thematic analysis was used as a qualitative research method to place the author in a better position to answer the research questions while portraying exactly the participants' opinions and experiences on the subject matter. The results of the quantitative approach clearly showed that there are gender discrepancies in Maltese criminal sentencing. Other results include the facts that Females are

associated with Assault, Financial crimes, Sexual offenses, and Threats and that Assault is more common among EU and Non-EU Females and that Females are consistently associated with non-incarceration sentences, while males are associated with incarceration sentences. Different themes emerged after an in-depth analysis of the information gathered from participants; Female Offenders' Demeanor in Court; Societal Views and Gender Stereotypes influencing the Criminal Court's View of Female Offenders; the Validity of the Evil Woman Hypothesis, Sentencing Practice Outcomes between Male and Female Magistrates and finally the Introduction of Sentencing Guidelines in the Maltese Criminal Court Context.

This research highlights the importance of the introduction of sentencing guidelines in the Maltese Criminal Court system. Another policy recommendation is to provide training in relation to stereotypical attitudes to the Judiciary.

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KEY WORDS: Gender discrepancy, Criminal Court Sentencing, Focal Concerns Theory, Paternalism/Chivalry Theory.

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Glossary of Terms

Aggravating Factors: Elements in legal cases that can increase the severity or culpability of a criminal act, leading to harsher sentences. These factors include prior criminal history, the use of violence or weapons, and the nature and circumstances of the crime. They are often contrasted with mitigating factors in judicial decision-making.

Association between Categorical Variables: This refers to the relationship between variables that are categorized by discrete, non-numeric categories. This association is often analyzed using statistical tests like the chi-square test to determine if the distribution of one variable differs significantly across the categories of another.

Chi-Squared Standardized Residuals: In the context of a chi-square test, these residuals are the differences between observed and expected frequencies, adjusted for the size of the expected frequencies. They provide insight into which cells (categories) contribute most to the chi-square statistic.

Chi-Square Test: A statistical test used to determine if there is a significant difference between the expected frequencies and the observed frequencies in one or more categories. It's widely used in research to test the independence of two categorical variables.

Column Proportions: In cross-tabulations, these are the proportions of each category of a variable relative to the total for each column. They are used to understand the distribution of a categorical variable within each category of another variable.

Critical Evaluation of Theories: A thorough assessment of the Focal Concerns theory and Paternalism/Chivalry theory, while examining their conceptual foundations, methodological applications, and limitations. It critically analyzes how these theories have been tested scientifically and their relevance in contemporary judicial decision-making.

Cross-Tabulations: A method to quantitatively analyze the relationship between multiple categorical variables. It involves creating a matrix (or table) to display the frequency distribution of variables and is essential in examining the interactions between different categorical data.

Data Reduction, Data Display, Verification: Key components in thematic analysis. Data reduction involves condensing the volume of data, data display refers to organizing and presenting the reduced data in a coherent manner, and verification involves checking the reliability and validity of the data and the findings.

Empirical Application of Focal Concerns Theory: Discusses the application and testing of the Focal Concerns Theory in real-world settings, particularly in judicial decision-making. It critiques the theory's limitations and the challenges in empirically applying it to understand judicial behaviors and sentencing outcomes.

Evil Woman Hypothesis: Deriving from the Chivalry Theory, this hypothesis states that when females commit crimes that go against stereotypical based behaviors, for example violent crimes, they are meted out with harsher sentences than their male counterparts.

Fisher Exact Test: A statistical significance test used in the analysis of contingency tables, particularly suitable for small sample sizes. It's an alternative to the chi-square test when the expected frequencies in any of the cells of a contingency table are too small to justify the approximation inherent in the chi-square test.

Focal Concern Theory & Paternalism/Chivalry Theory: Theoretical frameworks central to understanding gender disparities in criminal court sentencing. Focal Concern Theory delves into how judges' decisions are influenced by factors like blameworthiness, protection of the community, and practical constraints. Paternalism/Chivalry Theory suggests that female offenders are often treated more leniently due to societal perceptions of women as naïve and therefore in need of protection.

Inductive vs. Deductive Approach in Mixed-Methods Research: Refers to the different approaches in mixed-methods research. The inductive approach involves building theories from observed data, while the deductive approach tests existing theories against empirical data. In sequential explanatory models, this choice influences how concepts are identified, and relationships are tested.

Methodological Strengths and Weaknesses: A critical discussion on the advantages and limitations of thematic analysis as a tool for qualitative analysis. It includes an evaluation of its flexibility, depth of insight, and potential biases or limitations in interpreting qualitative data.

Mitigating Factors: Factors in legal cases that might reduce the severity or culpability of a criminal act, potentially leading to a lighter sentence. These include circumstances like lack of prior criminal history, the defendant's mental state, and the presence of coercion or duress.

Mixed Method Approach: An approach that combines qualitative and quantitative research methods to provide a more comprehensive understanding of research problems. It allows for the strengths of both methods to be utilized, offering a more nuanced and complete view of the research topic.

Odds Ratios: A measure of association between an exposure and an outcome. It represents the odds that an outcome will occur given a particular exposure, compared to the odds of the outcome occurring in the absence of that exposure.

Phases of Thematic Analysis: The process involves several distinct phases: data familiarization, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing the report. Each phase plays a crucial role in systematically organizing and interpreting qualitative data.

Pink Collar Crime: refers to the rising number of female offenders involved in white collar crime.

Quantitative Content Analysis: A research method that uses a set of procedures to make valid inferences from text. It involves quantifying the presence of certain words, themes, or concepts within texts and analyzing their meaning in a systematic, objective manner.

Quantitative Manifest Content Analysis: A systematic coding and categorizing approach used in quantitative research to interpret the manifest content of communication. It refers to the process of systematically coding and categorizing text to interpret its content, aligning with the research questions.

Research Design: A comprehensive plan outlining the study's methodology, including the selection of research methods, data collection techniques, and analysis strategies. It also encompasses ethical considerations, ensuring the research adheres to ethical standards and guidelines.

Row Proportions: In cross-tabulations, these are the proportions of each category of a variable relative to the total for each row. They help in understanding how a categorical variable is distributed across the categories of another variable.

Sequential Explanatory Mixed Methods Design: A specific type of Mixed Methods research design where quantitative data collection and analysis are followed by qualitative data collection and analysis. The purpose is to use qualitative results to assist in explaining and interpreting the findings of the quantitative research.

Stratified Cross-Tabulations: A method of analysis where cross-tabulations are conducted within stratified layers or subgroups. This approach is used to control for confounding variables and to understand the relationship between categorical variables within different strata or subgroups.

Sympathetic Life Circumstances: Consist of a list of hardships that an offender might be going through at the time the crime is committed, including poverty, mental health, addictions and history of abuse amongst other things and that might help in getting a more lenient sentence.

Thematic Analysis: A qualitative research methodology that involves identifying, analyzing, and reporting patterns (themes) within data. It includes transcription of data, coding for significant features, and the systematic identification and analysis of overarching themes. This method is particularly useful in providing rich, detailed, yet complex accounts of data.

Theoretical Thematic Analysis: A form of thematic analysis that is driven by the researcher's theoretical interest. It focuses on analyzing data in relation to specific theoretical concepts, providing a detailed and focused examination of the data in the context of the research questions.

Chapter 1

Introduction

Gender differences in criminal court sentencing has been the subject of various international studies for at least the past six decades (Anscombe, (1956); Fenster, & Mahoney, (1981); Bickle, & Peterson (1991); Spohn & Spears, 1997; Deakin & Spencer, 2003). The book ‘The Chivalry Thesis’ written by Pollak in 1950 was one of the first academic publications in which the author suggesting that female offenders were treated with more leniency because the criminal justice system was overly dominated by males who tended to evidence a sense of chivalry when judging female offenders (Jeffries & Bond, 2013). More recently, authors like Jeffries and Bond (2001; 2010; 2013; 2016; 2017); Steffensmeier and Demuth, (2006); Steffensmeier and Hoffman (1980), Steffensmeier (1980); Steffensmeier et al. (1998) and Steffensmeier et al. (2013) are in agreement that criminologists have accepted the notion that female offenders who enter the criminal justice system are treated more leniently than their male counterparts. Keegan (2016) explains that there are eight meaningful and consequential stages in criminal proceedings. These are the arrest of the criminal, the issuing of charges, the arraignment, the pre-trial proceedings phase, the trial, the verdict (in case an offender appearing in front of a jury), the sentencing phase and the appeal’s phase This differential treatment is mostly evident during the last phase of the criminal court procedure, which is the sentencing phase.

1.1 Background of Research Problem

Gelb (2010) described the issue of gender differences in criminal court sentencing outcomes for men and women as almost axiomatic in contemporary criminology. To understand such a difference, one must acknowledge the fact that there are more males who commit crime than females do and therefore the crime rate of male perpetrators is higher. Lauritsen et al. (2009) studied the gender gap in crime and explained it as “one of the few undisputed facts in criminology” (p. 362). Tillyer et al. (2015) researched the differential treatment of female defendants in the sentencing phase within the criminal justice process. These authors found out that in cases where both male and female defendants had lower criminal history, female defendants received more lenient treatment as compared to their male cohort.

Philippe (2017) carried out a study on gender disparities in the French criminal justice system. In order to do so, Philippe (2017) studied all the convictions that had occurred in France between the year 2000 and 2003. Data gathered from two different administrative datasets from the French Ministry of Justice suggests that, on average, females get prison sentences that are fifteen days shorter than their male counterparts. This gender gap was also observed in the case of crime complicities, when a male and a female, who were convicted together on the same day, by the same magistrate and for the same crime. The predominant types of crime committed by male and female accomplices were robbery (65%), followed by violence (15%) and drug use (15%). When analysing the type of sentences delivered in these cases, Philippe (2017) found that regarding prison time, males tended to receive the higher sentences (22% of the time versus 4%) while the opposite is true when it comes to suspended prison sentences. In such cases, women received longer sentences in 19% of the cases versus the 10% of males. Whilst the conclusions of this research study shed light on the subject under study, one of its main weaknesses is that

the data analysed occurred over a decade ago and this due to the fact that data on such court cases was only available for a limited period of time, that is from 2000 to 2003.

1.2 Rationale of the Study

Recent statistics published by The World Prison Brief (2024) state that on January 2024 the number of inmates at the Corradino Correctional Facility totalled 671 persons. The percentage of female inmates 9.1%. This difference between male and female offenders who receive a prison sentence is not restricted to Malta's shores but is clearly a widespread phenomenon. Statistics by the World Prison Brief (2024) show that in 2021, the percentage of female offenders who were in prison after receiving a detention sentence in Australia was that of 7.5% out of the total prisons' population, while in 2019 the percentage of female prisoners in the United States of America was that of 10.2 %. Authors Martin Stacey and Spohn (2006) who analysed the sentences imposed on male and female offenders in three U.S. district courts state that:

“In these three U.S. District Courts, female offenders received sentences that were approximately ten months shorter than the sentences imposed on similarly situated male offenders” (p. 73).

Mainstream literature (Doerner, 2009; Gleb, 2010; Holland, 2010; Jeffries, 2001; Jeffries & Bond, 2010; Philippe, 2017; Rodriguez et al., 2006) offers a possible explanation why fewer female offenders receive a shorter prison sentence or none at all. The suggestion is that Criminal Justice systems tend to treat female offenders with a greater degree of leniency even in instances when the crimes they commit are similar to those of males. One of the first authors who studied gender disparities in criminal sentencing was Otto Pollak (Jeffries, 2001). In his book *The Criminality of Women* (1950), Otto Pollak stated that women were treated leniently by the courts system as the criminal justice system was dominated by men and therefore characterised by male ideas of chivalry. Jeffries (2001) states that, since this issue has been raised by Pollak over 60

years ago, the question of gender differences in criminal court sentencing has undergone extensive international scrutiny. Another research study, which is consistent with the above, is that of Jeffries and Bond (2010). This research also shows that in comparison to male defendants, women generally receive a less severe sentence even when they appear before court under seemingly similar types of crimes. This may explain the reason why the latest World Prison Brief¹ shows that the female prison population represent between 2 and 9% of the prison population in all countries around the world (Walmsley, 2016). In the United Nations document entitled ‘Custodial and Non-Custodial Measures: Alternatives to Incarceration’ (2006), women offenders are considered to fall under the “special categories” section (p.11). This document stresses the importance of Rule 8.1 of the Tokyo Rules, which states that judicial authorities are to consider the rehabilitative needs of the offender, the protection of the community as well as the interests of the victim in the sentencing process and should also take into account the non-custodial measures as alternatives to incarceration. In cases where women are found guilty of crime, this document states that incarceration procures “disproportionately severe effects both on themselves and on their children and family members” (Alternatives to Incarceration, 2006, p.13). This might be one of the reasons that explains why the percentage of female prisoners around the world is much less than that of male inmates.

1.3 Purpose of the Study

The purpose of this study is to understand whether there exist gender disparities in the Maltese criminal court sentencing. In other words, the purpose of this study is to examine whether or not Maltese female offenders receive more lenient sentences than their male counterparts. To address such an issue, one must first explain what is being understood by the term ‘gender’ in this

¹ The eleventh edition of the World Prison Population List gives details of the number of prisoners held in 223 prison systems in independent countries and dependent territories.

proposed research study. A debate that would help understand better the leniency of court sentences when it comes to female sentences would be to explore and understand better the term gender as proposed by Covington and Bloom (2003) who stress the importance of understanding the distinction between sex differences and gender differences. The authors explain that whereas sex differences are biologically determined, the gender difference are constructed and assigned by society, and they exclusively relate to accepted social norms. In other words, gender is about the context and the reality in which women live. The issue of gender is crucial to this research study as despite the efforts to attain gender equality in Malta the female gender is still much associated with the provision of care. The Gender Equality Index 2015: Malta (2019) states that much progress has been made in Malta with regards gender equality since 2005 and has now reached the 15th place in the European Gender Equality Index. However, females still shoulder the responsibilities for care provision and domestic activities (42%) when compared to males (25%) who spend at least one hour daily doing such activities. Malta's lowest score amongst all domains was that of gender equality *vis a vis* the domain of power, ranking in the 22nd place across all the EU countries. This domain is divided in three sub-categories, which are political power, social power and economic. In all three domains Malta still needs to improve its gender equality index rate as females experience gender inequalities in all the three sub-categories.

Tamanaha (2012) defines this principle as the process by which the laws are enacted, administered and enforced. Tamanaha (2012) continues by stating that such process needs to be accessible, fair and efficient and "that such laws must be applied equally to everyone according to their terms" (p.233). The importance of this research lies in the fact that, by understanding whether or not such discrepancies exist, one can link such results to one of the governing principles applied in criminal justice systems existing in democratic countries, which is that of the Rule of Law. Another crucial aspect of this study is that it will provide new insights on

female offending and sentencing in Malta. It aims at gathering an in-depth understanding of what types of crimes are committed by females in the Maltese islands, the social circumstances (if any) which underline female offending and also the presence or absence of underlying factors like early guilty plea, which may determine different sentencing outcomes for men and women. By gathering and analysing such data, this research will provide a comprehensive representation of the types of crimes committed by females as well as the types of sentences received. The importance of this study also lies in the fact that it will also entail an analysis and cross comparison between the same types of crimes committed by male and female offenders and the criminal court sentences meted out.

The main aim of this study is to develop an understanding of whether or not there exists a criminal court sentencing discrepancy in cases of male and female offenders who are found guilty of offences which fall under the same category. The main aim of this research study raises the following core objectives:

1. To identify and analyse the types of crime committed by convicted female offenders who are brought before the Maltese Court of Magistrates: Criminal Judicature between the period 2005 to 2020;
2. To compare the above criminal court cases related information with similar offences perpetrated by male convicted offenders who were brought in front of the Court of Magistrates – Criminal Judicature in 2005, 2010, 2015 and 2020;
3. In case of gender discrepancy in criminal court sentencing, another objective is to identify whether there are any particular instances where female offenders are treated in a different (harsh/lenient) manner than their male counterparts.

1.4 Primary Research Questions

The research study will be based on a number of research questions. The main research question being addressed is whether or not male and female offenders brought before the justice system for the same crimes receive the same punishments, and if not, to explore the reason/s for such discrepancies? Another consequential research question is the identification of the types of crime that female offenders are most likely to be found guilty of by the Maltese criminal court. A third question will address whether or not magistrates make sentencing decisions based on their own stereotypic perceptions associated with the defendants' characteristics, including age, employment status, and whether or not they are responsible for dependent others. For example, do the gender roles that male and female defendants have within their family settings (Breadwinner vs Care-giver) influence the magistrates' sentencing outcomes? Another research question seeks to address the gender gap in sentencing, and asks whether the gender gap is wider in certain types of crimes or if it is uniform across all types of criminal court cases? Yet another research question seeks to understand which types of sentencing from the non-incarceration options are more likely to be given in criminal cases concerning female offenders in Malta. Do mitigating factors such as offenders' cooperativeness, parental responsibility or mental health problems influence the severity of criminal sentencing? And if so, do these mitigating factors, when present, influence the severity of criminal sentencing to both female and male offenders? The main hypothesis being brought forward in this proposed research study is that the process through which the judicial sentencing in criminal court cases occurs is a gendered process.

1.5 Theoretical Framework

Sentencing research shows a connection between the offender's gender and the severity of the sentence received (Gelb, 2010; Lauritsen et al., 2009; Philippe, 2017). The theoretical framework to be adopted in this study is set on two distinct theories, which provide the needed structure explaining why stereotypes about offenders might affect sentencing outcomes as well as the reasons why gender *per se* may affect sentencing outcomes.

The Focal Concerns theory argues that criminal sentencing disparities are linked to time constraints experienced by the judiciary, and which consequentially leads to quickening the decision-making process (Doerner, 2009; Rodriguez et al., 2006). Rodriguez et al. (2006) explain that in an effort to hasten the process of court cases, the judiciary are more likely to make quick decisions, which are frequently founded on conscious or unconscious assumptions about the defendants' characteristics, which can ultimately result in a biased opinion. Doerner (2009) and Holland (2010) explain that according to the Focal Concerns Theory, a quickened decision is generally based on three distinct variables. These are the defendant's blameworthiness, the danger that he or she may present to society at large and the practical constraints that may interfere with the sentencing decisions. Therefore, according to this theory, female defendants may be viewed as less blameworthy and thus judged as less responsible for their criminal actions. Rodriguez et al. (2006) state that the judiciary also considers women as less dangerous than males and therefore these stereotypes may possibly influence the judges' decision making. The third variable which judges refer to according to the Focal Concerns Theory is that certain constraints, such as prison overcrowding, will influence the judges' decision to decide on incarceration or opt for an alternative.

The second theory central to this study is the Paternalism/Chivalry Theory. Holland (2010) stresses the importance and usefulness of this theory in understanding issues of gender discrimination in criminal sentencing. The Paternalism/Chivalry Theory by Herzog and Oreg (2008), originated in the 1970's (Doerner, 2009; Holland 2010; Rodriguez et al., 2006) and states that in a patriarchal society, women tend to be treated in a more lenient manner. Such behaviour derives from the fact that women are seen as the weaker sex and therefore there is an implicit understanding that they need protection from a society that is mainly ruled by men. Saxena (2012) argues that the preferential treatment by which the judicial system treats female offenders is a result of cultural scripts in which women are depicted as naive, fickle and not liable for their criminal actions. Holland (2010) states that according to Franklin and Fearne (2008), a patriarchal society is evident when there exist fundamental differences between males and females. Examples of such differences are wage differences between genders and female under representation in positions of authority (political, administrative and managerial positions). In addition to this theory, Herzog and Oreg (2008) suggest that only women who meet certain criteria can benefit for more leniency by the judicial system. Herzog and Oreg (2008) explain that such treatment can be regarded as a form of exchange in which society reserves leniency only to those women who maintain traditional gender role attributes and behaviours. In fact, Rodriguez et al. (2006) found that female offenders who perpetrate typical female crimes such as shoplifting, illegal drug use and property crimes receive more lenient sentences than male offenders charged with the same offence. However, what happens when females go against societal stereotypes or step out of the boundaries of established gender roles? The Evil Woman hypothesis has been used to complement the Paternalism/Chivalry theory (Nagel & Hagan, 1983; Embry & Lyons, 2012). This Evil Woman hypothesis offers an explanation why some female offenders are given a harsher punishment than their male counterparts. According to this hypothesis, female offenders who breach gender attributed stereotypes and behave in an

unladylike manner will not only fail at being treated in a chivalrous manner but are met with more severe punishments (Tillyer et al., 2015).

1.6 Research Design

A Pragmatic Approach (Feilzer, 2010) is used to address the research questions of this study. Mawlood (2017) states that the pragmatic process in research is one which involves the use of the most appropriate methods to address the research problem. In view of this, the research methodology of this study necessitates the use of Mixed Methods. The main research question is whether or not males and females who are charged with the same crimes end up with the same punishments, and if not, what is/are the reason/s for such discrepancies. To gain an understanding of the criminal sentencing situation within the local context, this study requires a research method which gathers both numerical data as well as textural data (Williams, 2007). Williams (2007) states that:

“The mixed methods approach to research provides researchers with the ability to design a single research study that answers questions about both the complex nature of phenomenon from the participants’ point of view and the relationship between measurable variables” (p.70).

By adopting a Mixed Method approach, the data collected through the quantitative method sets the grounds for the qualitative study which will be subsequently analysed to answer the research questions. The Mixed Method design adopted in this study is the Sequential Explanatory model (Creswell, 2003; Trahan & Stewart, 2013). This model best fits this research study because as explained by authors Trahan and Stewart (2013):

“In mixed-methods research, the particular model often will dictate whether the researcher takes an inductive or deductive approach. Sequential explanatory models are often best served by a deductive approach. The quantitative antecedent can be used to identify the most salient concepts and test relationships between them. The subsequent qualitative study can be used to identify these concepts in qualitative data and elaborate on their interactions” (p.67).

The sampling strategy adopted in this study is twofold since, as already explained, this study consists of a quantitative method of data collection as well as a qualitative one. The quantitative section of this study gathers information from an online database of the Maltese Criminal Sentences from 2005 to 2020. This involved downloading of each court sentence given to female defendants and checking whether they were found guilty or not. Those court sentences involving a convicted female offender are used as a database to ascertain which types of crimes female offenders were found guilty of. Following this procedure, similar cases perpetrated by males in the years 2005, 2010, 2015 and 2020 are compared and analysed. Therefore, cases from 2005, 2010, 2015 and 2020 that consisted of similar crimes committed by males and females are analysed. The type of content gathered from the criminal court final sentences is the Manifest Content Analysis (Rose, Sprinks & Canhoto, 2015) as it gathers elements which are written and countable thus avoiding any interpretation of data from the researcher's side. A coding schedule is used to facilitate the analysis of the data (Rose et al., 2015). This coding schedule is divided into three distinct parts, that is, a coding schedule which gathers demographic data about the criminal cases; a coding schedule which gathers data about the crime itself and a coding schedule which gathers data about the convicted criminal. The one which gathers demographical data gathers information about the gender of the offender and the magistrates. It also comprises coding of the offenders' citizenship status, offenders' age at time of offence and at time of sentence. The coding schedule which gathers data about the crime itself includes date of offence and sentence, type of offence, location of the crime, and aggravating factors related to the crime itself, for example mode of theft, among others. The coding schedule which regards gathering and coding information about the convicted criminal includes the offenders past criminal history, mitigating factors such as pleading guilty, presence of dependants, etc.

Data retrieved from the quantitative research method is used in the formulation of the qualitative one, which consists of an in-depth semi structured interview guide. This interview guide is used in the one-to-one in-depth interviews being held with professionals who served or are still serving in the Criminal Justice system. These professionals are probation officers, lawyers from the Attorney General's office, police inspectors who have a prosecuting role and ex judiciary members. An introductory letter explaining the proposed study as well as information about informed consent together with the list of questions to be asked was sent to these professionals inviting them to participate in this research study.

The data gathered from these interviews is analysed via a thematic analysis approach. This further reinforces the choice behind the use of the Sequential Explanatory Model in this study. As stated by Trahan and Stewart (2013) "one or few specific findings of the quantitative study can be elaborated upon keying in on the relevant features of a qualitative data set" (p.66). Furthermore, the significance of interviewing professionals lies in the fact that as explained by Saxena (2012):

"A theory about existing beliefs and stereotypes towards women cannot be corroborated with research that focuses on offender characteristics and not on beliefs held by individuals who judge or evaluate the offenders" (p.3).

Besides the notion that such a methodological approach best fits the purpose of answering the research questions, which are the foundations of this study, it will also ensure the validity and reliability of this study because of the triangulation of data. The importance of using triangulation of data sources lies in the fact that the researcher uses the strengths while minimising the weaknesses associated with both the quantitative and qualitative approaches (Williams, 2007). The mixed method in the form of sequential explanatory approach described above will increase the use of triangulation because it will provide the researcher with a broader view when analysing the data gathered (Maruna, 2010; Mertens & Hesse-Bieber, 2012).

This research design also reflects the researcher's positionality within this study. Being a social worker by profession for the past 20 years, working on court related cases, the researcher has gathered significant work-related experience when it comes to cases being processed by the Court of Magistrates (Criminal Judicature). Therefore, the interest to study this topic stems from work related experiences of court cases. The researcher's assumptions about gender discrepancies in criminal court sentencing is that the court process is a gendered process. The researcher values the contribution to knowledge that such a research study could provide. In order to obtain an in depth understanding about the topic under study a Mixed Methods approach was used because it facilitates and enhances the process of triangulation of data. Furthermore, another reason behind the choice of this approach is the researcher's aims to diminish the weaknesses of each method while strengthening the advantages of both methods. Having worked on court related cases for many years, the researcher is aware of the possibility of Confirmation bias and therefore particular attention will be paid in reporting and analysing of the information that the participants will share during the semi-structured interviews.

1.7 Ethics

Being aware of the high ethical standards expected by the University of Malta regarding the process of conducting research, this research study is based on core data which is publicly available online and the information is accessible from any computer system. The online data analysed in the quantitative study was then subsequently used to provide a scientific basis for the formulation of the in-depth semi-structured interview guide.

In terms of the qualitative aspect, informed consent was given due consideration. Initial contact with potential interviewees was made through a formal letter in which the research being undertaken was explained. The participants' right to accept or decline the invitation to participate

in this study was also explained in detail. Furthermore, it was also stated that potential interviewees would be free to answer the questions being asked as well as to refuse to do so and that they could withdraw from the study at any time. The in-depth semi-structured interview guide was aimed at facilitating one-to-one interviews with professionals working in the criminal justice field, who were not audio recorded during such interviews and this to facilitate their participation. Particular attention was given to maintaining confidentiality during all the process of the gathering and analysis of data. The FREC/UREC process was adhered to.

1.8: Maltese context

This section is intended to provide the reader with an explanation of the demographical and cultural milieu of the Maltese islands and this to better the understanding of the context. The following section will provide an overview of the Maltese demography, the gender equality in Malta as well as the structure of the Maltese Courts and the caseload of the Court of Magistrates – Criminal Judicature. A brief history of the gender gap in the Maltese prison population is provided.

1.8.1: Maltese Demography

Malta's population in the early 2000's saw steady growth. According to the Population and Demographic Statistics by the National Statistics Office (2003) (NSO) of Malta, the population in 2003 was approximately 398,000. By 2008, it had increased slightly reaching about 410,000. The NSO (2003) states that historically, Malta has had a fairly balanced gender distribution. In 2003, the male population was slightly higher than the female population. Furthermore, Malta's population structure in the early 2000's showed a growing number of elderly individuals, as well as a youthful population (Demographic statistics: population by age and sex, 2008). The age

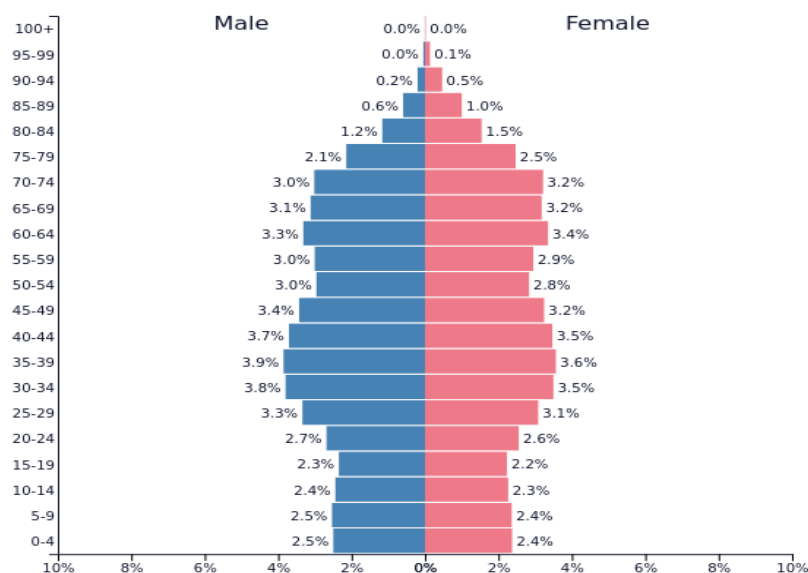
distribution in early 2000's was as follows; 15.2 % of the population was aged between 0 to 14 years, 67.5% of the population was aged between 15 to 64 years and 17.3% of the population was over 65 years. According to the Regional Statistics Malta 2022 Edition, the Maltese islands experienced a change in the population in the period between 2014 and 2020. Malta and Gozo had the highest increases in the elderly population, while a decrease was seen in youths aged between 10 and nineteen years. These latest statistics also show that there was an increase in the foreign population, especially in the cohort ranging from thirty to thirty-nine years of age. Data shows that in the Malta region there is a moderately higher concentration in the twenty to thirty-nine years of age, while in the Gozo region the higher proportion is that of persons over fifty years of age. These latest statistics also show that for the first time in years Malta's population consists of a relatively larger number of males as compared to the number of females (Regional Statistics Malta 2022). In fact, presently there are 266,939 males and 249,161 females living in Malta and 17,476 males and 17,087 females living in the Gozo region. The total amount of people who are currently residing in Malta is that of 516,100, while there are 34,563 person who reside in the Gozo and Comino region.

As far as Maltese and Gozitan households are concerned, the Regional Statistics Malta (2022) states that the most common household size is that of a two-person household. The average disposable income for each household was highest in the Western District reaching 38,365 euro while the lowest income is found in the Northern Harbour district which stands at 28,318 euro. The rates of persons who are at risk of poverty are 17.2% in Malta and 12.9% in Gozo. Malta experienced an increase in the labour market, and this occurred across all regions. In fact, an increase of 1,4% was recorded when compared to the previous year, that is, 2019. This meant that there was the amount of 217,036 Maltese residents who worked on a full-time basis. This increase in the Labour market was also experienced in the Gozo and Comino regions where there

was a rise of 3.1% when compared to 2019, with 15,864 who were fully employed. On the other hand, the largest percentage of unemployed persons resided in the Northern Harbour district, and this amounted to 774 people.

The life expectancy in Malta is 80.7 years for males and 84.8 years for females (O’Neil, 2024). As seen in Figure 1, the population structure of Malta is getting older. This can be attributed to two distinct factors, which are that firstly less babies are being born in Malta and therefore the birth rate has decreased along the years. The second factor is that the life expectancy is getting longer.

Figure 1
Malta’s Population Pyramid.



Source: Population Pyramid retrieved from <https://www.populationpyramid.net/malta/2022/>

1.8.2: Gender equality in Malta

The Gender Equality Index 2022 finds Malta ranking at the 13th place with a score of 65.6 out of 100 points. This makes its score 3.0 points less than the European Union's score which stands at 68.6 points. In the past twelve years, that is from 2010, Malta has made important improvements which increased its score by 11.2 points. The improvements which Malta has achieved pertain to the areas of work which include participation and segregation and quality of work (+11.9 points) and time which comprises care activities and social activities (+9.9 points). As stated in the Gender Equality Index 2022 Malta's best performance is in the subcategory of segregation and quality of work scoring 73.0 points and maintaining the 2nd place amongst European Union countries since 2010.

The biggest achievement was in the domain of power, where Malta increased its score by 2.9 points. This was mainly due to the changes made in the two different sub domains, that is, in the economic and in the social decision-making sub domains. When compared to other member states, Malta achieved a striking increase of 28.9 points in the sub domain of social power. This means that Malta increased gender equality in three main sections:

- “Share of board members of research funding organisations
 - Share of board members of publicly owned broadcasting organisations
- Share of members of highest decision-making body of the national Olympic sport organisation” (Gender equality index 2022 Malta, n.p.)

1.8.3: The Courts of Justice in Malta

The judicial system in Malta is built on two major foreign systems, namely the English and the Italian judicial systems. Before the Maltese islands were given to the Knights of St. John by the King of Sicily the emperor Charles V, the judicial system in Malta was a sporadic one as there

was no proper law-making structure. In fact one of the most important legacies left by the Knights of St. John is the Maltese Civil Law. It was under the rule of the Knights of St. John that the Maltese Civil Law was conceived and it was based on the Roman Law and the Napoleonic Codes. In 1800, the British empire occupied the islands. In 1831, a specialised commission was set up and its sole purpose was to improve the existent judicial system which was contained in the Code de Rohan. The nineteenth century brought with it major reforms in the Maltese judicial system. Testone (2010; p 470) states that:

“The projections were a substantive criminal code, a substantive civil code, a code of civil procedure as well as a code for criminal procedure”.

One important aspect of the criminal law in Malta that links it with the English Law is that it applies the principle that every person brought in front of the criminal court is considered innocent until proven guilty. Another aspect adopted from the English system is that in cases of jury, the presiding Judge is always assisted by a jury (Testone, 2010).

Currently, the Maltese Judiciary is composed of one male Chief Justice, fourteen male Judges and ten female Judges, as well as 5 male Magistrates and eighteen female Magistrates. The Maltese court system which deals with criminal issues is divided into the Superior Court, consisting of the Court of Criminal Appeal and the Criminal Court and the Inferior Courts which consist of the Court of Magistrates. The Court of Criminal Appeal deals with appeals made by individuals who are convicted either by the Criminal Court or by the Court of Magistrates (Criminal Judicature). The Criminal Court deals with criminal cases which are punishable by a term of more than ten years imprisonment. Indicted persons who are prosecuted for criminal cases liable to a punishment of more than 6 months but less ten years imprisonment can choose to be heard before the Court of Magistrates Criminal Judicature.

The graphs presented hereunder illustrate the situation *vis a vis* the caseload as found in <https://www.statista.com/statistics/970916/life-expectancy-at-birth-in-malta-by-gender/> and as processed by the Court of Magistrates – Criminal Judicature in Malta and Gozo. The graphs also provide the number of new court cases as well as terminated ones. Each graph provides an overview of the situation regarding the turnover of court cases on a monthly basis.

Figure 2

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Malta) in 2005

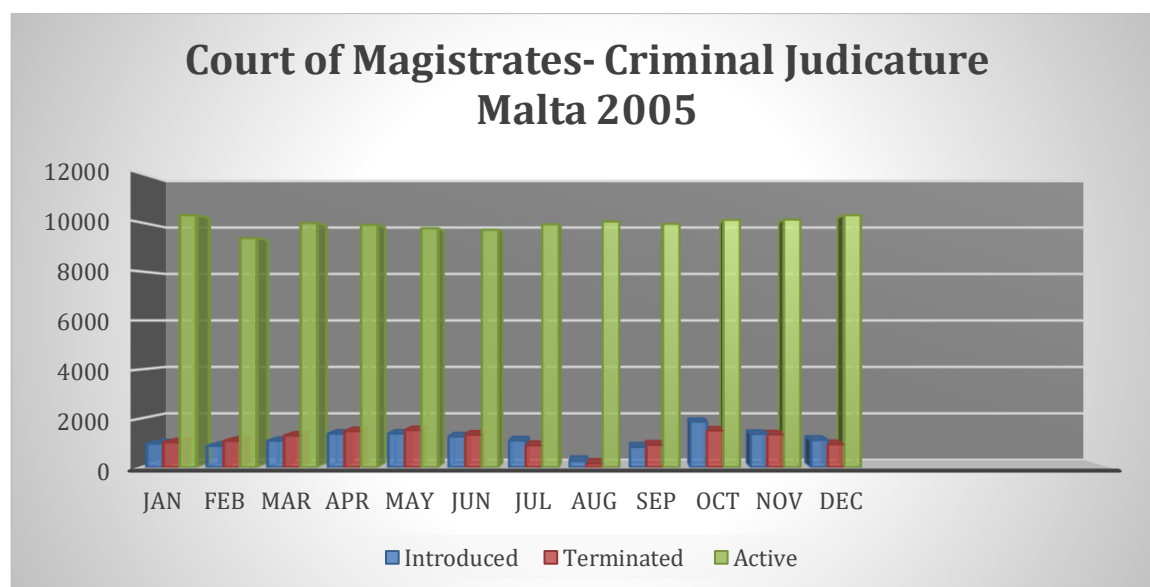


Figure 3

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Gozo) in 2005

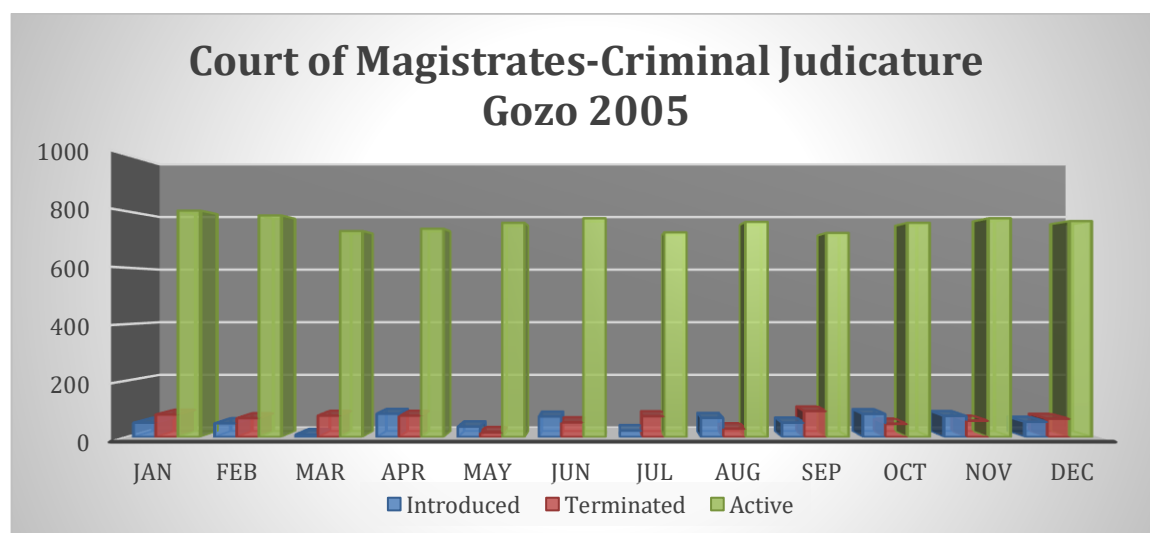


Figure 4

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Malta) in 2010

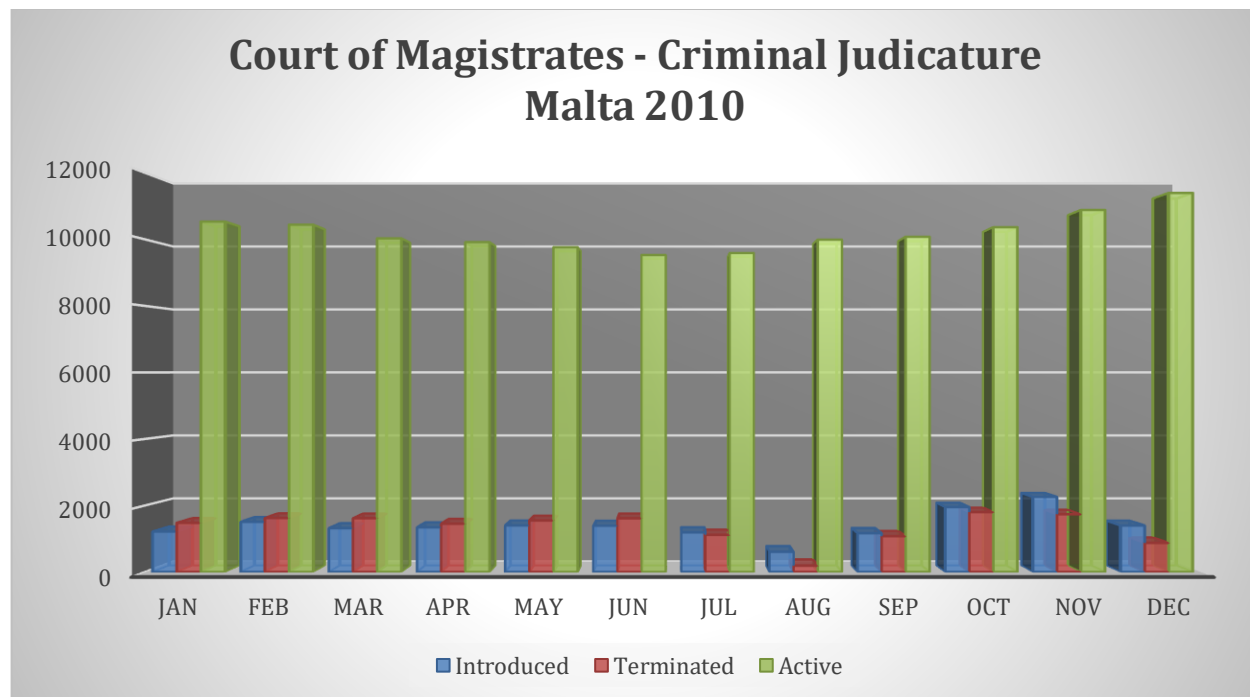


Figure 5

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Gozo) in 2010

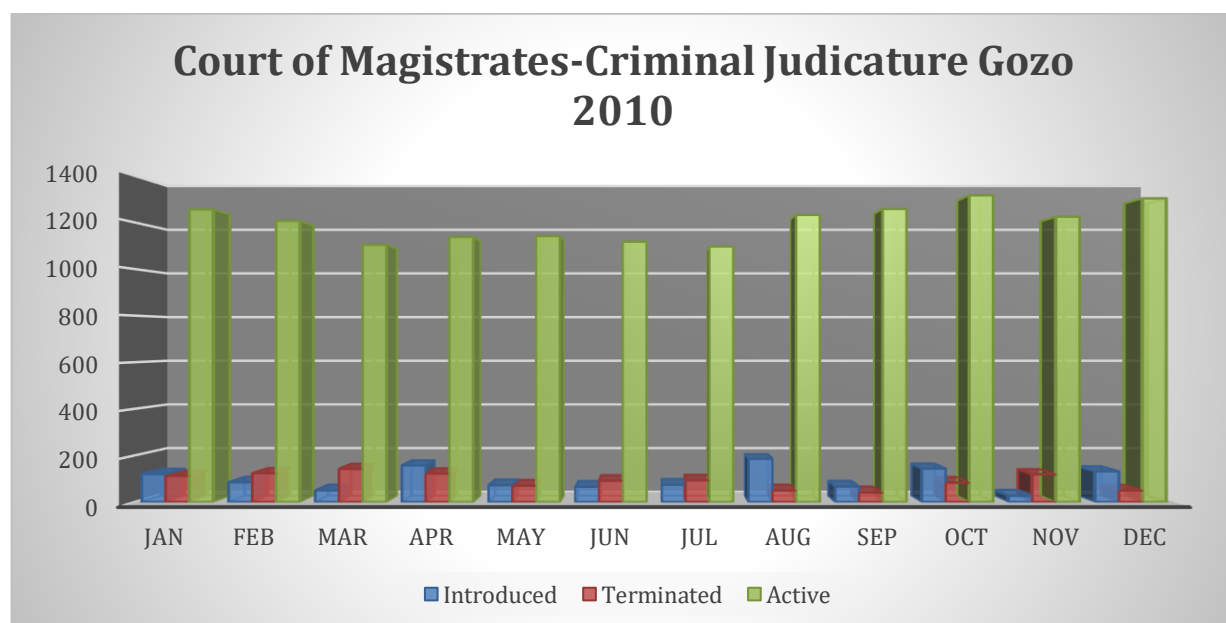


Figure 6

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Malta) in 2015

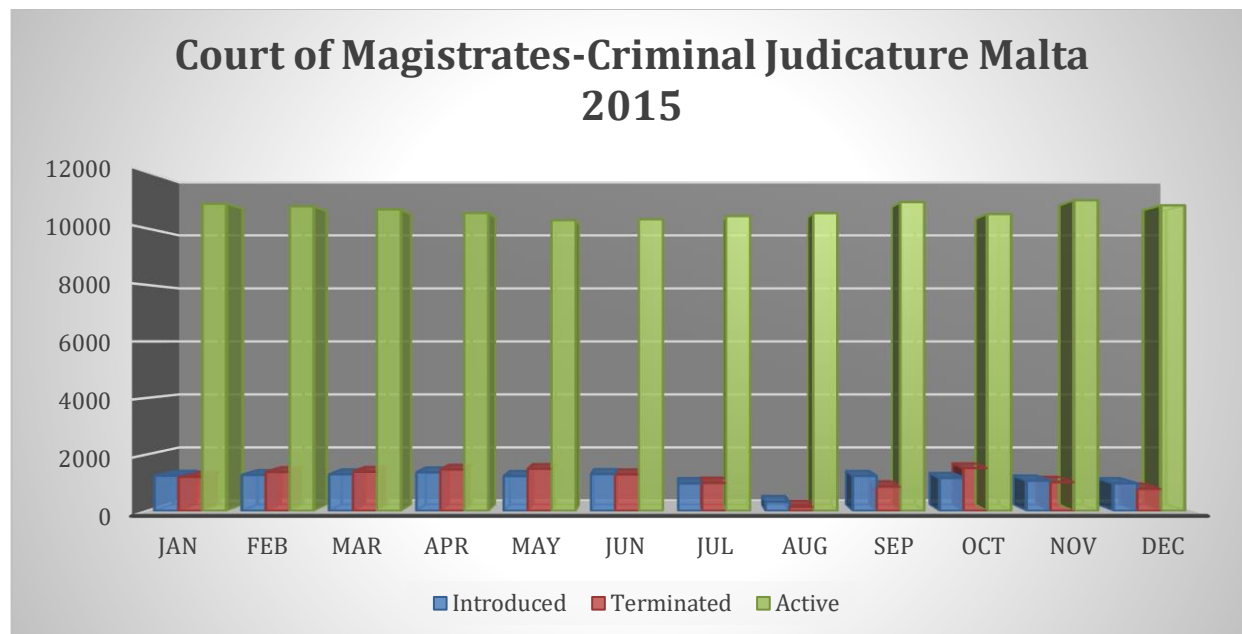


Figure 7

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Gozo) in 2015

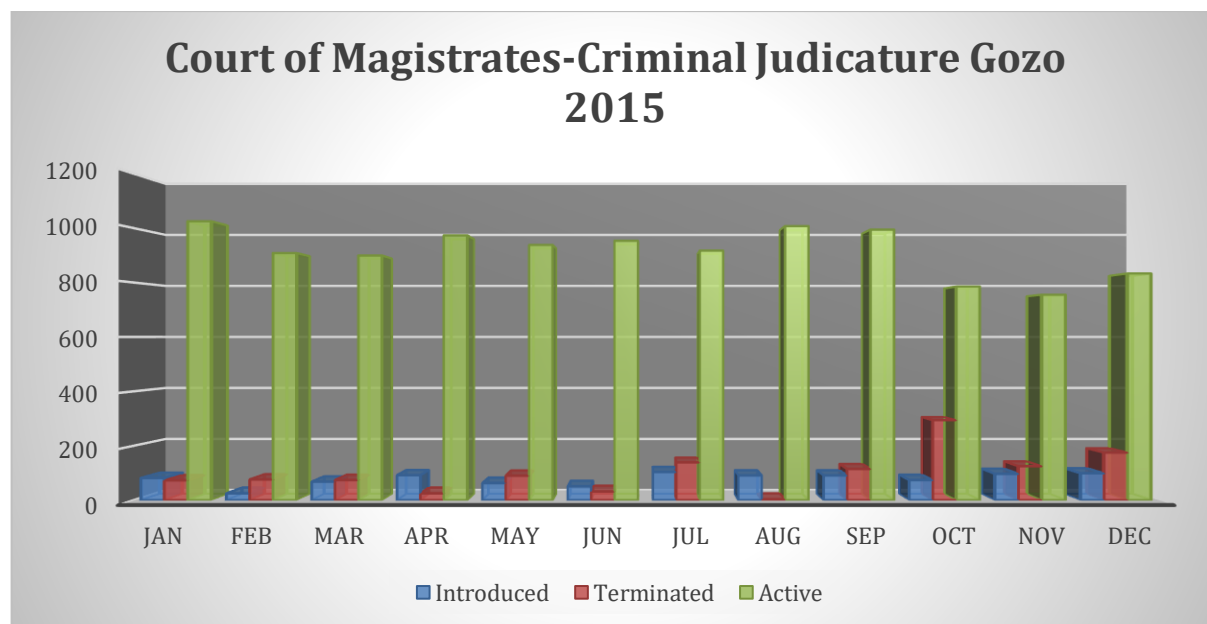


Figure 8

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Malta) in 2020

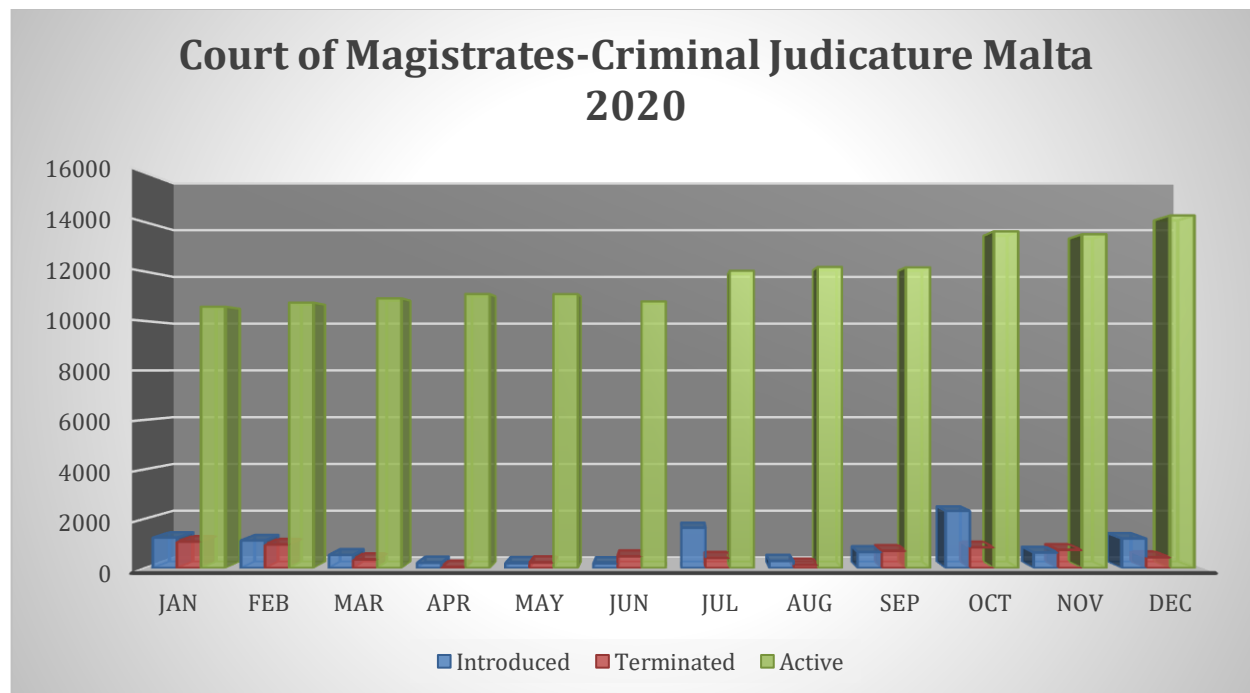
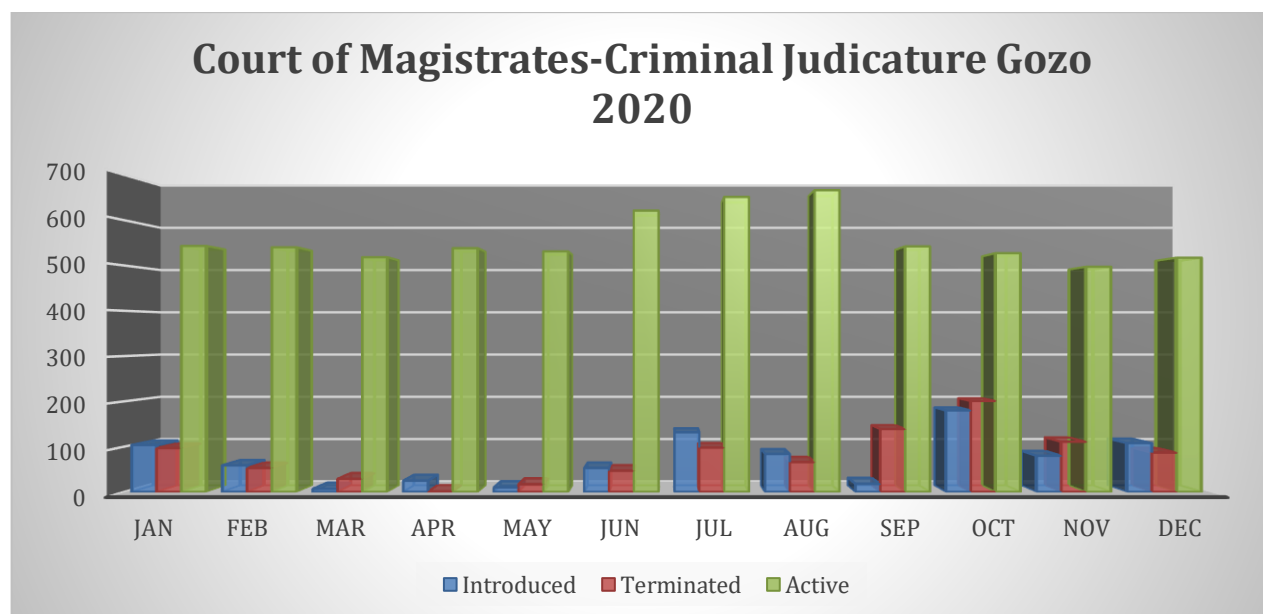


Figure 9

Criminal Cases dealt with by the Court of Magistrates Criminal Judicature (Gozo) in 2020



Source: <https://justice.gov.mt/en/COJ/Pages/ReportsCriminal.aspx>

1.8.4: Criminal Sentencing and Gender Gap in Malta

One of this research' main focus is to understand whether there is a gender gap in criminal sentencing. This comprises seeking an understanding about whether or not there is a gender gap in the percentage of females who are convicted of a crime versus their male counterparts. Furthermore, this research tries to identify the type of crimes which female offenders are found guilty of in the Maltese context. Richardson (1825, as quoted by Knepper & Scicluna, 2010; p.411) illustrates such gender gap in the prison population within the Maltese context by stating that around two hundred years ago, more specifically on the 25th April, 1825, the Maltese prison population was that of 211 prisoners. Out of this total number, nine of them were female. Interestingly, female offenders were found guilty of similar crimes as those perpetrated by women in present days.

“Maddalena Mallia was serving an eight-day sentence for assault, Dianora Xuereb was serving one month for stealing, and Anna Bonello and Caledonia Maemara six months each for stealing and receiving stolen goods. Other had received far longer sentences. Rosa Saliba was serving three years for assault, M. Di Paris Muscat and Teresa Haber ten years for domestic robbery” (Knepper & Scicluna, 2010; p.410).

Pullicino (2016) in her study about theft as a criminal activity in Malta during the period 1838 to 1888, states that theft was considered by Maltese authorities a “high volume crime” (p.28). During this period the criminal court determined the severity of the sentences to be meted out by the amount/value of stolen goods and not by the offenders' modus operandi. Maltese authorities applied the method of deterrence as a method to prevent crimes against the property. In fact a first time offender who was indicted with committing simple theft was liable to a sentence of one to six months hard labour. Pullicino (2016) research also found out that during this period the main perpetrators of theft were males. Infact data showing the number of male and female offenders who during the period from 1838 to 1888 were found guilty of theft, indicate that males were mostly likely to commit theft. This is due to the fact that there were 1396 accused

males while on the other hand only 132 females were convicted of this crime. According to this study, females were more involved in domestic theft. In fact the vast majority of female perpetrators worked with wealthy families and therefore they had a heightened opportunity to steal from their employers.

This discrepancy between male and female offenders who are given an incarceration sentence appears to still be present in current times. The World Prison Brief (2021) presents the existing situation *vis a vis* the female prison population in Malta. Table 1 shows how the female prison population has increased over the past decades.

Table 1

Malta's Female Prison Population

Year	Number of female prisoners	Percentage of total population	Female prison population rate (per 100,000 of national population)
2001	11	3.9%	2.8
2005	14	4.1%	3.5
2010	34	5.7%	8.2
2015	37	6.3%	8.7
2021	58	7.1%	11.2

Source: World Prison Brief (2021; n.p.)

1.9 Thesis Structure

This research study is presented in seven important and distinct chapters. The first chapter, the Introduction Chapter describes the research problem and lays out the reasoning behind it. Both the rationale and the purpose of this study are explained. The primary research questions are also

introduced in this first chapter. An introduction to the theoretical framework used in this study is provided in the introduction section. A brief introduction about the research design adopted in this study is also introduced to the reader and the importance of assurance that high ethical standards are maintained throughout all the phases of this research study is also explained. A section detailing the Maltese context is also included in the Introduction chapter. This section is divided into three distinct sections, namely, the Maltese Demography, Gender Equality in Malta and the Courts of Justice in Malta. This section is intended to provide the reader with the information needed to understand better the Maltese context.

The second chapter reviews past research studies which are relevant in addressing the research problem and answering the research questions. This chapter is divided into two main parts, one which covers important research about the questions being raised by this research study and a following section which delves deep in the theoretical framework adopted. The first part of this chapter starts with putting things into perspective by showing how the research problem was addressed and studied in early research. The researcher's positioning, that is, that incarceration sentences are harsher than non-custodial sentences is also explained via relevant academic literature. The various types of non-incarceration options are also referred to in the literature review chapter. This is done with the aim of facilitating comprehending the type of different options of non-custodial measures which are enforced by judicial authorities. A presentation of relevant academic literature about important variables such as race, mitigating/aggravating factors in criminal sentencing and gender gap in crime amongst others are discussed and an analysis of these studies strengths and weaknesses is also provided. The second part provides a comprehensive analysis of the theoretical framework steering this research study. Two main and distinct theories are explained, and a critical evaluation is also provided.

The Methodology chapter focuses on describing the scientific method applied in this study so that the issues raised by the research questions are answered in a scientific way and applied to the local setting. The information provided within this section is shared so that this study could be replicated in the future. A thorough analysis as to the reasons why a mixed method approach was chosen as the best suited scientific method to address the research problem is also provided. Consequently, both the quantitative and qualitative research designs are explained in detail, and the respective strengths and weaknesses of each method are scrutinised.

Chapter 4 consists of the presentation and analysis of the quantitative method of research applied in this study. Data is presented via tables and figures so as to facilitate understanding the findings. All the findings are analysed from a descriptive and an inferential point of view as well as compared to academic literature.

Chapter 5 details the qualitative research method of this study. Data gathered from the one-to-one interviews is presented grouped into individual themes. Qualitative data is analysed by referring to quantitative data and academic literature. Reference to answer the research questions of this study is done in both the quantitative chapter as well as the qualitative one.

Chapter 6 focuses on the discussion of findings as it provides a triangulation and integration of both quantitative and qualitative data. In this chapter both quantitative and qualitative data are discussed in terms of the research questions being put forward by this thesis. This data is also compared to academic literature.

The Conclusion Chapter consists of a general overview of the research method used. An overall review of the quantitative and the qualitative findings in relation to the research' aims and

research questions is also made. This research' main contributions to knowledge are identified and explained as well as the limitations of this study. Finally, recommendations for policy change are also put forward.

2 Conclusion

As can be seen in the information above, the topic regarding possible gender disparities in criminal court sentencing is a complex and a multifaceted one. This chapter is set to be the foundation on which this research study is developed. In fact, each section within the introduction chapter is developed further in the chapters to follow. The following chapter, on the other hand, encapsulates relevant research studies that were performed in the recently past years and each study was chosen by the researcher with the intention of providing scientific comprehension of the different aspects evolving from the research problem put forward in this study.

Chapter 2

Literature Review

The Literature Review Chapter will focus on past academic studies which will serve as the bases for a better understanding of the topic under study. The main research question of this study is whether the judicial system treats respective genders in a differential manner or else the treatment reserved for male and female offenders is one which is biased based on gender. This chapter will be divided into different sections which address the various issues put forward by the main research question.

2.1 Gender and Sentencing

The following introductory section attempts to provide an insight on early research studies which focused on the research problem presented in this study. Different early research shows that the issue of gender disparities in criminal court sentencing has been the subject of debate and research on an international basis for the past decades.

2.1.1 Early Research

One of the first authors who studied gender disparities in criminal sentencing was Otto Pollak (Jeffries, 2001). In his book *The Criminality of Women* (1950), Pollak stated that women were treated leniently by the courts' system as the criminal justice system was dominated by men and evidenced by male ideas of chivalry. Following Pollak's study (1950), many subsequent studies (Bickle & Peterson, 1991; Kruttschnitt, 1982) supported the notion that court officials felt compelled to protect the 'weaker sex'. While these studies reinforced the persistence of gender stereotypes in judicial decisions, it is crucial to assess whether their findings were context-dependent. For example, Kruttschnitt (1982) focused on a specific period in the United States' history when gender roles were rigidly defined. While these findings may have reflected a particular and specific context, modern research might lead to different findings especially in jurisdictions with greater gender equality.

Haggart (1973) performed an analysis of secondary data pertaining to thirteen different books in which authors tried to understand the reasons why women commit crime at a lower rate than men. The period in which these books were published was that from 1918 and 1973. Haggart (1973) refers to the table illustrated in Lunden (1967, p.267) to gather data showing the differential treatment of female offenders. . In fact, the information provided by Lunden (1967) in Table 2 covering the period between 1959 and 1963, shows the percentage of convicted persons who were granted probation instead of a prison sentence by the California Superior Court. The data clearly shows that the percentage of female offenders that were granted probation is higher than for male offenders across all crimes.

Table 2*Percentage of Convicted Offenders Granted Probation by the California Superior Courts*

Offence	Male	Female
Forgery and Checks	46.1	71.4
Larceny	44.3	69.6
Narcotics	38.4	58.5
Bookmaking	87.3	91.9
All other	42.8	62.5
ALL	44	68.5

Source: Haggart (1973; p.44)

Haggart (1973) attributes this discrepancy in criminal sentencing to two distinct but consequential factors. The first factor is that women commit crimes at a lesser rate than males which in turn leads judicial authorities to view female offenders as less threatening than their male counterparts and this leads to female offenders benefitting from a lenient treatment. Another possible explanation as to why females are treated in a more lenient manner in the criminal sentencing phase is that, as explained by Haggart (1973), it all boils down to how males and females are brought up and to the way in which their exposure to the “biologically influenced” (p.46) socialization process affects their behaviour respectively. Sethna (1952, as quoted by Haggart, (1973) claimed that women were “more docile and capable of self-control to a greater extent than men except during menstrual and pre-puberty times” (p.45). This actually amounts to introducing the idea that there might be other variables, in this case a biological and “biologically influenced” (Sethna, 1952, as quoted by Haggart, 1973, p.46) social variable in understanding male versus female offenders and the consequent criminal sentences meted out. One can argue that in current terms and standards this reasoning could be judged as primitive, but one must acknowledge the fact that back in the mid twentieth century researchers were attempting to understand the underlying factors behind the gender differences both in offending

and in the criminal sentences given. The importance of studying stereotypical roles attributed to females by society and their impact on gender discrepancy in sentencing was also highlighted in the study by Kruttschnitt and Green (1984). This research was specifically designed to understand better the importance of the gender role attitudes in determining sentencing outcomes. This in view that, according to authors, judges tend to show a paternalistic attitude towards female offenders and often prefer not to sanction them to a prison term. Through their quantitative research study, which encompassed a stratified random sample of over two thousand male and female convicted offenders who were sentenced by the criminal courts in Minnesota, U.S.A, Kruttschnitt and Green (1984) came to the conclusion that female offenders who did not meet sex-role stereotypes such as being financially dependent on others or being a mother were in fact meted with harsher penalties. The importance of this study lies in the fact that, whereas previous research by Haggart (1973), attributed leniency to the type of crimes which are generally associated with female offenders, that is, non-violent crimes, this particular research spotlighted the issue of the influence of non-traditional roles held by female offenders as putting them at higher risk of receiving a harsher sentence.

In contrast with Kruttschnitt (1982) and Kruttschnitt and Green (1984) whose studies focused on sex-role stereotypes acting as forms of social control on female offending, Daly (1987) brings forward the argument that women receive more lenient sentences because of the “social costs to punishment” (p.152). Daly’s (1987) research tested the hypothesis that familial male and female offenders receive more lenient sentences than non-familial male and female offenders. Daly (1987) explains the reasoning behind her hypothesis by describing two main aspects. The first is that any criminal court judicial officer has the interest to maintain social order thus tries to find alternatives to imprisonment to avoid breaking up families. The second aspect is that it is in the judicial authorities’ best interest to sanction the guilty (defendants) while protecting the innocent

(defendants' family members). Daly stresses the fact that keeping the defendants' families together is also justified in terms of economic safeguarding grounds. Daly's (1987) quantitative study used a data set which comprised of 2,004 defendants, of which only 11% were female, who were prosecuted in a lower New York City criminal court over a four-month period between 1974 and 1975. The author found that male offenders who were married but had no dependants were not advantaged in the criminal sentencing phase. The most interesting result in Daly's (1987) study was that male and female defendants who were "non-familied" (p.168) were treated alike. On the other hand, female offenders who were both married and had children benefitted the most from leniency in the kind of the sanction received. Another study which provides more insights on how familial and non-familial offenders were treated by the criminal court sentencing is the study by Bickle and Peterson (1991), as they emphasise the fact that the offenders' status has also a bearing when studying gender and sentencing.

Bickle and Peterson (1991) focused on other variables other than gender, including 'exploratory variables' (p.379) such as family status and associated responsibilities. The results of this quantitative study showed that being the family breadwinner did not influence the severity of sentencing outcomes with regards to male offenders. The authors also state that marital status and provision of emotional support to family members or significant others "have uniform effects on the sentences of males while for females the influence of these variables depends on the race of female offenders" (p.390). Another interesting result which came out of this study was that white female offenders who lived alone and in an independent manner were treated in a more punitive manner. Bickle and Peterson (1991) explain that the reasons behind such results is that white female defendants that lead an independent life are seen by judicial authorities as different from the typical stereotype associated with the female gender, which is one of caregiver and that of shouldering responsibility towards husbands and off-springs. Authors define this

variable as conforming with “white male hegemony” (p.391) and these findings are in agreement with those of Daly (1987) study, which provides evidence that females who adhere to typical gender stereotypes receive more lenient sentences. Bickle and Peterson (1991) found that Black female offenders benefited from being married as it resulted in them receiving a more lenient criminal sentence. The interpretation given to this difference in the criminal sentence meted out to female offenders of different races is attributed to the fact that court officials might perceive married female offenders as already bound to a form of ‘informal control’ (p.391). Results also show that the marital status of male offenders (of both races) increased the likelihood of imprisonment. Authors argue that court officials view these offenders as much more irresponsible and irrational in perpetrating their criminal activities. The major strength of the research performed by Bickle and Peterson (1991) is that it shed light on the importance of other variables rather than consideration of the different gender when trying to understand the existent gender discrepancies in the criminal court sentences. This research study presents a significant weakness as it was based on a very small sample of female offenders (n=124) as compared to that of male offenders (n=390) and it examined only those offenders who were found guilty of forgery thus excluding other important crimes like, such as, property crimes or crimes of violent nature.

Fenster and Mahoney (1981) state while there has been various research on gender disparity in criminal sentencing, due importance must be given to any prior criminal record and degree of seriousness of the offence of the defendants as this will help in gaining a further understanding as to whether female offenders are treated more leniently than their male counterparts. Fenster and Mahoney (1981) quote four studies which attempted to examine such factors and all of them yielded different conclusions. According to Fenster and Mahoney (1981) this was due to the fact that these previous research studies compared sentences of male and female offenders who

committed separate and distinct criminal acts. In order to avoid such incongruences, Fenster and Mahoney (1981) studied and analysed the criminal court sentences given to male and female co-defendants, that is, offenders who were charged with the same crime. The methodology adopted by Fenster and Mahoney (1981) was that of a mixed approach. Statistical data from 105 pairs of co-defendants who were found guilty by an urban felony court during 1972 to 1977 was used. Furthermore, this study also involved one-to-one interviews with criminal court authorities such as judges, probation officers and lawyers. The results of this study indicate that even when both male and female offenders committed the same crime and had similar prior criminal records, the criminal sentence given to female offenders was more lenient than that of males.

Naylor's (1992) study tries to explain the anomaly identified by Fenster and Mahoney (1981), in the pilot study performed in three Australian Magistrates' courts, namely Melbourne City Court, Prahran court and Broadmeadows court. The data in this observational study was gathered within a five-month period. Naylor (1992) found that female offenders were treated more leniently than males. One important aspect of this study is that Naylor (1992) states that even when criminal sentences were appealed on the ground of disparity by a male co-offender who was meted out a harsher sentence than that of his female counterpart, those appeals were unsuccessful. Naylor (1992) attributes such discrepancies to the influences exerted by judicial personal values and the way such values influence their decision-making process.

In order to understand better the discrepancy between genders *vis a vis* the criminal sentence meted out, Moyer (1992) performed an empirical analysis of the findings of three 1987 reports submitted to the Ministry of the Solicitor General of Canada that scrutinised 23 years of homicide data from 1962 to 1984. Together with gender being an independent variable, Moyer (1992) used

race as another independent variable to study any possible correlation in the sentencing discrepancies between offenders of different race and gender. To study race as an independent variable, Moyer (1992) included analysed data of Canadian offenders and categorised them as non-aboriginal and aboriginal offenders. The results clearly suggest that there were no discrepancies in the severity of the sentences due to gender and race of offenders. However, an interesting result was that non-aboriginal women were “more likely than aboriginals to be judged not guilty by reason of insanity at their trial” (p.399). According to Moyer (1992) these findings may suggest cultural barriers in that non- native judicial authorities may not raise the question as to whether aboriginal offenders might have perpetrated a homicide because of mental health issues. On the other hand, a study by Green, Mills and Read (1994) contrasts the idea that female offenders received more lenient sentences. These researchers studied 573 drug couriers of different nationality (59 nationalities in total), of whom nearly one third of the group were female couriers and who were arrested in Heathrow and Gatwick airports during the period of 1991 and 1993. Green et al. (1994) concluded that:

“Women couriers experienced a slightly higher custody rate than their male counterparts (86.7 percent compared to 77.9 percent), quite remarkable in view of the generally lower risk of custody experienced by women in British courts” (p.485).

Spohn and Spears (1997) performed quantitative research, which included detailed data of 8,414 defendants who were charged with violent offences before the Detroit Recorder’s court during the years 1976, 1977 and 1978 respectively. Spohn and Spears’ (1997) study yielded two totally different results with regards to the impact that race has on the criminal sentence outcome. In fact, the authors state that “Black males faced the highest odds of incarceration, followed by white males, Black females and white females” (p.51). They explain that their study indicates that Black male offenders received a prison sentence more often than white offenders, that is, that the percentage of Black offenders receiving prison sentences was higher and the reason attributed by the authors to this statement was tied to racial differences. Where Black offenders are

concerned, they are exposed to additional discrimination. Spohn and Spears (1997) explain that Black male defendants were incarcerated more often than Black female offenders because of their gender. According to the authors such results propose that judges of whom the majority were men, are influenced by their paternalistic or chivalrous attitudes in determining the sentences given to female offenders. This is in contrast with the study performed by Bickle and Peterson (1991) who stated that white independent female offenders were treated in a harsher way than their male counterparts.

Further research which highlights stereotypical associations attributed to the female gender and how this impacts criminal sentencing is that done by Doerner (2009) who quotes Rafter and Stanko (1982) and Rafter (1990) and states that these authors recognised that in the middle of the 18th century there was a dual system of criminal sentencing for female defendants. In this specific era, female offenders, who were seen by judicial authorities as feminine and trainable, were often sent to non-penal institutions such as reformatories. Whereas female offenders who were considered to be bad or to exhibit masculine traits were more frequently than not subject to incarceration (Butler, 1997, as quoted by Doerner, 2009).

Another important variable which was studied by researchers in the attempt to understand gender discrepancies in criminal court sentencing was the sentencing guidelines. The research paper entitled 'Sentencing guidelines mechanisms in other jurisdictions' (2016) explains that:

“There exist various models of sentencing regimes, ranging from those that utilise rigid numerical guidelines, such as in the United States, to those that are more narrative based, such as in England and Wales, to those that continue to favour wide-ranging judicial discretion” (p8).

The issue of whether the sentencing guidelines have had an impact on the sentencing discrepancy between genders was the focus of different research studies. Nagel and Johnson (1994) wanted to test the hypothesis that the presence of sentencing guidelines restricts and delimits the applicability of the Judiciary's discretion in sentencing the offenders appearing before them. Nagel and Johnson (1994) examine the literature which analyses the sentencing of female offenders both before and after the introduction of the Sentencing Reform Act of 1984 in the United States of America. This data was consequently compared and analysed with the data gathered from the United States Sentencing Commission. This data focused on the sentencing patterns of female offenders convicted of any of three main crime categories – embezzlement, drug trafficking and larceny. The conclusion reached was that, despite the implementation of clear sentencing guidelines, female offenders were still treated in a more lenient manner than their male counterparts.

Nagel and Johnson (1994) explain that the reason behind this clemency in the sentencing phase is attributed to the fact that the criminal justice systems pay particular weight and attention to the macro-level social costs *vis a vis* the micro level benefits to individual offenders. Another study which sheds further light on the impingement, if any, of sentencing guidelines on the criminal court sentencing is the research performed by Koons-Witt (2002). The author focused her research study on whether the gender of offenders and gender related factors influence the sentencing outcomes in Minnesota and this both prior and after the introduction of the sentencing guidelines. Koons-Witt states that in general female offenders were treated more leniently especially in cases where they had dependent children. Another important result was that female offenders who committed violent crimes and therefore went astray from the traditional stereotyped roles were most often incarcerated as much as male offenders who were primary care givers (Koons-Witt, 2002).

Deakin and Spencer (2003) tried to understand the implications and repercussions that putting women offenders behind bars might inflict on society, the individual offender and respective family members. The authors state that, despite the fact that there seems to be gender discrepancy in criminal court sentencing, this does not reflect on the fact that women's prison population was on the increase in the United Kingdom and Wales (Deakin & Spencer, 2003). According to Deakin and Spencer (2003) the notion that females are committing more serious crimes and therefore their incarceration rates is on the increase is untrue as there is no clear evidence of this, and it cannot be scientifically supported. On the other hand, Deakin and Spencer (2003) explain the increase in female offenders' incarceration by saying that they are 'fast-tracked to prison' (p.128). Despite the fact that during the 1980's and 1990's female offenders were generally sentenced to non-custodial sanctions, such measures aggravated female offenders' position in front of court authorities in cases where they became recidivists.

As seen above, previous research on the topic has tried to understand the reasons behind the gender discrepancy in criminal court sentencing (Pollak, 1950; Haggart, 1973; Daly, 1987; Deakin & Spencer, 2003). The study of Bickle and Peterson (1991) showed that white females who led independent lives were treated in a harsher manner by judicial authorities. Female offenders received a harsher sentence even when they did not conform to stereotypical roles (Kruttschnitt & Green, 1984). The importance of analysing variables such as prior criminal record and seriousness of offence was also established when studying gender disparity in sentencing (Fenster & Mahoney, 1981). Studies also show that even when sentencing guidelines could have been used, the judiciary often decided to depart from such guidelines and sentence females to a more lenient sentence (Nagel & Johnson, 1994; Koons-Witt, 2002)

The above scientific information provides the foundation to understand early studies performed with regards to the topic of gender discrepancies in criminal court sentencing. The different conclusions also shed light on important variables and aspects whose dynamics can impact the sentencing outcomes and therefore cannot be ignored when researching gender differences. More recent international studies attempting to scrutinise and enquire about how extra-legal and legal aspects can affect the criminal sentencing phase.

2.2 Gender and criminal sentencing

The following section will be divided into three main parts, each part intentioned to give a better understanding factors concerning gender and criminal sentencing and what can lead to gender disparities in the final phase of the criminal justice process. This section also covers different research studies which enable further understanding about the possible link of gender disparities in criminal sentencing to the fact that there exists a considerable gender gap in crime. The last part of this section provides insights on the possible influence that sentencing guidelines might have on the sentencing of both male and female defendants.

2.2.1 Gender disparity in sentencing

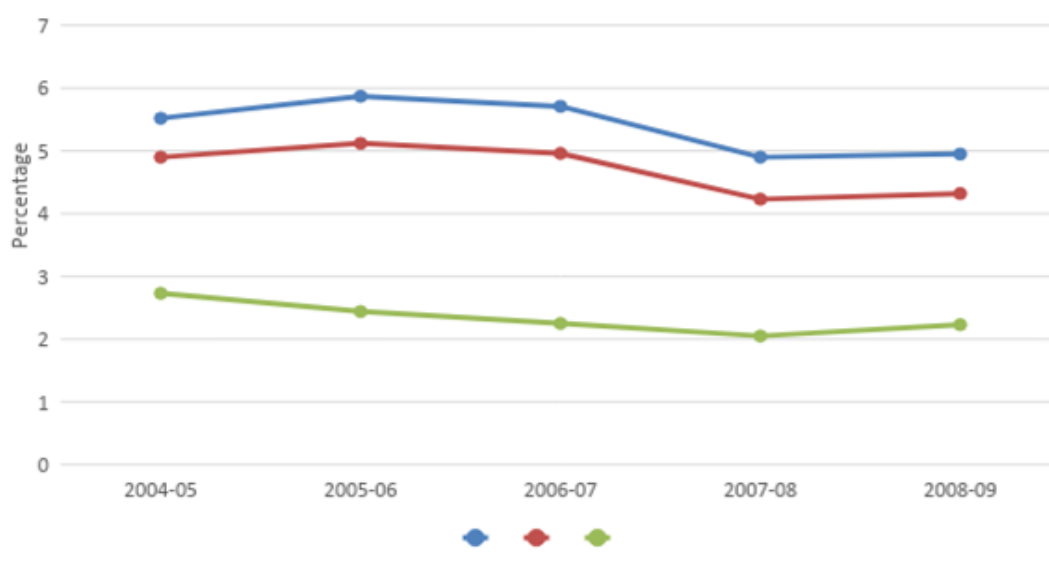
“In sociology, criminology, legal studies, and to a lesser extent, in economics, there exists an empirical literature on racial and gender disparities in criminal sentencing” (Sorensen, Sarnikar & Oaxaca, 2012; p. 256).

Different international research studies state that male and female offenders are treated differently by the court system as females are more advantaged to receive a more lenient sentence for the same crime committed (Etienne, 2010; Gelb, 2010; Jeffries & Bond, 2010; Jeffries, 2017; Sorensen, et al., 2012). Gelb (2010) introduces his research published by the Sentencing Advisory Council in Melbourne by stating that criminologists acknowledge the concept that

gender disparity in crime occurs across the entire globe. Gelb (2010) explains that in the past years sentencing practices in Victoria Courts show a clear trend of an increase in sentencing severity for female offenders. Interestingly, in his analysis Gelb (2010) found a discrepancy between the types of courts and the criminal sentences given to female offenders. Figure 10 and Figure 11 below show the proportion of female and male offenders who were sentenced to prison by the Magistrates' court and by the Higher Courts in Victoria.

Figure 10

Proportion of People Sentenced to Imprisonment, Magistrates' Court, July 2004 to June 2009

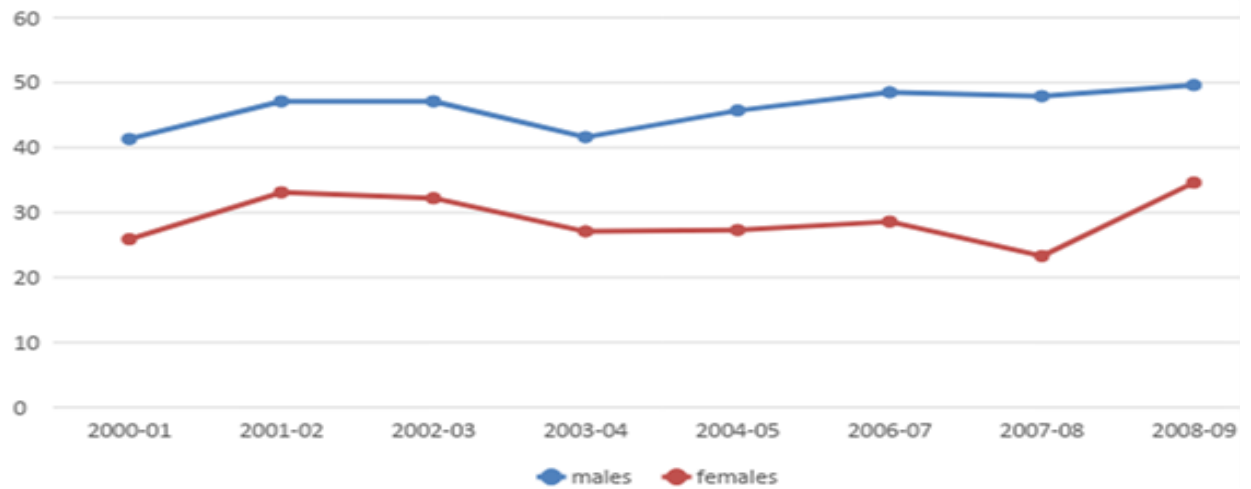


Source: Gender differences in sentencing outcomes (2010; p. 13)

Figure 10 shows an overall stability in the percentage of female offenders receiving a prison sentence. Gelb (2010) states that the decrease of the severity of the sentence received by female offenders went down to 2.3% in 2008-2009 period from the 2.73% shown in the year 2004-2005 (as marked by the green line in Figure 10). This data from the higher courts of Victoria shows both an increase in the number of female offenders who received an effective prison term, and also an increase in the average length of imprisonment.

Figure 11

Proportion of people sentenced to imprisonment, Higher Courts 2000 to 2009



Source: Gender differences in sentencing outcomes (2010; p. 14)

As seen in Figure 11, the period of 2007 to 2009 marks a rapid increase of imprisonment rates for female offenders. Gelb (2010) explains that such an increase was not solely limited to Australia but was experienced in other countries such as U.S.A. and the United Kingdom. In her research study, Gelb (2010) categorised the types of crimes committed by both genders in offences against the person; property offences; drug offences; offences involving death; other offences. These categories were consequently sub categorised to provide more detail to the research. A quantitative method of data collection was used and criminal sentences between the period of 2000 to 2009 were analysed. Gelb (2010) explains that the strongest and most consistent predictors of female imprisonment sanctions are the gravity/severity of the offence and the defendants' past criminal history. Despite the increase in number of female offenders, male offenders are far more likely than females to be given an imprisonment sanction "47.8% of men compared to 30% of women" (Gelb, 2010; p. 17).

Through her detailed analysis of the sentences meted out by Magistrates' Courts and Higher Courts in Victoria (Australia), Gelb (2010) found that there are two main types of offences for

which female offenders are sentenced to longer terms of imprisonment than their male counterparts. One offence falls under the category of ‘Offences against the person – aggravated assault’. Between 2004 and 2009, the Magistrates’ courts in Victoria sentenced 19 female offenders charged with aggravated assault to an average of 8.3 months compared with the sentence of 5.9 months of imprisonment meted out to their male counterparts. Gelb (2010) explains: “Offences against the person are not the type of criminal behaviour typically associated with women. It is thus possible that sentencing for women convicted of committing violent offences will be harsher than for men” (p.29).

This pattern extends beyond Australia. In the United Kingdom, official statistics consistently reveal gender disparities among individuals prosecuted for various offences. Including assaults, recent statistics indicate that males account for approximately 78% of all prosecutions in England and Wales, while females represent 22%. According to the Women and the Criminal Justice System, 2019 Report (2020) this disparity is particularly pronounced in violent offence categories, where 84% of prosecutions are of males accused of violence against the person, with females accounting for only 16%.

When analysing gender disparities in assault cases, it is crucial to consider not only the gender of the offender in isolation but also the interaction between offender and victim gender – what researchers call the sex dyad or gender dyad (Weiss et al., 2016). The authors conducted innovative research examining how different gender combinations in one-on-one assaultive crimes influence reporting and arrest decisions in the United States. Their findings reveal complex patterns that help explain some statistical disparities in official records. While male-on-female offences are reported to police more frequently than other gender combinations (57% compared to 45% for male-on-male and 43 % for female-on-female), female on male offences

actually result in higher arrest rates once reported (50% compared to 39% for male-on-male) as Weiss et al. (2016) explain, “The legal trend toward arrest and charging up low levels incivilities will render more visible physical aggression that typifies women’s offending” (p. 15).

This dyad perspective helps reconcile seemingly contradictory trends in assault statistics. While females remain underrepresented in overall violence statistics, the increasing arrest rates for female offenders may reflect changing responses to particular gender combinations rather than actual behavioural changes. As Steffensmeier et al. (2006) note, “Net-widening policy shifts have apparently escalated the arrest proneness of females for criminal assault” (p.73), particularly in contexts where traditional gender expectations are violated.

A particularly revealing insight emerges when examining the 2023 Federal Bureau of Investigation (FBI) data from the perspective of within-gender crime patterns. When analysing the distribution of offences within each gender rather than across genders, a striking pattern emerges: assault constitutes a significantly higher proportion of female offending compared to male offending. Specifically, assault offences account for approximately 36.0% of all female offending (1,010,427 of 2,806,012 total female offenders), whereas assault offences represent only 31.9% of male offending (2,270,231 of 7,122,000 total male offenders). This proportional difference reveals that when females do engage in criminal behaviour, they are more likely than males to be involved in assault compared to other offence categories. Such pattern may be seen to align with Focal Concerns Theory’s emphasis and perceptions of dangerousness, as assault, despite representing a higher proportion of female offending, may be interpreted differently when committed by women due to gendered expectations about appropriate behaviour (Steffensmeier et al., 2006).

Schwartz et al. (2009) are in agreement. They claim that female violence typically involves “less seriousness, less offender culpability, and behaviours in private settings and against intimates” (p.77), precisely the types of incidents that are increasingly captured under expanded definitions of assault. The higher proportion of assault within female offending patterns may therefore reflect both the nature of female’s aggression (more often occurring in domestic or intimate context) and the criminal justice system’s heightened sensitivity to these forms of violence in recent decades.

The dyad analysis also reveals that female-on-female violence receives distinct treatment within the criminal justice system, with fewer arrests despite reporting rates similar to other gender combinations (Weiss et al., 2016). This suggests that same-sex female violence may be taken less seriously, seen as ‘cat fights’ rather than genuine criminal assault. This perspective simultaneously minimises female agency while potentially denying female victims equal protection.

Interpreting these statistics requires careful consideration of competing explanations. As Steffensmeier et al. (2006) argue, there are two primary hypothesis that might explain changes in female violence statistics. The ‘behaviour change hypothesis’ suggests actual increase in females’ violent behaviour, perhaps due to changing gender roles or socioeconomic pressures. In contrast, the ‘policy change hypothesis’ attributes statistical changes to shifts in how the criminal justice system responds to and processes female offenders, particularly for behaviours that have historically been treated differently based on gender.

Schwartz et al. (2009) emphasize the importance of ‘data triangulation’ when examining gendered patterns in violence. Their research compares multiple data sources, namely arrests,

convictions, incarcerations, and victim reports in order to assess whether apparent increases in female violence reflect actual behavioural changes or simply changes in official responses. Their findings suggest that “rather than women becoming more violent, changes in the management of violence increasingly mask differences in the violence levels of women and men” (p.30).

Cross national evidence further complicates this picture. Schwartz (2013) examined data from six countries, including English-speaking nations (United States, United Kingdom and Canada) and Scandinavian countries (Finland, Norway and Sweden). This comparative analysis revealed that “female violence is neither increasing nor changing in nature to be more serious” (p.817). Instead, this research suggests that changing social control practices in specific countries, particularly the United States and United Kingdom, have led to increased arrest rates for females, without corresponding changes in actual violent behaviour.

The 2023 FBI data published in *Crimes in the United States (2023)* further illustrates that even as females comprise a minority of overall offenders (25.2% of all offenders), their proportional involvement in assault (29.9% of assault offenders) exceeds the representation in almost all other violent crime categories. An examination of the FBI data from 2020 to 2023 reveals this pattern has remained consistent across recent years, with assault consistently representing a larger portion of female criminal activity compared to male criminal activity throughout this period. The persistent yet seemingly contradictory finding is that females are underrepresented in assault compared to males in absolute terms, yet assault constitutes a larger proportion of female than male offending. This highlights the complex gendered nature of both violent behaviour and its processing through the criminal justice system. When examining within gender offending patterns, assault represents a higher proportion of the total criminal activity among female offenders (36.0%) compared to male offenders (31.9%). This does not indicate that women are more violent than men in absolute terms, men still account for approximately 69% of all assault

offences, but rather suggests that when women do engage in criminal behaviour, they are more likely than men to be involved in assault relative to other crime categories.

These findings indicate that the underrepresentation of females in violent crime statistics, alongside paradoxically harsher sentences when they commit such crimes, likely results from complex interactions between gender expectations, reporting practices, law enforcement policies and judicial decision making. As Schwartz (2013) notes “women’s participation in violent acts, including assault, challenges traditional notions of femininity” (p.800), leading to intensified social control responses that can manifest as both statistical underrepresentation and punitive overreaction.

The other types of crime for which female offenders tend to receive a harsher prison sentence are the offences falling under the category of offences involving death, more specifically the subcategories culpable driving causing death (78% male versus 90.6% females) and murder (average length of imprisonment 210.1 months versus 212.4 months given to male offenders) (Gelb, 2010; p.21). Gelb (2010) explains that the difference in the severity of sentences regarding female offenders indicted with culpable driving causing death is influenced by age. In other words, male offenders who were found guilty and sentenced to equivalent harsh penalties belonged to younger age groups and therefore were sentenced by a different court and held in detention in a youth centre. In fact, Gelb (2010) explains that prior research shows that females who are found guilty of such offence are generally older (by an average of 6 years) than their male counterparts. On the other hand, Gelb explains that the average length of prison sentence meted out for murder to female offenders is conditioned by their having fewer co-occurring offences than male offenders whose sentencing is affected by other aggravating factors, , which in the case of male offenders, act as aggravating factors.

The results of this research project show that female offenders are treated in a harsher manner when they commit crimes of a violent nature. According to Gelb (2010) this is due to the fact that the magistrates' decisions to incarcerate are exacerbated by stereotypical ideas associated with the female gender. But does this happen in Western societies only, or is it something which occurs on a more global scale? Since most of the existent research on gender disparities in criminal sentencing is limited to Western societies (Hartley, Kwak, Park & Lee; 2011; Lu et al., 2013). Hartley et al. (2011) decided to explore the issue by focusing entirely on gender differences in criminal sentencing in Korea. Their research analysed offences related to trafficking of illegal narcotics. Hartley et al. (2011) concluded that even in South Korea, female defendants who are charged with drug trafficking get more lenient sentences than their male counterparts.

Hartley et al. (2011) study's major contribution to knowledge is that its results show that female offenders who are employed are treated more harshly than female defendants who do not hold an employment. Hartley et al. (2011) explain these results because South Korean judges give much weight to traditional gender roles and therefore, they view employed females charged with drug trafficking as non-complaint with societies' norms. An interesting factor in this study is that, in South Korea this country's judicial process does not include the possibility of mandating a pre-sentence investigation report as opposed to Western societies, where these reports are considered as common practice by the judiciary. The importance of a pre-sentencing report in the criminal court process was highlighted in the study by authors Jeffries and Bond (2010). They argue that the presence of a pre-sentencing report can favour female offenders. This in view of the fact that court authorities assessing the criminal case and the offender's personal situation prefer to include alternative sanctions to imprisonment as part of their recommendations (Jeffries & Bond, 2010). Moreover, the fact that judges take into consideration

certain important social roles during the sentencing phase is also shown by Freiburger (2010; 2011). Freiburger (2010) made important contributions to understanding how familial status/roles of offenders of different race and gender can impact the type of criminal sentence meted out.

Jeffries and Bond (2010) state that to understand whether there exist gender discrepancies in criminal court sentencing, researchers have to examine both the “Direct effect” and the “Interactive effect” (p.84). The ‘direct effect’ refers to the influence that gender by itself can exercise during the sentencing phase. The ‘interactive effect’ refers to the influence that variables such as past and present offending behaviour has on the criminal sentence meted out. According to Jeffries and Bond (2010) past research shows that such variables aggravate more the sentences delivered to male defendants. The quantitative research performed by Jeffries and Bond (2010) in which they studied the sentences issued by the South Australia’s District and Supreme Courts for a period of five years (2002-2006) confirmed official criminal justice statistics. Jeffries and Bond (2010) state that:

“A direct relationship between sex and sentencing was found: when women and men appear before South Australia’s higher courts for comparable criminality (past and present), women were less likely to be imprisoned and, when sentenced to prison received shorter sentences” (p. 93).

Another important factor which led judges to impose harsher sentences on female offenders was that of repeated convictions. This in view that as explained by authors Jeffries and Bond (2010) women are generally taken to court for less serious crimes and in fewer instances than males. So, females who commit serious offences or who have repeatedly engaged in criminal behaviour are perceived by the judiciary as less adapted for reformation as “they exceeded the bounds of gender appropriate behaviour” (Jeffries & Bond, 2010; p. 94).

The importance of analysing factors such as past criminal history, was also highlighted in the study performed by Pina-Sanchez and Harris (2020). This study's major contribution to knowledge is that authors put much emphasis on the fact that in order to ascertain gender disparities in sentencing one must study all important variables of each case like, for example, past criminal record, or mitigating and aggravating factors. According to authors this must be done so that a comparison of 'like with like' is performed. Pina-Sanchez and Harris (2020) analysed an important survey (Crown Court Sentencing Survey) because it gathered extensive details about each case appearing before the Crown Court from 2011 to 2015. The analysis of this research focused on three main types of crime, namely, assault, burglary and drug offences. Pina-Sanchez and Harris (2020; p.7) state:

“Based on the gender effect estimated in these models we can now establish that, for offences of assault, male offenders are 2.84 times more likely to receive a custodial sentence than female offenders”.

Authors emphasize the point that such results were reached after performing of an analysis of cases which had similar circumstances such as mitigating and aggravating factors, level of harm perpetrated, past criminal record and other important variables. This study also shows further discrepancy between genders as it resulted that prison sentences meted out to male offenders are 14.7% longer than those meted out to female offenders. Pina-Sanchez and Harris (2020) state that due to the fact that the database while being an extensive one it was not an exhaustive one “as it is virtually impossible to control for all legitimate factors taken into account when passing a sentence (p.10)” and that therefore the results should not be considered as definitive.

Similar results concerning male offenders receiving a lengthier prison sentence were found in the research study performed by Tereskinas et al. (2022). This research was performed in Lithuania and it sought to understand whether there were gender disparities in the Lithuanian

criminal courts. Authors used a database which contains all Lithuanian court decisions and specifically used the court sentences which were delivered in 2018 with regard to crimes such as murder, grievous bodily harm, actual bodily harm, drug distribution and theft. Tereskinas et al. (2022) used a representative sample for each offence and a simple random sampling was taken. This study yielded information from which the conclusions which possibly may be drawn are that male offenders were more prevalent to be given a custodial sanction, a probation sentence and a short-term incarceration, whereas female offenders were more likely to receive restriction of freedom, community service and fines. The authors also state that their data shows a statistically significant difference regarding the length of prison sentence given to male offenders when compared to that given to female offenders. In cases of grievous bodily harm, the average prison sentence for males was that of 46 months whereas female offenders were sentenced to an average of 25 months. This type of sentence disparity was also seen in cases of drug trafficking as male offenders were sentenced to longer periods of imprisonment.

The disparity in sentencing severity between male and female offenders was also highlighted by the study performed by Etienne, 2010. In her article, Etienne (2010) tries to understand the discrepancies in criminal sentencing between female and male offenders by firstly gaining a good grasp of how courts sentence male defendants. The research problem presented in this study is that despite there being “determinate sentencing processes” (p.73) which were supposedly introduced to limit judiciary discretion to avoid discrepancies in sentencing between genders as much as possible, such sentencing guidelines have not yet reached their ultimate goals. Etienne (2010) explains that gender disparity in criminal sentencing can be attributed to three main factors. The first factor is that as shown by other international research (Etienne, 2010; Gelb, 2010; Messing & Heeren, 2009; Pina-Sanchez & Harris, 2020) there is a gender gap in crime. The second factor is that female offenders are more likely to receive an alternative sanction to

imprisonment and the third factor, put forward by Etienne (2010), is the disparity in sentence severity. Etienne (2010) explains that some groups of defendants who are given an incarceration sentence receive higher sentences for committing the same crimes. This can be related to racial discrimination in sentencing.

Whilst acknowledging the fact that a certain level of disparity can be justified, for example in cases of pregnant female offenders, Etienne (2010) explains that one should consider what the “state of punishment” is (Etienne, 2010; p83). The author differentiates between the punishment as means of retribution or as means of rehabilitation. If the ultimate goal of a criminal sentence is that to provide security to society by keeping offenders locked up, then sentencing guidelines have to be adhered to. If on the other hand, magistrates impose sentences to rehabilitate offenders, then this type of sentence needs to be adjusted to the needs of the individual offender irrelevant of his/her race, gender, or ethnicity (Etienne, 2010). But what happens when the sentences meted out concern capital crimes thus being retributory in nature? Are female offenders treated leniently? The research performed by Messing and Heeren (2009) tries to answer these research questions and provides new insights on gender and capital sentencing. Authors Messing and Heeren (2009) analysed newspaper reports about offenders who committed murder in a domestic setting within a ten-year period, 1993 to 2002. During this period there were a total of 197 homicides within the domestic setting and perpetrators amounted to 161 male and 36 female offenders. Out of the total number of capital murder cases only 69 (18 females and 51 males) met the criteria of this research study, which was capital cases comprising an offender who murdered multiple victims in a domestic homicide setting². This research led to

²Domestic homicide setting refers to the murder of family members connected by blood or by kin, or other persons who had an intimate relationship with the offenders or any member of their family. This includes the killing of police officers or good Samaritans who tried to intervene during the perpetration of crime (Messing & Heeren, 2009).

the conclusions that there is a significant difference between the ways male and female offenders commit the crimes and there are also discrepancies in how offenders of both genders are treated in the last phase of the criminal justice system, which is the sentencing phase. Messing and Heeren (2009) explain that, irrespective of preceding familial situations, female offenders who had murdered their children using a firearm or knife received the harshest sentences. On the other hand, male offenders who committed murder during the marital separation were treated in a more lenient manner. Messing and Heeren (2009) gave three main reasons as to why this occurred. Firstly, there is a huge gender gap in the perpetration of domestic homicide; female perpetrators are highly outnumbered by male perpetrators. Secondly, within different social contexts, females tend to be regarded as nurturing, caring and more inclined to be an instrument of emotional support in domestic settings and therefore in distinct conflict with heinous crimes such as domestic murders. Thirdly, and most importantly, the existence of the “male archetype” (Messing & Heeren, 2009; p.184) in the gendered nature of family relationships, and even more specifically in crimes committed during the separation phase, worsens female offenders’ position in front of the judicial system. Messing and Heeren (2009) state that:

“Both men and women are seeking relief from pain induced by separation, but they are doing so in a gendered manner. Men are striking out at the object of their pain, whereas women are focusing their anger inward, attempting suicide and lashing out at their children as extensions of themselves” (p.185).

In view of this, female offenders who commit infanticide cannot avail themselves of mitigating circumstances such as, for example a crime committed under the heat of passion dogma.

2.2.2: Gender gap in crime

Different studies suggest that the gender gap in crime is decreasing as time goes by (Campaniello & Gavrilova, 2018; Estrada et al., 2015; Heiskanen & Leitonon, 2016; Jeffries & Bond, 2010; Jeffries & Newbold, 2016; Schlesinger, 2008). As stated in the study by Jeffries and Bond (2010), females tend to commit less serious crimes and therefore are brought in front of the competent

criminal courts in a much smaller number. Campaniello and Gavrilova (2018) who studied the gender gap in property crimes in the United States of America explain that such a gap is shrinking and that females are engaging more in property crimes. The data provided by Campaniello and Gavrilova (2018) shows that in 1995 there was one female criminal for every three males. This ratio decreased over time, resulting in one female for every two males who committed property crimes in 2015 (Campaniello & Gavrilova, 2018). But is the gender gap in crime an extensive one or is it getting smaller as societies experience emancipation? Estrada et al. (2015) try to provide an answer to this question by introducing their research with the following statement:

“It has been forty years since Adler et al. (1975) noted that in their widely noted book *Sisters in Crime* that the gender gap in crime has become smaller” (p. 1272).

This research was performed in Sweden and Estrada et al. (2015) used two data sets to answer their research question as to whether the gender gap was on the decrease or not. Estrada et al. (2015) gathered their data by using historical records of convicted offenders between the years 1841 to 2010 as well as studied the convictions and sanctions meted out to offenders charged with theft and violent crimes by using a longitudinal birth cohort approach. Estrada et al. (2015) refute the hypothesis that the decline in the gender gap is due to the fact that females are committing more crimes due to emancipation. Contrarily, their research results show that crime rates in Sweden were at their highest peaks during the post-war period. Estrada et al. (2015) explain the fact that there was an increase in criminal activity for both males and females due to a change in the ‘opportunity structure that affected both males and females’ (p.1286). The additional analysis concerning cohorts led to the conclusions that the gender gap had decreased substantially during the later teenage years (15-20). Authors attribute this narrowing in the gender gap to the decreased levels of theft and violent crimes committed by female and male Swedish teenagers. Jeffries and Newbold (2016) agree with such a statement as their quantitative study shows that in both Australia and New Zealand the number of women who were sentenced

to prison has increased and in fact, is higher than that of male offenders. The authors state that such an increase is not experienced in Australia and New Zealand solely, but is also affecting other Western countries. Jeffries and Newbold (2016) state not only are more females are committing violent crimes but there is also an increase in female minor offences such as theft and public order offences. The authors bring forward the hypothesis that the increase in female offenders' incarceration rates in Australia and New Zealand can be attributed to the fact that the courts are responding more severely to female offending even when the crime committed is not serious in nature.

The gender gap in crime is deemed a very significant and important one in white collar and organizational crime (Steffenmeier et al., 2013). An analysis of a database covering 83 corporate frauds in which a total of 436 perpetrators were involved was conducted. This research led to important findings with regards to female offending in corporate crimes. Steffenmeier et al. (2013) show that less than one female compared to ten male offenders was involved in white collar crime. The criminal role which both male and female offenders took in their criminal activities also differed. Steffenmeier et al. (2013) explain that whereas male offenders generally took the role of ring leaders, such a role was never assumed by female perpetrators of white-collar crime.

The importance of understanding the gender gap in this research study is that, whereas the gender gap is becoming narrower, research studies show that the type of crime committed by males and females can be different. Heiskanen and Leitonon (2016) performed a detailed analysis of the

“total crime”³ (p.18) in different countries. Heiskanen and Leitonon (2016) used crime statistical data from two main sources, the Crime Trends Survey co-ordinated by the United Nations Office in Drugs and Crime, and the European Sourcebook of Crime and Criminal Justice Statistics. The major strength of this research is that it encompasses all the available international data of persons who were suspected of crime and who went through the criminal justice system process. Another important aspect of this study was that the authors also analysed the “attrition”⁴ (p.27) rates for male and female suspects. To provide a broader view of how both genders are represented in the criminal justice system, Table 3 shows the ratios of attrition for total crime as experienced by both genders between the period from 2004 to 2013.

Table 3

Attrition Ratios for Total Crime, for Men and for Women, %

	Conviction Ratio	Punitivity Ratio	Prisoners/suspects	Number of countries
Male	54	25	13	46
Female	45	10	5	46

Source: Heiskanen and Lietonen (2016, p. 29)

As seen in Table 3, the different ratios were higher for males than for females. Heiskanen and Lietonen explain the reason behind the high rate of attrition of male offenders by fact that males commit more serious offences than females do. Heiskanen and Leitonon (2016) are in agreement with Steffenmeier et al. (2013), stating that their research has proved that crime is not gender neutral and that males and females perpetrate different crimes. The authors explain that the

³Total crime refers to all criminal offences against the penal code of different countries which were under study in this research.

⁴Attrition refers to the dropping out of the cases at different stages of the criminal justice process.

gendered nature of crime is tangibly visible in domestic and sexual offences, but much less apparent in fraud related offences. In fact, this study shows that European countries have experienced the highest share of females who were suspected of being involved in fraud, money laundering and theft. Another main finding of this research study is that the percentage of females in each crime category decreases as the criminal justice process proceeds. Such figures are attributed by the authors to the fact that the number of males suspected of crime is decreasing while that of females is increasing. Heiskanen and Leitonen (2016) explain this gender gap as linked to the fact that since the level of crime committed by females is much lower than that committed by males, it reflects in the decrease of the total number of crimes committed.

Other possible factors influencing the narrowing of the gender gap can be socially related campaigns. Harmon and O'Brien (2011) explain that an in-depth panel analysis of female and male imprisonment trends in all fifty states in the United States of America (from 1970 to 2008) show that female incarceration rates skyrocketed during the era where there was the campaign 'war on drugs'. The authors explain that at times the rates with which female drug offenders were being given a prison sentence exceeded that of male offenders. The research performed by Harmon and O'Brien (2011) also sheds light on the fact that the campaign 'war on drugs' was also a radicalised campaign which affected more Black and Hispanic females than Whites. This result highlights the importance of understanding that race can impinge on the criminal court sentencing (Harmon & O'Brien, 2011; Etienne, 2010). Another important result is that such narrowing in the gender gap was not attributed to sentencing reforms in the U.S.A. like for example the introduction of sentencing guidelines. Gaskins (2004) refers to these groups of women who are convicted of drug crimes as "women of circumstance" (p. 1533). Gaskins (2004) explains that these women become involved in crime because they are dependent on or have a strong relationship with a drug trafficker.

By referring to different academic studies, the above information highlights the gender disparities in criminal court sentencing (Etienne, 2010; Gelb, 2010; Jeffries & Bond, 2010; Jeffries, 2017; Sorensen et al., 2012). These studies show that male offenders are more likely than female offenders to be given an incarceration sentence. On the other hand, research shows that the female offenders are sentenced in a harsher manner when they commit violent crimes or have repeated convictions (Jeffries & Bond, 2010). This is because Magistrates' decisions to incarcerate are aggravated by stereotypical ideas associated with the female gender. This is true in both Western and non-Western countries (Hartley et al., 2011). Racial discrimination was also highlighted as a possible reason for discrepancy in criminal court sentencing (Etienne, 2010). The author explains that one must consider the difference between punishment as means of retribution or as a means of rehabilitation.

According to Campaniello and Gavrilova (2018) the gender gap in crime is decreasing not only because females are engaging more in violent crimes, but the courts are responding more severely to female offending. Heiskanen and Leitonin (2016) explain that males and females commit different types of crimes. According to the authors such a difference is not only tangible in domestic and sexual offences but not as apparent in fraud related offences. In fact, European countries have the highest share of females who were involved in fraud, money laundering and theft. Socially related campaigns can also be an important factor in the decrease of the gender gap in crime (Harmon & O'Brien, 2011). Another important factor that might be decreasing the gender gap in crime is the introduction of sentencing guidelines. The next section's main focus is to gather academic literature about sentencing guidelines.

2.3: Influence of sentencing guidelines on the sentencing phase

“The Maltese legal system presently adopts an unstructured sentencing regime where sentencing discretion is firmly safeguarded by the judiciary” (Zammit, 2017; p. 44).

The importance of this statement lies in the fact that the Maltese Criminal Courts has no official structure through sentencing guidelines and therefore the magistrates cannot avail themselves of such parameters and instructions. The absence of sentencing guidelines in Malta should be given due consideration because as Morin (2008) explains sentencing guidelines were set in place (reference is made to the U.S.A.) to decrease gender disparity in criminal sentencing as much as possible. The attempt to eliminate these discrepancies was made by establishing minimum and maximum sentences for specific offences based on the characteristics of the crime. Gelb (2010) states that the implementation of sentencing guidelines in Australia has ensured that more female offenders are given a prison term and there also has been an increase in length of criminal sentencing meted out to female offenders. Morin (2008) and Gelb (2010) state that the sentencing guidelines are set according to different types of crimes and also take into account offenders' criminal history. Family obligations of the offender as well as other personal factors are not addressed in the sentencing guidelines (Morin, 2008; Gelb, 2010). Sorensen et al. (2012) state that, despite the fact that sentencing guidelines provide “a more mechanical approach” (p. 260), their quantitative research study on the severity of criminal sentences meted out for the same crimes perpetrated by offenders of different gender, showed that the judiciary still took into consideration the personal circumstances of defendants as they did not base their decisions just on the seriousness of the offence and past criminal history of offenders.

On the other hand, Zammit (2017) stresses the fact that Malta's "instinctive approach"⁵ (p.45) can lead to high discrepancies in criminal sentencing. In his dissertation, Zammit (2017) suggests that the introduction or adoption of presumptive sentencing, which ensures more consistency and equilibrium, reduces gender disparity. Machin (2005) explains presumptive sentencing as the sentence that applies if the crime is regarded as being serious as other similar crimes on average which are listed in the sentencing guidelines and the offender's criminal history is archetypical for the type of offender who commits the crime. An example of this type of sentencing guidelines is the one adopted by the District of Colombia Sentencing Commission (2017) detailed in Table 4.

⁵The instinctive approach refers to the fact that the judiciary in Malta uses discretion as an exercise where upon delivery of the sentence, the magistrates unify and weigh all relevant considerations according to their conscience

Table 4*Presumptive sentencing of specified crimes in the District of Columbia*

		Criminal History Score				
		0 to ½ A	¾ to 1½ B	2 to 3½ C	4 to 5½ D	6 + E
3 Points	Ranking Group Most Common Offenses					
	Group 1 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	Group 5 Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
2 Points	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
	Group 7 Burglary II 3rd degree sex abuse Negligent homicide Attempt 2nd degree sex abuse Unlawful poss. of a firearm (prior fel.) ¹	12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point	Group 8 Carrying a pistol (formerly CPWL) UIV/ Attempt robbery Attempt burglary 1st degree theft Assault w/significant bodily injury	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/uttering Fraud	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison or compliant long split only.						
Green/dark shaded boxes – prison, compliant long split, or short split permissible.						
Yellow/light shaded boxes – prison, compliant long split, short split, or probation permissible.						

Source: Tombs-Souvey (2017; p. A1)

Table 5*Sentencing ranges listed in months*

		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ A	¾ to 1¼ B	2 to 3¾ C	4 to 5¾ D	6 + E
2 Points*	Group 1 Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
1 Point*	Group 2 Distribution or PWID (schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
	Group 3 Distribution or PWID (except schedule I or II narcotic or abusive drugs) Attempt distribution or attempt PWID (schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	6-18	10-24	14-30	18-36	22+
¾ Point*	Group 4 Attempt distribution or attempt PWID (except schedule I or II narcotic or abusive drugs) Attempt possession of liquid PCP	3-12	5-16	7-20	9-24	11+
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison or compliant long split only.						
Green/dark shaded boxes – prison, compliant long split, or short split permissible.						
Yellow/light shaded boxes – prison, compliant long split, short split, or probation permissible.						

Source: Tombs-Souvey (2017; p. B1)

Pfaff (2006) explains the differences between mandatory, presumptive and voluntary sentencing guidelines. Whereas mandatory sentencing guidelines have to be adhered to, presumptive and voluntary guidelines are there to offer a useful signpost for the judiciary who wish to sentence in a more homogenous manner (Pfaff, 2006). The focus of the study made by Pfaff (2006) was to offer an explanation as to the reasons why the adoption of presumptive and voluntary

sentencing guidelines led to positive results. Pfaff (2006) explains that there are three main reasons why voluntary guidelines work. The first reason is that they provide useful information to the judiciary; secondly, policy makers can ask to replace them or enforce a more mandatory system and thirdly, judges can be held accountable for non-compliance and therefore more subject to having their sentences appealed.

Gaskins (2004) studied the impact that mandatory minimum sentencing laws have on female offenders who have marginal liability or minor involvement in drug trafficking crimes. Gaskins (2004) explains that such mandatory laws resulted in an increase of female incarceration, especially regarding drug related crimes. This is due to the fact that mandatory sentencing laws set clear limits on judiciary's discretion as they do not permit the judges to take into consideration other important personal factors when deciding on the criminal sentence to be given (Gaskins, 2004). Schlesinger (2008) highlights the impact of mandatory sentencing on female offenders and maintains that the enforcement of mandatory sentencing laws is affecting female offenders in disproportionate ways. The study performed by Schlesinger (2008) addressed the knowledge gap with regards to mandatory sentencing and its influence on the incarceration rates of White and Black male and female offenders in five different American states. Amongst other important findings, Schlesinger (2008) study suggests that mandatory sentencing terms increase incarceration rates for three main types of crime, which are violent, property and drug crimes. This is consonant with the study of Gaskins (2004) who also found that mandatory sentencing guidelines affected the sentence meted out to female offenders. The second important result is that "these policies disproportionately burden women" (p.43). This in view that despite the fact that the introduction of these sentencing policies was to help the courts to address sentencing disparities and achieve a more homogenous sentencing outcome. In reality however, the courts fail to consider the fact that women are not similarly situated as their male counterparts.

Schlesinger (2008) explains that females who enter the criminal justice system are, on average, less culpable offenders. They generally, find it more difficult to find adequate legal representation and moreover, due to imprisonment, female offenders are more likely to lose their children.

Authors Lill and Ahluwalia (2018) continue to highlight the importance that sentencing guidelines should take into consideration the negative impacts that incarceration can have on female offenders. In fact they recommend that in the formulation of new sentencing guidelines, the Sentencing Guidelines Council is to provide specific guidelines in relation to female offenders. Lill and Ahluwalia (2018) argue in favour of the introduction of sentencing guidelines that take into account the gender of the offender because of the following statistics which shed light on the difficulties that female prisoners might encounter. Authors quote statistical facts which are taken from Women Prison website that provide a clearer picture of the situation regarding female offenders who are incarcerated in the United Kingdom. Lill and Ahluwalia (2018, p. 11) refer to such statistics and state that 57% of female offenders who received an incarceration sentence have been victims of domestic abuse and 79% of women who have been assisted by Women in Prison, have reported that they were experiencing domestic violence or sexual abuse. Furthermore, 53% of female offenders who were incarcerated reported that they have been emotionally, physically or sexually abused as a child. Another interesting result was that 26% of all female offenders held in custody had no criminal history. Lill and Ahluwalia (2018) further state that 46% of incarcerated female offenders reported having a history of attempted suicide which rate is twice the rate of males (21%) and more than seven times higher than the general population. It was also reported that 30% of female offenders had previous mental health problems before being incarcerated and that incarcerated females are five times more likely to suffer from mental health issue than the general population. These authors also

state that unfortunately, around one third of females who are sent to prison lose their homes and subsequently their possessions while incarcerated. Finally, for 85% of female offenders who were also mothers, the experience of being incarcerated constricted them for the first time to be separated from their children for a significant amount of time. According to Lill and Ahluwalia (2018) the above-mentioned statistics provide the needed grounds for which sentencing guidelines should incorporate the needs of female offenders. This in view that the current legal penal system in the United Kingdom was initially created to cater for male offenders and this can be seen from the prisons' layouts, to the services and training prisons provide and to security procedures (Lill & Ahluwalia, 2018).

The information above shows the importance of sentencing guidelines and how such guidelines can help judicial authorities decrease gender disparities in criminal court sentencing (Morin, 2008). Studies show that in certain countries, like Australia, the implementation of the sentencing guidelines resulted in more female offenders receiving a prison sentence (Gelb, 2010). Despite the fact that the sentencing guidelines do not take into account the offenders' personal circumstances, the judicial authorities still took such issues into consideration when meting out their sentences (Sorensen et al., 2012). In his dissertation Zammit (2017) stresses the importance that presumptive sentencing guidelines are introduced in the Maltese context. According to the author this would ensure more consistency and homogeneity, hence reducing gender disparities in criminal court sentencing. Pfaff (2006) gives a detailed description of the different types of sentencing guidelines and states that presumptive and voluntary guidelines provide the judiciary with the needed information to sentence in a more homogeneous way. Mandatory sentencing guidelines set limits on judicial discretion because they do not permit judicial authorities to take into consideration the offenders' personal situation (Gaskins, 2004). Schlesinger (2008) furthers this argument by stating that mandatory sentencing guidelines are affecting females in a

disproportionate way and this because the courts fail to consider that women are not similarly situated as their male counterparts. Moreover, there can be instances where judicial authorities depart from such mandatory guidelines and base their sentencing decision on their discretion. To try to answer this study's main research question by reviewing previous research studies, it is important to understand whether or not judicial discretion plays a role in furthering gender disparities in criminal court sentencing.

2.4. Judicial authorities' use of discretion in the sentencing phase

The following section focuses on recent academic research addressing the influence of judicial use of discretion during the sentencing phase and how this could be linked to a more lenient criminal sentences meted out to female offenders.

Miller (2015) conducted a quantitative research based on 200 offenders who were found guilty of driving under the influence (DUI). Miller (2015) studied offenders of both genders, of different ages as well as of different races. Interestingly, Miller (2015) came to the conclusion that, despite the fact that criminal court judges could use their discretionary powers in sentencing offenders, where the offence of DUI is concerned, the judicial authorities do not exert discretion as the sentencing severity remains similar despite the variables analysed. In fact, Miller (2015) states that:

“The current study found that overall most defendants were found guilty of driving under the influence and were given the appropriate penalty based on the offence level. The results from the current study may reflect the opinions and social movements that have occurred over the past decades that bring drunk driving in the spotlight and promote the importance of strict, severe punishment for those who commit the offence” (p.47).

This study brings to the forefront an important aspect concerning the judicial sentencing process, which is the pressure that society and pressure groups might impose on the judges vis-a-vis the criminal sentences meted out.

Miceli (2008) focused on the study of the interplay between sentencing guidelines, rules that are explicitly written and judicial discretion. Miceli (2008) explains that the use of judicial discretion can have a positive and a negative effect. The positive facet of the use of judicial discretion is that judges/magistrates can tailor the criminal sentences according to the personal circumstances of the offender appearing before their court. On the other hand, the negative facet implies that judicial discretion goes against the principle of 'just deserts' as stipulated by the criminal law. Miceli (2008) also implies that judicial discretion can also jeopardise the social control function of deterrence. An interesting finding of Miceli (2008) is that crime rates actually rose in those states (U.S.A.) which adhered to sentencing guidelines. Miceli (2008) concludes that, according to his study, the adoption of sentencing guidelines does not act as deterrence of crime and vouches in favour Judges and/or Magistrates considering all the different aspects of the individual case.

A similar result was found in the study performed by Ayal et al. (2013) who focused their study on one single offence, which was aiding illegal immigration in Israel and for which the Israeli prosecution demanded a mandatory prison sentence. Ayal et al. (2013) stated that: the criminal justice system in Israel entails that the police are in charge of the prosecution in this type of offence, as it falls under the category of minor crimes and misdemeanours. Therefore, the hypothesis was that the lack of judicial discretion due to clear sentencing guidelines facilitated

the transfer of the power of discretion from the judges to the prosecution. In fact, Nowacki (2015) stated that

“While both of these actors (judges and prosecutors) hold some degree of discretion, the total amount of discretion in the process is fixed. That is, when one actor loses discretion, the other gains it” (p. 1361).

Ayal et al. (2013) found that their study does not support the displacement of discretionary power hypothesis as the competent courts have repeatedly and consistently meted out sentences which did not entail a prison sentence as explicitly stated in the sentencing guidelines and therefore as requested by the prosecution units. The explanation put forward by Ayal et al. (2013) is that judges are not influenced or affected if their decisions are appealed and this because since police prosecutors appear before the same judges, they tend to sidestep the possibility of appealing to Judges using their discretionary powers. Another possible explanation is that judges and/or magistrates are more likely to use their discretionary power in sentencing offenders who are brought in court for minor offences (Norwacki, 2015). This is also true of sentencing in countries such as England and Wales. Roberts (2011) explains that in 2010 the sentencing guidelines system in England and Wales changed drastically and this as a result of the Criminal Justice Act 2009. Roberts (2011) argues that the English system has become more elaborate than the American sentencing guidelines system. Roberts' (2011) also reached important conclusions regarding sentencing guidelines and the use of judicial powers as it clearly reflects the fact that judicial discretion is widely used in cases which are not considered major offences. In this study, focusing on different criminal court sentences of crimes in England and Wales, Roberts (2011) found that judges departed from the sentencing guidelines when they had to sentence cases of burglary (non-dwelling). On the other hand, Roberts (2011) states that in cases of robbery, judicial discretion was not exerted as judges tended to conform with the sentencing guidelines as provided by the Criminal Justice Act 2009.

The information above highlights the fact that judicial discretion can be influenced by the pressure that society and/or pressure groups impose on judicial authorities to an extent that it might influence the severity/leniency of the sentences meted out (Miller, 2015). Miceli (2008) explains that judicial discretion has both a positive and a negative side to it. The positive aspect is that the judges/magistrates can tailor the criminal sentences according to the type of offenders appearing before their courts. The negative aspect is that judicial discretion goes against the principle of 'just deserts'. Even when sentencing guidelines were mandatory, judicial authorities still maintained their discretionary powers Ayal et al., (2013). Other studies show that judicial authorities are more likely to use their discretionary powers in cases where the offence is a minor one, while abiding by the sentencing guidelines in the case of more serious offences (Norwacki, 2015; Roberts, 2011).

The extent to which judicial discretion impinges during the criminal sentencing phase is also linked (Amirault & Beauregard, 2014; Cheng, 2017; Jacobson & Hough, 2007; Lovegrove, 2011; Pruit, 2014; Robinson et al., 2012) to the judicial discretion on whether or not aggravating and/or mitigating factors should be taken into consideration in the criminal sentence meted out. A spate of academic literature attempts to explain how different mitigating and/or aggravating factors influence the type of sentence given by the judiciary and how these factors act as determining agents on judicial discretion.

2.5 Mitigating and Aggravating factors influencing the severity of criminal sentencing.

The following section will focus on the extent that mitigating and/or aggravating factors can have during the criminal sentencing phase. A thorough understanding of the implications that such factors might impinge on the type of sentence meted out can help in furthering the answers

to this study's main research question, which is whether or not criminal courts are more lenient with female offenders than with their male counterparts.

Cheng (2017) provides a simple yet comprehensive definition of mitigating and aggravating factors. Cheng (2017) states that:

“Courts must take into account a wider range of factors that may aggravate (i.e., enhance) or mitigate (i.e., reduce) the severity of the sentence. These include factors that point to the seriousness of the offense, the harm done, the offender's culpability as well as the offender's background, such as criminal history, age, employment record, and family obligations” (p. 507).

An important study regarding mitigation factors was performed by Jacobson and Hough (2007). They explored the role of mitigation and personal mitigation in the criminal sentencing process in the Crown Court. In fact, their study involved observations in open court sittings (132 cases involving 162 defendants) and 52 one-to-one interviews with judicial authorities. This study was carried out in five different Crown Courts centres, which are located in London and in the Southeast, Yorkshire, Humber and West Midlands areas. As explained by Cheng (2017) mitigation refers to any aspect of the case which can reduce the severity of the sentence. Personal mitigation as defined by Jacobson and Hough (2007) refers to factors relating to the perpetrator rather to the criminal act itself. The importance of this study lies in the fact that authors Jacobson and Hough (2007) found that personal mitigation factors can be determinant in having the judicial authorities opt for non-custodial sentences rather than sending the perpetrator to a term of effective imprisonment.

The primary reference to mitigating and aggravating factors in the United Kingdom is found in the publication in form of a guideline titled 'Overarching Principles: Seriousness' (2004). This publication puts much emphasis on the innate obligation of each criminal court to give a sentence that is proportionate, and which is matching the seriousness of the offence. The two major

parameters to assess the seriousness of the crime are the culpability of the offender and the harm actually done or that could have possibly been caused by the criminal offence (Overarching Principles: Seriousness, 2004). Interestingly, the list of aggravating factors as provided by these guidelines is much more voluminous than the list of mitigating factors. In fact, the guidelines as provided by ‘Overarching Principles: Seriousness’ (2004) lists twenty-two aggravating factors, which indicate higher culpability and nine aggravating factors that indicate a more serious degree of harm caused and limit the guidelines’ list to four mitigating factors strictly related to the offenders’ culpability. The mitigating factors are:

- Mental disability or mental illness;
- The offender’s age – where it is evident that it had major influence on the defendants’ criminal action. For example – youthfulness and acting immaturity with consequent criminal implications;
- The role played by the defendant in the commission of the criminal act, when such role was a minor/unimportant one; and
- When the defendant experienced a high level of provocation before committing the criminal act (Overarching Principles: Seriousness, 2004; p. 7).

Another important study concerning mitigating/aggravating factors is the one conducted by Robinson et al. (2012). Robinson et al. (2012) refer to aggravating and mitigating factors as “Extralegal Punishment Factors” (XPFs) (p.737). The reason behind this nomenclature is because the authors recognise the importance that apart from the formal criteria, which is the written law and which helps the judiciary to come to determinate decisions, there are also other factors, which are not explicitly written down, but which play a very important role in the decision-making phase within the criminal justice system. Robinson et al. (2012) divide both the mitigating and aggravating into four main categories, suggesting that the higher the degree within each category, the more the judiciary uses its discretion to reduce or enhance the criminal sentence. The study by Robinson et al. (2012) was conducted using a quantitative survey with a participant pool of 423 lay people who were asked to give a ranked judgement after reading five

different crime scenarios, which included variables such as gender, age and ethnicity of the offenders.

Robinson et al. (2012) put 'Offender reaction to the offence' (p.815) as the first XPF, which is mostly considered equally important. In fact, the authors state that the higher the degree of remorse, regret and honest apologies that the offender expresses, the more the judiciary is prone to use the discretionary powers to the offender's advantage. The authors state that acceptance of guilt and pleading guilty are already formally recognised as mitigating factors in the U.S. Sentencing Guidelines, but the authors explain that it is the fact that the offender shows remorse for the criminal act committed that makes the judiciary prone to reduce the severity of the criminal sentence. Robinson et al. (2012) explain that in other instances where the offender shows a sense of remorse and regret is when he/she turns him/herself to the police authorities. Jacobson and Hough (2007) refer to this mitigating factor as the offender's response to the offence and the prosecution. Importance is given to the fact that the offender, not only shows remorse for the criminal act committed, but is also willing to address the problems or life circumstance, which led to the perpetration of the crime. Jacobson and Hough (2007) also stress that judicial authorities pay due consideration to the level of co-operation that the offender has had with the police authorities. In her research titled 'Plea and Charge Bargaining', Devers (2011) stresses the importance that a guilty plea is considered as a mitigating factor when the offender has no/minor prior criminal record as well as the offence for which the offender is being prosecuted is not a serious one.

Another important mitigating/aggravating factor as identified by Robinson et al. (2012) concerns the "offender's status or characteristics unrelated to the commission of the offence" (p. 819).

Robinson et al. (2012) study reveals that judicial authorities most frequently seek information about the offender's character prior to the committing of the offence. This generally occurs when the offender needs rehabilitation from drug or substance abuse. The authors suggest that when the offender shows a sincere effort in the rehabilitation process, such deed is frequently seen as evidence that the offender wants to reform her/himself. On the other hand, a previous criminal record is an almost universal aggravating factor (Robinson et al., 2012; p. 821).

Robinson et al. (2012) explain that even though a prior criminal record is not an 'extralegal punishment factor' but forms part of the legal factors which are often incorporated in sentencing guidelines, the bad character pertaining to the offender is considered by authors as an XPF. Interestingly, this study concludes that the offenders' bad deeds or character prior to the perpetration of the crime was considered as a possible mitigating/aggravating factor when the crime committed was related to personal injury scenarios. This idea is supported in a study by Jacobson and Hough (2007) which clearly indicates that the offender's past, more specifically, whether the offender is of a good natured character or not, is leading a productive life or not, or has experienced great struggles in life like for example coming from a deprived background. All those personal circumstances are considered as personal mitigating factors and are generally used to reduce the severity of the sentence meted out. Jacobson and Hough (2007) state that judicial authorities also take into consideration the offender's personal circumstances at the time of the offence, for example, whether or not the offender was going through great financial difficulties or was experiencing psychiatric or mental health problems. The different research studies reviewed above, do consider guilty pleas as mitigating factors but generally such pleas need to be put forward in a context where the offence is not a serious one, where the offender has co-operated with the police authorities and where prior criminal record is also considered by judicial authorities as not a very negative one.

Robinson et al. (2012) explain that another important XPF as viewed by the research participants is the factor related to the offender or any third-party's consequent suffering as a result of the offence committed. The authors also stress the fact that this does not apply to any type of serious crime, but it is strictly related to minor offences. In a particular way, the XPF concerning "hardship for offender's family or others" (Robinson et al., 2012; p. 823) found great support from participants and it was evident that they deemed it as a mitigating factor, especially when the criminal punishment would be entailing that the offenders' dependants are deprived of their main caregiver. Jacobson and Hough (2007) explain that it is very clear that some personal mitigating factors such as disrupting the offender's family life or putting in jeopardy the offender's employment particularly apply when the sentence type concerns imprisonment versus non-custodial sentences and not about the sentence length. Jacobson and Hough (2007) refer to this as the 'offender's present and future prospects' category (p.33) in which classification the authors include the offender's commitment to tackle substance dependency and other related problems, the responsibilities that the offender holds towards his/her family and the offender's chronic physical illness or disability. Another similar study to that of Robinson et al. (2012) is that of Starr (2013) who uses the term "Sympathetic Life Circumstances" instead of "Extralegal Punishment Factor" (Starr, 2013; p.15). Starr (2013) argues that females who commit a crime tend to come from disadvantaged backgrounds. According to the author, these sympathetic life circumstances consist of a list of hardships that an offender might be going through at the time the crime is committed. These sympathetic life circumstances include poverty, mental health, addictions and history of abuse amongst other things (Starr, 2023). The author states that females who are going through sympathetic life circumstances may be seen as less culpable and/or more inclined towards accepting the fact that they need to rehabilitate and quit their substance addictions for example. In her presentation to the Scottish Sentencing Council on the Sentencing of Parents, Minson (2017) differentiates between male and female offenders who are primary

caregivers to dependent children. Minson (2017) states that in instances where offenders appearing before a criminal court are also responsible for the care of dependent children this needs to be considered as a legal mitigating factor as stated in Article 8, (law in Scotland) which is the right to respect for family life of both parent and child. Minson (2017) and Brett (2018) both explain that the state can interfere with this right only when there is a persistent social need, or in pursuing a legitimate aim. Minson (2017) states that judges/magistrates in a criminal court context should put the interests of offender's children at the forefront. Minson (2017) further states that this does make a difference between gender and care giving roles in the sense that, whenever female offenders are concerned, non-custodial sentences should be given to women with dependent children. Brett (2018) extends the issue of dependent children as a mitigating factor for both genders, irrespective of the offender being the father or the mother of the dependent minor/s. Brett (2018) explains that the best interests of the child/ren is an international legal obligation by which the children of offenders have the right to maintain contact with both parents and therefore there should be an alternative sentence to imprisonment.

The last mitigating/ aggravating factors as suggested by Robinson et al. (2012) to be considered during the criminal court proceedings are those which involve the victims of the criminal acts as well as the public opinion with regards the specific crime being processed. The most popular mitigating factors as suggested by this study are when the offender receives forgiveness by the victim and when the victim wants less or no punishment. The authors explain that this generally occurs in crimes related to property crimes and corruption. Robinson et al. (2012) explain that the reason behind these being considered as mitigating factors is because the type of crimes committed are not against the specific person/persons but against property. On the other hand, public outrage over the offence committed can be considered as an aggravating factor. Authors

Jacobson and Hough (2007) also make reference to this type of mitigating factor. In fact, they state|:

“An interesting form of mitigation – which does not fit neatly within any of our categories but is perhaps best included under the heading ‘responses to offence and prosecution’ – is support from the victim or the victim’s family. This may arise most frequently in domestic violence cases, where the victim of the violence asserts that she ‘forgives’ the offender and wishes their relationship to continue” (p.29).

In their study, Jacobson and Hough (2007) emphasise on this type of mitigating factor because one can hardly state with certainty whether the forgiveness on behalf of a domestic violence survivor is genuine or is extorted out of the victim’s fear of abuse. Jacobson and Hough (2007) suggest that while judicial authorities cannot discard the expressed wishes of the victim of domestic violence, they can make use of their discretionary powers to ascertain that the victim is helped by giving the appropriate sentence to the perpetrator, which may possibly include community work and therapy sessions.

Other studies by Umukoro and Egwuonu (2013) and Beaver, et al. (2019) bring to the fore another mitigating factor which according to the authors only female offenders can benefit from. These studies suggest that another factor that seems to impact sentencing outcomes is physical attractiveness. In their study Umukoro and Egwuono (2013) reached the conclusion that “Physically attractive offenders were sentenced to shorter sentences than physically unattractive ones” (p. 6). In their longitudinal study Beaver, et al. (2019), have found that physical attractiveness can act as a mitigating factor in the criminal justice process. But the most interesting finding was that attractiveness is the only extra-legal factor that only females can benefit from while male physical attractiveness does not seem to have any type of application on sentencing outcomes.

As seen above mitigating and aggravating factors can have many forms, for example personal mitigating factors refer to the factors related to the individual perpetrator him/herself and were proved to be effective in receiving a non-custodial sentence rather than a custodial one (Jacobson & Hough, 2007). Robinson, et al. (2012) divide the mitigating and aggravating factors into four main categories, that is “offender’s reaction to the offence” (p.815) which involves whether the offender has shown remorse for his/her actions; whether he/she co-operated with police; etc. The “offender’s status or characteristics unrelated to the commission of the offence” (p.819); refers to the offender’s behaviour before committing the crime and is usually referred to by judicial authorities in cases where the offender needs some form of rehabilitation. The third XPF according to Robinson, et al. (2012) is “hardship for offender’s family or others” (823). This is deemed as a mitigating factor in cases where the offender has significant others who depend on him/her who will have to face the consequences and repercussions of the offender’s incarceration. The last XPF as mentioned by Robinson, et al. (2012) involves the victims of the crimes as well as the general public’s view of the crime. The authors explain that when the victim forgives the offender, then such act should be deemed as a mitigating factor. On the other hand, if the crime creates public outrage, it should then be considered as an aggravating factor. Jacobson and Hough (2007) remarked that judicial authorities should pay particular attention when the victim pardons the perpetrator and this in cases of domestic violence. This is so because it could be that the victim is coerced to forgive. Different studies (Umokoro & Egwuono, 2013; Beaver, et al., 2019) found that physical attractiveness can also serve as a mitigating factor and this generally applies in cases where females are the perpetrators.

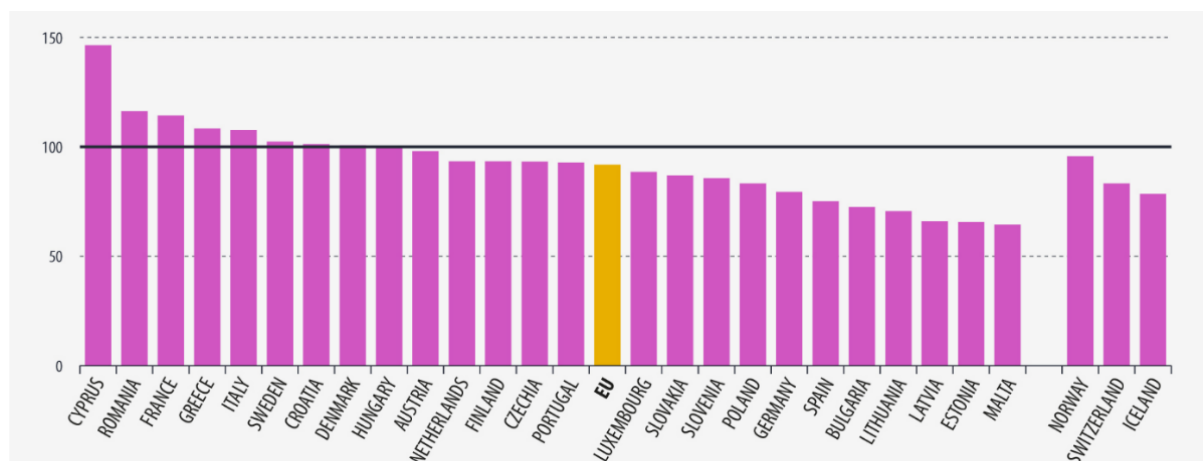
The information above explains why mitigating and aggravating factors are important given they can influence whether or not the offender gets a custodial or a non-custodial sentence and even

influence the length of such sentences. The next section will provide scientific explanations why an incarceration sentence is considered to be a tougher sentence than a non-custodial one.

2.6 Reasons why incarceration sentences are deemed harsher than non-incarceration ones.

The researcher's positioning in this research study is that custodial sentences are harsher sentences than non-custodial ones. This positioning is due to the following reasons. Aebi, et al. (2023) performed a study for the Council of Europe in which they used a survey to gather information about prisons and prisoners in Europe in 2022. Results from this research show that Malta together with other countries like Turkey, Georgia, Azerbaijan, Hungary, Lithuania, Poland, Slovenia Republic, Albania, Czech Republic, Latvia, Estonia, Moldova, Serbia, Montenegro, Scotland, England and Wales had a very high score in regard to the prison population rate per 100,000 people. Malta's score was more than 25% higher than the European median value. On the other hand, as seen in Figure 12, information provided by the Eurostat (2023) shows that in 2021 Malta together with other two European Union member states, that is, Estonia and Latvia marked the lowest prison occupancy rate recorded.

Figure 12
Prison Occupancy Rate



Source: EU prisons in 2021: populations & overcrowding (n.p.)

While this means that in Malta' prison the cells are less overcrowded when compared to other European countries the problem still exists. This in view that prison overcrowding is not only an issue of limited space available for detainees, but it may also negatively affect the prison sanitation and hygiene level which in turn may increase the rates of infectious diseases. Overcrowding may also impinge on the quality of health services available for prisoners. This means that prisoners who are in need of physical or mental health care find it more difficult to access such services (United Nations System Common Position on Incarceration, 2021). Overcrowding may also affect negatively the prison management as it may lead to an increased possibility of conflict between inmates. This, in turn poses great challenges on the security and the management of the prison. Lanciano, de Leonardis and Curci (2022) explain that overcrowding is just one of other factors which contribute to physical and mental health problems. Other factors include family deprivation, isolation, fear of the unknown and the prison environment itself which is one full of distrust.

Authors Cunha, et al. (2023) state that:

“Incarceration is definitely linked to poor health, and upon release from prison, many individuals experience difficulties in maintaining good health” (p.5).

According to Cunha, et al. (2023) the repercussions of having to serve a prison sentence extend beyond the prison walls. Ex inmates are stigmatised and therefore they find it hard to find employment. Those suffering from poor health, especially poor mental health are more likely to reoffend than offenders who do not exhibit health related problems. This in turn makes it harder for them to reintegrate into society.

Incarceration not only impacts the offender but also his/her respective family members or loved ones. Imprisonment diminishes the inmate's family income as the incarcerated parent cannot

provide financially to his/her family (Wildeman & Western, 2010). Authors Wildeman and Western (2010) state that:

“By removing men from the labour market, marking them as criminals, and making it difficult for them to acquire more skills, incarceration diminishes their earnings. By exposing them to infectious diseases, stress and the stigma of a criminal record, incarceration compromises their health” (p.165)

This can have serious repercussion on the inmates’ family as they tend to then be more at risk of poverty and family breakups. Generally, children of incarcerated parents face multiple risk factors, mainly in aspects related to economic status, behaviour, academic achievement and health (Aiello & McCorkel, 2018). Furthermore, children of incarcerated parents are at risk of social exclusion and stigmatization (Thulstrup & Karlsson, 2017). When compared to children who did not have an incarcerated parent, children of inmates experienced more mental health problems and psychosocial stress and this due to the separation from their parents. Thulstrup and Karlsson (2017) also state that children of imprisoned parents tend to feel lonelier, are stigmatised by their community, and go through a high level of uncertainty at home as well as in school environments.

The information above provided scientific data about the reasons why imprisonment is considered a tougher sentence than a non-incarceration sentence (Lanciano, et al., 2012; Cunha, et al., 2023). The difficulties experienced not only by those who are given a prison sentence, but also the repercussions experienced on their families and loved ones in view of such sentences were also mentioned (Thulstrup & Karlsson, 2017). The following section focuses on the different types of non-incarceration options which can be an alternative sanction to imprisonment.

2.7 Non incarceration options

The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules, 1990) state the one of the scopes of enforcing non-incarceration measures is to avoid excessive use of imprisonment. The Tokyo Rules further specify that non-custodial measures can be used at different stages of the criminal justice process, that is, there are measures which can be used at the pre-trial stage, others which can be used at the sentencing stage, while other are used during the post sentencing stage. This section focuses on the non-custodial measures which can be meted out at the sentencing phase. Furthermore, the Tokyo Rules state that in disposing of non-custodial measures, the judicial authorities are to take into consideration the offenders' needs for his/her rehabilitation. Judicial authorities are also to enforce such measures whilst maintaining the protection of society and safeguarding the victims' interests. The list of non-custodial measures as provided in the Tokyo Rules (1990) are as follows:

- “a. Verbal sanctions, such as admonition, reprimand and warning;
- b. Conditional discharge;
- c. Status penalties;
- d. Economic sanctions and monetary penalties, such as fines and day-fines;
- e. Confiscation or an expropriation order;
- f. Restitution to the victim or a compensation order;
- g. Suspended or deferred sentence;
- h. Probation and judicial supervision;
- i. A community service order;
- j. Referral to an attendance centre;
- k. House arrest;
- l. Any other mode of non-institutional treatment;
- m. Some combination of the measures listed above” (p.3).

Non- custodial sanctions in Malta are divided into two distinct categories; ones which do not entail any supervision, for example fines and the conditional discharge, and others which entail a certain degree of supervision, for example a probation order and a suspended sentence with supervision order (Scicluna, 2021). The Magistrate presiding the court of Magistrates – Criminal Judicature is to decide on the length and the type of non-custodial sanctions to be meted out. The Maltese Criminal Code on the other hand, establishes the legal length of the so called “reference sanctions” which are the non-custodial sanctions stipulated in the legal provisos of criminal offences. In fact, the Maltese Criminal Code provides the minimum and maximum sentence length that can be meted out with regards to specific crimes. Scicluna (2021) further adds that there is an implicit practice that the magistrate presiding the criminal court grades the punishment according to the offender’s criminal record. In the sense that, for example, first time offenders are hardly ever given a custodial sentence. The non-custodial sanctions which can be given by the Maltese Criminal court differ also by severity. For example, a probation order can be given instead of a prison sentence which carries up to seven years imprisonment. Alternatively, a suspended sentence can be given instead of a sentence of two years imprisonment. The following are the different non-custodial sanctions available in Malta.

The Criminal Code provides legislation for the following non-custodial sanctions:

- **Reprimand and Admonition (Section 7).** Scicluna (2021) explains that this is probably the least severe from the non-custodial options as it involves only a reprimand and admonition and there are no further actions which are taken by court or by any supervising authority. It is to be noted that this sanction is listed in the offenders’ criminal record, however if the offender refrains from committing any other offence, this sanction may not impact on the offenders’ future.

- **Fines (Section 7).** Scicluna (2021) explains that there are two types of fines, fine (*multa*) or fine (*ammenda*). The difference between them is that the *multa* is applicable to crimes whereas the *ammenda* is applicable to contraventions. Another difference is the amount of money that the offender has to pay when given this sanction. In case of a *multa*, it carries a minimum of 23.29 euro to a maximum of 1,164.69 euro. Whereas an *ammenda* carries a minimum of 6.99 euro to a maximum of 23.29 euro.
- **Interdiction (Section 10).** These non-custodial sanctions can be general or specific and can be temporarily or for life. Unless specified by any other law, interdictions which are temporary can last for a maximum of 5 years.
- **Suspended sentence (Section 28 A TO 28 I).** This is a prison sentence which can last up to two years, and which can be suspended for a period of between one and four years. In the case that in the operative period of this non-custodial sanction, the offender engages in criminal activities, then he/she is to do their time in prison.
- **Suspended sentence with supervision order (Section 28 G).** The court may combine a suspended sentence together with a supervision order in cases where the crime carries with it a period of more than six months imprisonment and less than two years imprisonment. This non-custodial sanction entails that the offender is subjected to the supervision of a probation officer for the period of the suspended sentence.

Other non-custodial sanctions are found under the Probation Act (Chapter 446). These include:

- **Probation Order (Section 7).** The probation order can be given for a minimum of 1 year to a maximum of 3 years and can be given in those cases where the prison sentence does not exceed 7 years. During the period of the probation order, the offender is supervised by a probation officer. The probation order can also include a treatment order.

- **Treatment Order (Section 7, subsection 5).** A criminal court can impose a treatment order on the offender. The length of the treatment order cannot go beyond the period of 3 years.
- **Community Service Order (Section 11).** This order involves a minimum of forty hours to a maximum of four hundred and eighty hours of unpaid work or unpaid work together with training. Offenders receiving such a sentence should be over the age of sixteen years and the unpaid work has to be done in a period between one month and two years. This order can be given for offences that carry more than seven years of imprisonment.
- **Combination Order (Section 18).** The criminal court can order a probation order together with a community service order. In the combination order, the probation order carries with it the same length of sentence, that is, from one year to three years, while the community service order work hours decrease to a minimum of forty hours to a maximum of one hundred hours.
- **Absolute Discharge (Section 22).** Offenders are given absolute discharge, when the court is convinced that the ordeal of the trial was enough of a punishment for the offender. In this case, the offender is discharged without having to abide by certain conditions imposed by court.
- **Conditional Discharge (Section 22).** In this order, the court discharges the offender with the condition not to commit other offences during the operative period of this sentence. The conditional discharge can last up to 3 years (Scicluna, 2021).

It is important to note that generally, before the court decides on which non-custodial sanction is given to an offender who is found guilty of an offence, the court usually orders the Department of Probation and Parole to put together a pre-sentencing report. This report entails the gathering

of information about the offender which in turn can help the court to better identify the offender's needs.

The section above provides the reader with information about the alternative sanctions to incarceration. The United Nations through the Tokyo Rules (1990) provides guidelines as to what can be considered as a non-custodial sanction. The list of non-custodial sanctions at the sentencing phase is made up of thirteen different sanctions which vary from probation and judicial supervision to house arrest. Non-custodial sanctions in Malta are divided into two distinct categories – those involving supervision and those which do not entail any kind of supervision. Those involving supervision include, probation order, suspended sentence with supervision order, treatment order, community service order and combination order. The other non-custodial sanctions which do not require supervision are absolute discharge, conditional discharge, suspended sentence, interdiction, fines and reprimand and admonition.

The information provided in this section of the literature review offers a broad overview of the academic literature available on the topic under study, and it also encompasses the different issues, be they legal or extra-legal factors or mitigating and/or aggravating factors, which can accentuate gender disparities in criminal court sentencing. In order to provide the needed theoretical framework to provide further understanding of the research problem, this study will be guided by two main and different theories.

2.8: Theoretical Framework

The theoretical framework steering this study incorporates two distinct theories which attempt at providing an explanation as to why female offenders are meted out more lenient criminal sentences for the same crimes committed by male counterparts. The two theories reviewed in this section are the Focal Concerns Theory, and the Paternalism/Chivalry Theory. The main reason behind focusing on these two theories concerning gender disparities in criminal court sentencing is that both theories provide a structural as well as a behavioural understanding of the phenomenon. (Alozie & Johnston, 2000). Alozie and Johnston (2000) explain that a theory which provides a “behavioural explanation” (p.240) contends that females get involved at a much lesser rate in criminal activities than their male counterparts and when they (the females) do, the crimes committed tend to be of a lesser degree. On the other hand, a “structural explanation” (p.240) suggests that male offenders are treated in a harsher manner by the criminal court system *per se*, even when the crimes committed are like those that are perpetrated by female offenders. Furthermore Bontrager et al. (2013) state that:

“Chivalry and Focal Concerns perspectives argue that a variety of practical and extralegal factors weigh upon criminal justice decision making, creating greater leniency for female than male offenders” (p.352).

These practical and extra-legal factors are discussed and reviewed in the following section.

There are other theories, like social control theories, which also aim at providing the theoretical base needed to explain gender discrepancies in criminal court sentencing. Eitle et al. (2014) explain that the Power-Control Theory has also been used in studies to understand the gender gap in crime and delinquency, however, such research studies produced mixed results. Eitle et al. (2014) state that the power control theory sheds lights on the notion that parental control and effective child rearing depends on the type of occupational role that respective parents hold. This

in view of the fact that the type of parental occupation impinges in different ways on how parents are socialised, which in turn influences the type of supervision patterns in raising boys differently from girls. In a nutshell, the power control theory assumes that females refrain from committing crime because of the stereotypical way they are brought up, which is enhanced by informal social control agents such as assuming caring roles, etc. Social Control theories were not chosen as the theoretical framework for this research study as such theories, for example the Power-Control theory, create a methodological problem because they are best suited for longitudinal studies (Eitle et al., 2014). On the other hand, the choices behind this theoretical framework were that both the Focal Concerns Theory as well as the Paternalistic/Chivalry approach are relevant to this research study as they provide the needed framework to explain gender differences in criminal court sentencing. This is because, as stated earlier, both theories provide a ‘structural and a behavioural explanation to understand the phenomenon being studied (Alozie & Johnston, 2000; p.240). Moreover, Roberts (2016) states that the Focal Concerns Theory provides “the best theoretical lens” (p.25) in research studies which focus on gender differences in criminal court sentencing. According to Roberts (2016), this theory provides the needed framework to explain how gender in addition to other legal or extra-legal variables impact the judiciary’s criminal sentencing decisions.

2.8.1: Focal Concerns Theory

The Focal Concerns Theory was appositely developed by Steffensmeier and Hoffman Steffensmeier (1980), Steffensmeier (1980) and consequently improved and synthesized by Steffensmeier, Ulmer and Kramer (1998). This theory provides a theoretical context in addressing the issue that, despite the narrowing gender gap in crime, female offenders do receive more lenient sentences for the crimes committed in spite of the increase in crimes and the ‘changing nature of female delinquency’ (p.80) (Steffensmeier et al., 1980). The authors explain

that adolescent female offenders perpetrate more crimes related to larceny, liquor law violations and runaways, while adult female offenders engage in crime categories such as larceny and fraud (Steffensmeier et al., 1980). Steffensmeier (1980, as quoted by Roberts, 2016; p.23) coined the original version of the Focal Concerns Theory by identifying five major influences that affect judicial authorities during the sentencing phase. These are practicality, naivete, chivalry, permanence of behaviour, and perception of dangerousness. The work by Steffensmeier et al. (1998) was determinant in the further development of the Focal Concerns Theory. This was due to the fact that their quantitative research study on the intersections of gender, race and age in the criminal sentencing outcomes led to the conclusions that “gender has the largest” (p.788) effect on sentencing outcomes, followed by age and then race. In fact, this study puts forward strong evidence that offenders, who receive the harshest criminal sentences are Black males in their 20’s to 30’s. Steffenmeier, et al. (1998) explain that these results are consistent with the Focal Concerns framework adopted in their study. The validity of the Focal Concerns Theory was considered in this study because it was evident that judicial authorities took into consideration the offenders’ blameworthiness, dangerousness, risk of recidivism and practical organizational consequences when deciding on the type of sentence. Wermink, et al. (2015) refer to the suggestions and appeals put forward by Ulmer (2012), where he states that most research projects testing the feasibility of the Focal Concerns’ Theory’s applicability to understanding gender discrepancy in criminal sentencing is limited to the United States of America and additional research in other countries should follow. In an effort to expand on the existing data, Wermink, et al. (2015) performed quantitative research covering the Netherlands and its jurisdictions by analysing the criminal court sentencing issued during the year 2007. Wermink, et al. (2015) state that the results are consonant with previous studies performed in the U.S. and that their study shows that “criminal court processing outcomes are typically less severe for female offenders compared with those for male offenders” (p. 754). Wermink, et al. (2015) state

that according to their study, female offenders are perceived by the judiciary as being less culpable, of lesser risk for future perpetration of crime and less able to serve a prison sentence. These disparities were not limited to gender only, but were also conditioned by other variables such as age and ethnic origin. Wermink, et al. (2015) state that age has “curvilinear effects” (p.754) on the type of sentences meted out. This is due to the fact that harsher sentences are given to adult offenders when compared to the ones given to the youngest and oldest adult offenders who committed similar crimes. Furthermore, non-Dutch citizens received harsher sentences than natives. This is highlighted by the fact that Moroccans consistently received the harshest penalties (Wermink, et al., 2015).

The Focal Concerns perspective offers a useful theoretical framework for understanding how and why extra-legal factors, more specifically gender, race/ethnicity and age can influence the judicial authorities’ decisions during the sentencing phase. In fact, Freiburger (2009) states that:

“This perspective offers insight into the reasons why several legal and non-legal offences and offender characteristics influence the sentences that defendants receive in the criminal court” (p.163).

Different research studies (Doerner, 2009; Jeffries & Bond, 2013; Richardson, 2015; Roberts, 2016; Steffenmeier, et al., 2017) show that the validity of the Focal Concerns Theory even in research studies involving states where there is the implementation of and adherence to specific sentencing guidelines. The Focal Concerns Theory as applied in this research study is important because it “combines elements from theories on both judicial decision-making and gender disparity” (Richardson, 2015, p. 15). This theory is based on three main pillars that judicial authorities take into account when reaching a decision on the type of criminal sentence given.

The three Focal Concerns (pillars) as proposed by Steffensmeier and colleagues (1980; 1998) are: blameworthiness, community protection and practical concerns. Richardson (2015) and Doerner (2009) explain that blameworthiness needs to be divided in two components, which are the offenders' culpability and the severity/degree of harm caused by the criminal act. Richardson (2015) explains that blameworthiness is the focal concern, which is most likely to be clearly explicated by law, so that the punishment attributed should reflect the proportionality of the offender's criminal act and its severity should depend on the level of responsibility and the degree of harm caused by the criminal act in itself. Doerner (2009), Jeffries and Bond (2013) and Richardson (2015) agree that blameworthiness within the Focal Concerns perspective needs to be associated with the retributive philosophy of punishment. Hence, judicial authorities' perceptions of blameworthiness are primarily related to factors such as the seriousness of the offense, the offenders' prior criminal history and/or victimisation as well as the offenders' role in the criminal offence. Steffensmeier and Demuth (2006) also state that judicial authorities tend to positively favour offenders with more lenient sentences when they plead guilty assuming responsibility for their actions even because the judicial authorities seem to assume they are less likely to offend.

The second Focal Concern that judges are concerned with, is that of protecting the community (Jeffries & Bond, 2013). When explaining Community Protection as the second Focal Concern, Freiburger (2009) also includes the notion of "dangerousness" (p.164). This entails that magistrates and judges also take into consideration whether the defendant appearing before them is of a dangerous nature and his/her predisposition for recidivism. Freiburger (2009) also explains that by doing so, judges and magistrates give due importance to protecting society from persons who could re-victimise by causing harm to a given community. As in the case of the Focal Concern of blameworthiness, when analysing the second Focal Concern of community

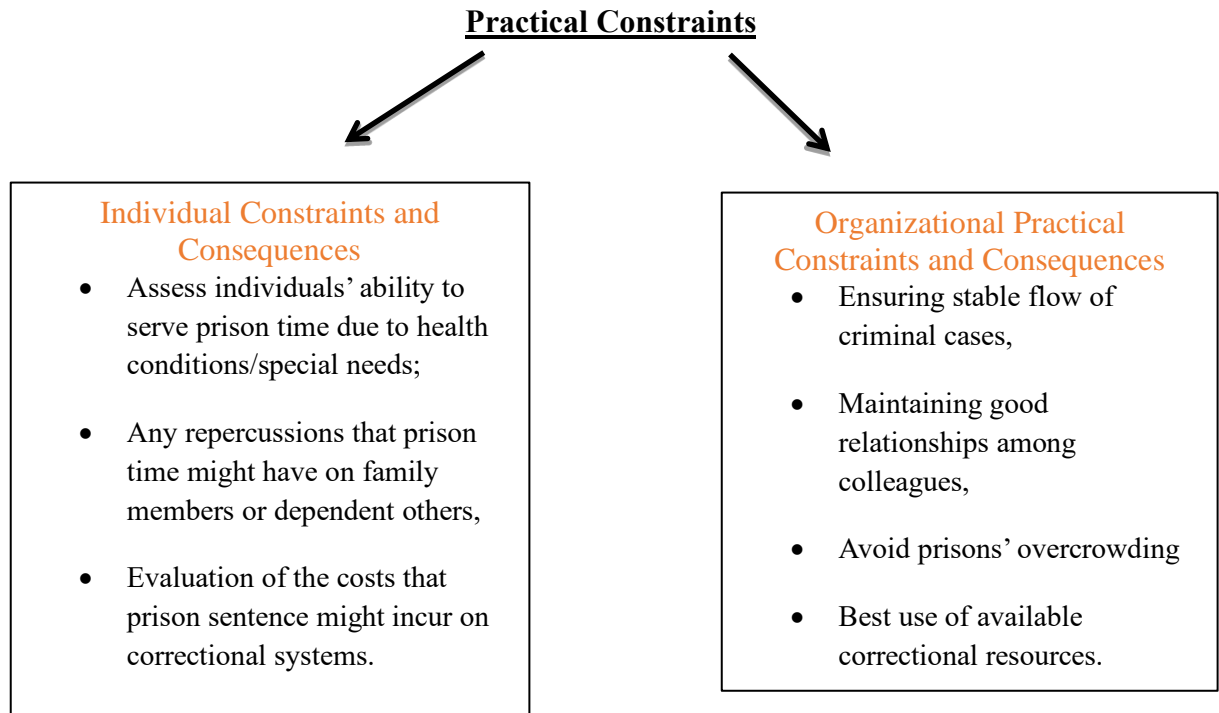
protection, Freiburger (2009) states that judicial authorities consider also the offenders' prior criminal history as well as the level of severity of the offence. In fact, in her study, Freiburger (2009) found out that these two aggravating factors led judicial authorities to give an imprisonment sanction. On the other hand, an important consideration mentioned by Freiburger (2009) is that offenders with a good level of education also seem to benefit from a decreased severity in their sentence. Freiburger (2009) study does not, however, consider employment as favouring in any way the defendants because, according to her, judicial authorities do not view this as a mitigating factor which could restrain the offender from perpetrating criminal activities again.

According to Richardson (2015) the third and last focal concern comprises both individual and organisational practical constraints and their respective consequences. Richardson (2015) and Doerner (2009) explain that practical constraints and their consequences are linked to examining the way in which criminal sentencing decisions impact the operational course of the criminal justice system while taking also into consideration the individual defendants, their respective families and communities. In order to facilitate understanding, the third focal concern will be divided into two distinct areas of concern; on one side there are the Organisational practical constraints and consequences concern and on the other there are the Individual practical constraints and consequences concern (Freiburger, 2009; Richardson, 2015; Roberts, 2016). According to these authors, the Organisational practical concern focuses on ensuring the stable flow of criminal cases while maintaining a working relationship among courtroom actors. It also involves the taking into consideration of and being thoughtful of the prisons' crowding and available resources. Individual practical concern relates more to the individual offender's ability to serve the prison time, his/her health conditions including any special needs that s/he might have, the disruption/repercussions that an effective prison sentence might have on the offender's

respective family members including dependent children, as well as an evaluation of the costs that such prison sentence might incur on the correctional system.

Figure 13

Focal Concerns Theory- Practical Constraints



This perspective also emphasizes the point that judges/magistrates are presented with these strong and persuasive focal concerns which limit their prospect seeking further information about the offender appearing before them (Franklin & Fearn, 2015; Steffenmeier, et al., 1998). Therefore, because of these concerns, the judicial authorities find it easier to make decisions within the reality which is being presented to them through these three focal concerns, which are blameworthiness, dangerousness of the offenders, and possible practical constraints which might limit the type/severity of the criminal sentences. Franklin and Fearn (2015) explain that:

“To deal with a high volume of cases in light of the relative uncertainty concerning the future behaviour of offenders, judges develop a perceptual shorthand that can quickly be applied to each case” (p.98).

Roberts (2016) states that the Focal Concerns Theory provides “the best theoretical lens” (p.25) in research studies which focus on gender differences in criminal court sentencing. According to Roberts (2016), this theory provides the needed framework to explain how gender in addition to other legal or extra-legal variables impact the judiciary’s criminal sentencing decisions. As already stated, the Focal Concerns Theory was tested by different international research studies with special regards to gender differences and its impact on the judiciary during the criminal sentencing phase (Franklin, 2009; Franklin & Fearne, 2015; Freiburger, 2009; Harris, 2008; Richardson, 2015; Roberts, 2016; Steffensmeier & Motivans, 2000; Steffensmeier, et al., 1998; Van Slyke & Bales, 2013; Van Wingerden, et al., 2016;). An interesting study is the one carried out by Van Slyke & Bales (2013) as it applies a Focal Concerns’ theoretical framework to answer the research questions as to whether or not female offenders of street crimes are more likely to be severely punished than female white-collar crime perpetrators. The authors also examined whether or not the judges’ gender impacted the severity of the sentence in the case of male offenders and *vice versa*. Van Slyke and Bales (2013) performed an extensive study involving white collar and street economic offences that appeared in front of Florida’s criminal court from 1994 to 2004. This research study also assessed criminal sentences meted out by more than 200 male and female judges. Results show that the most significant difference in “gender-of-judge effect” (p.188) on the type of sentence meted out to offenders of different gender was particularly persuasive for females sentenced by male judges. The authors argue that these results provide a new academic scenario which contradicts long held believes on white collar crime theory and research. Whereas, according to Van Slyke and Bales (2013) empirical research and theory have often agreed that female offenders of white collar crime benefit from more leniency than their male counterparts as well as when compared to female perpetrators of street economic crimes, and this at the criminal sentencing stage, the research (Van Slyke & Bales, 2013) shows significant contradictions to this. In fact, Van Slyke and Bales (2013) state that:

“Analysis indicate that female street offenders sentenced by male judges receive the most lenient sentences – not female white-collar offenders sentenced by male judges” (p.188).

When analysing these results within the Focal Concerns perspective, one reaches the conclusion that stereotypes *vis-a-vis* gender role expectations influence any one of the three focal concern considerations: blameworthiness, dangerousness, and practical constraints. Van Slyke and Bales (2013) explain that such stereotypes are not associated by the judiciary to thought processes that female offenders need protection because of their vulnerable nature, but the authors attribute stereotypes which are culturally transmitted in evaluating the offender's personal experiences and life situation. The authors argue that the perpetration of white-collar crime by female offenders does in actual fact support the judiciary's notion that these female offenders have higher grades of criminal intent, higher culpability and higher levels of recidivism, which is not restrained. This in view that white collar crime comprises planning and premeditation and the offender's attempt to avoid to the utmost the possibilities of detection. On the other hand, Pope (2013) explains that when it comes to female perpetrators of white-collar crime, the term mostly used to address this type of crime is “Pink-Collar Crime”, a coined term referring to the rising number of female offenders involved in white-collar crime. The 2013 Marquet Report for Embezzlement is a study performed by Marquet (2014) which incorporates the study and analyses of embezzlement cases in the U.S.A. for a period of six years from 2009 to 2013 and includes a total of 2,698 specific cases. Marquet (2014) sheds light on different aspects concerning white collar crime, including characteristics of fraudulent schemes, characteristics of perpetrators, characteristics of victim organisations as well as the judicial consequences associated with this type of crime. Interestingly, one of the major motivators of white/pink collar crime is the aspiration to lead a lavish and extravagant lifestyle rather than experiencing a financial problematic situation. The study of Von Slyke and Bales (2013) found that judges give harsher sentences to females who commit white-collar crime. Another interesting fact which is evidenced by this report is that “nearly three fifths (57%) of the incidents involved female

perpetrators and the average prison sentence was less than 4 years for convicted major embezzlers” (p. 7). Marquet (2014) also states that male perpetrators of white-collar crime do, in actual fact, steal more money than their female counterparts. This does not mean that female perpetrators do not steal a considerable amount of money. The case of Irina A. Nashshin is given as a real-life example of pink-collar crime who managed to embezzle 20,000,000 U.S. Dollars from Affiliated Health Group Limited. Further examples provided in the Marquit Report (2014) include the oldest major embezzler in the 2013 case study which involved Ms. Marilee Garrison, an 80-year-old lady, and her daughter Susan Hilgeman from Newburgh, Indiana. Together they conspired the embezzlement of 290, 000 U.S.D. via the signing of forged cheques to themselves while consequently serving as treasurer in a non-profit organisation called “Evansville 555 Eastern Star”. Garrison, who was considered as the mastermind by judicial authorities received a sentence of 4 years imprisonment while her daughter who pleaded guilty for the crimes she was indicted on, received a probation sentence.

Another important contribution of the application of the Focal Concerns Theory to the type of criminal sentences meted out was the study performed by Franklin and Fearn (2015) in which they applied the Focal Concerns Theory to try to understand whether or not there exists a connection between race/ethnic stereotypes, besides gender in the sentencing phase. Franklin and Fearn (2015) state that the “model minority stereotype” (p.96) emerges as a potential extra-legal factor, which consciously or otherwise influences judges/magistrates in the sentencing process. The study performed by Franklin and Fearn (2015) focused on the study of Asian offenders by seven different American state courts. An important contribution of this study is the way the researchers categorized the legal factors and more specifically the “offense seriousness”.

“These include violent offences (rape, robbery, assault, other), property offences (burglary, theft, auto-theft, other), drug offense (drug sales, other)

public order offences, and misdemeanour offences. An additional measure, multiple charges, was also included in the analysis to account for whether the offender was arrested for more than one criminal charge” (Franklin & Fearn, 2015; p.104).

This study led to the conclusions that with regards the length of sentence, Asian offenders were treated in a slightly more lenient manner than Hispanics. Judicial focal concerns seemed to have the greatest impact on the earlier phases of the sentencing decisions, when the judges/magistrates were evaluating whether to impose imprisonment or a community-based sanction. In this regard, Asian offenders received more community-based sanctions than prison terms and Franklin and Fearn (2015) attributed this result to the “minority stereotype”.

Another research contributing to a better understanding of the application of Focal Concerns Theory and its impact on criminal sentencing decision makers was the one conducted by Van Wingerden, et al. (2016) which analysed extra-legal factors such as personal circumstances of the offender amongst other factors and the likelihood of incarceration or not. This, in view that certain stereotypes pertaining to the offender’s personal life circumstances (for example, a possible drug addiction) might dispose the judicial authorities to perceive such circumstances as increasing the possibilities of reoffending. This study is about the analysis of Dutch pre-sentencing reports available to judges. This implies that judges were briefed in detail on the offenders’ personal life circumstances. Van Wingerden et al. (2016) state that their research led to the conclusion that even when judges were informed about the offender’s personal life situation, they were still influenced by the stereotypical attributions bound to the offender characteristics. The Focal Concerns perspective theorises that due to lack of detailed information about the offender, judicial authorities base their sentences on stereotypical attributions related to blameworthiness, dangerousness and practical constraints (Doerner, 2009; Jeffries & Bond, 2013; Richardson, 2015; Roberts, 2016; Steffenmeier et. al., 2017). On the other hand, the study

conducted by Van Wingerden et al. (2016) provide a new perspective to such statements. In fact, results show that even when Judges/Magistrates are well-informed about the offender's personal life circumstances, through the pre-sentencing reports, the judicial authorities' criminal sentencing might still be influenced by time constraints.

As seen from the information provided above, the Focal Concerns Theory provides the needed theoretical framework to understand the dynamics, which might influence the judicial authorities during the criminal court hearing and during the sentencing phase. Considering that the main aspect under study is possible gender disparities in the criminal court sentencing, a link with feminist criminology and how Feminism views this aspect is explicitly important. Tripathi (2014) explains that there are many feminist approaches to this criminological aspect. One feminist approach is Liberal Feminism. This approach focuses on gender inequality and the dynamics by which traditional societal roles impact negatively the female gender. According to this approach gender inequality leads to women being discriminated against as they are attributed nurturing and caring roles whilst males retain the powerful roles in society (Simpson, 1989). Another important approach, Socialist Feminism, combines Radical feminism and Marxist feminism standpoints, and asserts the notion that gender differences flourish in capitalist societies and that the solution to this incongruence is to have a society free of gender differences and class stratification. In terms of crime and punishment, Socialist Feminism attributes the causes to the interaction between genders as well as highlights the point that our systems of power are mainly headed by the male gender. On the other hand, as explained by Burgess-Proctor (2006), the third wave of Feminist criminology links Multiracial Feminism to Focal Concerns Theory and this is because multiracial feminism gives importance to social locations, in the sense that, people of the same race will receive a different treatment to similar situations, and this depends upon their class structure location. For example, an esteemed medical doctor will be

treated differently than an unemployed person by society at large. Burgess-Proctor (2006; p.40) states that:

“...the concept of social location from multiracial feminism and the concept (or focal concern) of offender blameworthiness from sentencing theory overlap in a meaningful, theoretical way to explain how defendants’ demographic characteristics influence judicial decision making”.

Since the offenders’ demography is vital in applying the multiracial Feminism approach, but also conscious that such information can be difficult to obtain through the quantitative research method adopted in this study, another important theory which is widely used by academics to explain gender disparities in criminal court sentencing will be used. The Paternalism/Chivalry theory is used in this research study because as stated by Moulds (2003) this theory “is an appropriate one to describe the use of discretion by officials of the criminal justice system” (p.429).

2.8.2: Paternalism/Chivalry Theory

The Paternalism/Chivalry Theory envisages that female offenders who enter the criminal justice system will eventually receive more lenient criminal sentences than their male counterparts, even if they appear before the criminal court for very similar types of offences. This is mainly because of two main components, which are Paternalism and Chivalry. Paternalism within this theoretical framework is seen as the implicit superiority that males exhibit especially within the realm of the criminal justice system. Chivalry, on the other hand, is defined by the authors Lu, Liang & Liu (2013) as “a type of protective attitude assumed by males toward females” (p.160). Therefore, on one hand, the chivalry standpoint views females as weak, frail and powerless and unable to assume the same responsibilities/consequences for their criminal actions as male criminals do. On the other hand, the paternalists posit that females are to be sheltered and protected by males due to their different gender roles attributed by social norms. The patriarchal

perspective puts forward the notion that it is in society's best interests to treat female offenders in a more lenient manner than male offenders (Jeffries, 2017; Koons-Witt, 2002; Lu et al., 2013). Moreover, patriarchy exists within a system which is largely dominated by males, where masculinity is more esteemed than femininity (Embry & Lyons, 2012). Kruttschnitt and Savolainen (2009) state that paternalism infers that there is status and power deficiencies between males and females and therefore it is more of a "pejorative concept" (p.226) than the chivalry hypothesis. The authors further explain that paternalism within this framework is linked to females as caring and nurturing subjects due to motherhood and who are basically defenceless and powerless in a society in which such gender stereotypes and attributions exist. In their meta-analysis of contemporary research, the authors Bontrager et al., (2013) provide further explanation for the paternalism/chivalry theory and state that:

"In addition, they argue that male judges often view female offenders as inappropriate for imprisonment because they are weaker than men. These perceptions and feeling are often coupled with a paternalistic desire to protect and aid women in times of need. These sentiments however, are not extended to all female offenders, just those female offenders that fit the mould of specific construction of femininity" (p.353).

Saxena (2012) states that the earliest assertions linking the Paternalism/Chivalry Theory to the differential treatment of women within the criminal justice system were made by William I. Thomas back in 1907 in his publication entitled 'Sex and Society'. Thomas (1907) as quoted by Saxena (2012) stated that:

"...a man is merciless to woman from the standpoint of personal behaviour, yet he exempts her from anything in the way of contractual morality, or views her defections in this regard with allowance and even amusement" (p.8).

Saxena (2012) further explains that discussions about the chivalrous demeanour within the criminal justice system re-emerged in the 1950's by authors like Pollak, who claimed that within the criminal justice system, which is a male dominated institution, women need to be protected.

Embry and Lyons (2012) have studied how chivalry influences the criminal sentencing phase by facilitating gender disparities. To test the Paternalism/Chivalry hypothesis (amongst other hypothesis namely the evil woman hypothesis and the selective chivalry hypothesis), researchers Embry and Lyons (2012) adopted a quantitative approach by using data from the National Corrections Reporting Program to identify sex offenders who appeared in American courts from 1994 to 2004. In order to identify which perspective applies best to gender disparities in criminal sentencing, the authors decided “to examine those crimes that are most distinct departures from gender roles that a woman can commit, namely sex offences” (Embry & Lyons, 2012; p.157). Another reason for choosing to analyse criminal sentences meted out for this type of crime was that according to the authors, they needed to fill in the existing knowledge lacunae on the application of Paternalism/Chivalry Theory in such a context. The results of this study clearly show that as a social institution, the criminal justice system is unwilling to break paternalistic stereotypes and chivalrous attitude even towards females who commit atypical, gender crimes. In fact, results showed that when all the legal and extra-legal variables were considered, a significant difference was attained with reference to the criminal sentence length. The mean sentence length for male sex offenders was longer, thus showing a harsher penalty for males who committed the same crimes as females. Male offenders of sex crimes such as rape, child sexual assault and forcible sodomy received a mean sentence length of 9.38, 7.88 years and 9.04 years, while females found guilty of these sex crimes received a sentence length mean of 8.83, 7.41 years and 6.23 years respectively (Embry & Lyons, 2012, p.158). Another important contribution of this research study was that researchers used data of offenders that appeared in front of courts guided by mandatory sentencing guidelines, thus reinforcing the concept that the Paternalism/Chivalry Theory does provide the needed theoretical framework to understand serious gender discrepancies in criminal sentencing.

The Paternalism/Chivalry theoretical framework was also adopted in different research studies to analyse whether female judicial authorities have the same paternalistic/chivalry attitudes towards female defendants which studies produced mixed results (Farrell et al., 2010; Gill et al., 2015). Farrell et al. (2010) studied sentencing disparities in American Federal Courts as women defendants make up just 15 % of the total cases appearing in front of these courts. Farrell et al. (2010) wanted to test the hypothesis as to whether or not court staff structure could reduce/augment gender disparities in criminal sentencing. The results showed that male judges decreased the likelihood of offenders (both males and females) being given a prison sentence and also the overall length of sentences. An explanation of this result is that female judges and prosecutors may introduce the “ethic of care” (Farrell et al., 2010; p. 122) in their courtroom and this may be concomitant to a different consideration of offenders’ characteristics, which in turn leads to more lenient sentences overall. Furthermore, Farrell et al. (2010) found evidence suggesting that an increase in the number of female judges/magistrates corresponded to a more lenient approach towards female offenders. Thus, the notion that female offenders do receive more lenient sentences as a result of paternalism/chivalrous treatment within the criminal court system as an institution is reinforced. On the other hand, the study carried out by Gill et al. (2015) produced opposite results. Researchers studied reported and unreported immigration appeals from 2009 to 2012. The quantitative data consisted of 1098 immigration appeal cases from eleven different U. S. courts of appeals. Gill et al. (2015) state that:

“Our results do, however, raise important questions about how we approach the task of interpreting the interactive effects judge and litigant gender. While the presence of women on the panel does seem to mitigate the all-male panel’s leniency on women, it produces a symmetrical leniency on men. This could be a result of female judges bringing their own implicit biases to the table. It is possible that women Judges judge female litigants especially harshly, perhaps because they understand that women are not the damsels in distress that some judges may implicitly assume them to be” (p.14).

Menkel-Meadow (1986) conducted a study in which she coined the different attributes that female judges bring to the courtroom as the “Feminization of the legal process” (p. 898). Menkel-Meadow explains that this can be interpreted in two ways – on one hand this profession can be deemed feminised as there is a growing participation of females in this profession and secondly because females can bring about change to a profession, which is mostly dominated by men, via qualities such as “nurturance, collectiveness, empathy and relatedness” (p. 898) normally associated with females. The results of the study carried out by Menkel-Meadow, which involved a qualitative analysis of data of female who work in the legal profession and who are from different western industrial countries, led to the conclusion that:

“Early studies of women judges have failed to uncover any real differences in judging, except that women were more likely than men to sentence female offenders to prison. Scholars have speculated that women may be more likely to take into account of a wider variety of contextual factors in making a decision, tempering justice with mercy” (p.917).

Kruttschnitt and Savolainen (2009) provide other implication of the Paternalism/Chivalry Theory. The authors explain that the fact that female offenders receive lenient treatment from judicial authorities might be also linked to the fact that most Western Societies are still attempting to achieve gender equality. In order to test the Paternalism/Chivalry Theory, Kruttschnitt and Savolainen (2009) performed their research by using data from Finland, as according to them, this country is much more associated with gender equality than other countries, especially ones like the U.S.A. This study focused on analysing statistics provided by the Finnish government. Researchers used a random sample of sentencing outcomes covering the period from 1996 to 2000, including cases which involved decisions to incarcerate or not. The shifts in gender roles, which are evidently present in the Finnish society, do, in actual fact, reduce gender disparities in criminal court sentencing (Kruttschnitt & Savolainen, 2009). Kruttschnitt and Savolainen, (2009) conclude that “In Finland, gender has no effect on the decision to incarcerate, net of other social and legal case characteristics” (p.242).

Tillyer et al. (2015) adopted the Paternalism/Chivalry Theory to examine the relationship between the defendants' gender and past criminal history and their effect on sentence length in criminal cases related to narcotic dealings. The results of this research study led to the conclusions that female defendants with a shorter criminal history received much shorter sentences than male offenders who had a similar criminal history. Tillyer et al. (2015) explain these results as:

“The preferential treatment of women may reflect a belief that female defendants with lower criminal scores are seen as less deserving of a strict punishment because they conform to traditional gender-specific, social norms or because these defendants are seen as less able to effectively handle the rigors of a long prison term” (p.715).

Tillyer et al. (2015) confirm the importance of including control variables such as prior criminal history of offenders when analysing this topic within the Paternalism/Chivalry Theory. The importance of these variables is also presented in the conclusions reached in the meta-analysis study by Bontrager et al. (2013) in which researchers reviewed a comprehensive synthesis of studies focusing on gender and criminal sentencing decisions published from 1991 onwards. The importance of the study by Bontrager et al. (2013) lies in their conclusions that one cannot study the attribution of the paternalistic/chivalristic perspective without taking into consideration all the variables, such as past criminal history, offense type and crime seriousness.

“In comparison, studies that relied on at least two of the three established necessary control variables reported support for the Chivalry theory 73% of the time” (Bontrager et al., 2013; p.365).

As seen in the study conducted by Bontrager et al. (2013) the use of an appropriate methodology, one which includes important variables and other legal and extra-legal factors is essential when attempting to provide a scientific grounding to the research problem addressed in this study.

Embry and Lyons, (2012) and Tillyer et al. (2015, as quoted by Tereskinas et al., 2020; p3) state that:

“The Chivalry Hypothesis also includes the concept of selective chivalry, or the evil woman thesis, that attempts to explain women’s transgressions of traditional gender roles and responses to them”.

The Evil Woman hypothesis compliments the Paternalism/Chivalry Theory in the sense that it offers an explanation in instances where females are not treated in paternalistic/chivalrous matter and are given a more severe sentence than their male counterparts (Nagal & Hagan, 1983). Rodriguez et al., (2006) state that female offenders whose crime goes against established gender related stereotypes and norms are given harsher criminal sentences, “perhaps similarly to men convicted of these crimes” (p.322). This hypothesis asserts that only female offenders who maintain and adhere to stereotypical female gender roles, such as committing crimes like drug use, shoplifting and forgery are met with leniency within the criminal justice system especially during the sentencing phase. Females who breach such stereotypes and commit masculine crimes, such as those involving violent crimes will not benefit from gender stereotypes and consequently receive harsher sentences at the criminal sentencing phase. This in view that they are not only violating the law but also, going against what society at large expects from them.

Griffin and Wooldredge (2006) further explain the situation by giving the example that in drug crimes sentencing judges might disregard the gender of the offender as both genders have a high risk of recidivism. According to the Evil Woman Hypothesis, females will not benefit from any chivalrous demeanour on behalf of the sentencing judge because her involvement with drugs may be perceived as highly irresponsible behaviour especially if the female offenders are mothers and therefore such criminal acts can jeopardise the well-being of her children. Griffin and Wooldredge (2006; p. 896) explain that:

“In this sense, the evil woman and chivalry perspectives could be seen as opposite predictions stemming from the same basic phenomenon: preferential or punitive treatment is meted out based on the degree to which court actors perceive a female defendant as fitting the stereotype of either a good or a bad woman”.

The Paternalism/Chivalry Theory offers another view as to the reasons why female offenders receive more lenient sentences than their male counterparts who committed similar crimes. Paternalism within this framework posits that females are to be sheltered and protected by males and this due to the different roles attributed to them by society at large. Chivalry on the other hand, means that males view females as weak, frail and powerless and therefore are not able to assume responsibilities for their criminal actions. Kruttschnitt and Savolainen (2009) explain that Paternalism within this framework is linked to females as caring and nurturing subjects due to their motherhood and who are defenceless and powerless in a society in which such stereotypes and attributions exist. The authors further their argument by explaining that the fact that female offenders receive lenient treatment from judicial authorities might be linked to the reality that most Western societies are still attempting to reach gender equality.

The Chivalry Theory includes the Evil Woman Hypothesis to explain the behaviour of female offenders who go against traditional gender roles and behaviour and who are meted with harsher sentences than their male counterparts who commit similar crimes (Rodriguez, et al., 2006). This in view that they are not only breaking the law but, they are also violating what society at large expects from them. The next section provides a critical evaluation of the two main theories used in this research.

2.9 Critical Evaluation of the two theories

Richardson (2015) puts forward a critical evaluation of the Focal Concerns Theory and states that there are limitations concerning both the original formulation and the subsequent scientific testing of this theory. Richardson (2015) explains that the theoretical domains within the focal concerns framework have not been fully clarified. This in view that the Focal Concerns Theory

is laid out on three focal concerns concepts, yet the exact set of variables that represent each of these concepts is not clearly established. Steffensmeier and colleagues, who are considered to be the founding fathers of the Focal Concerns Theory as presently adopted, identify only some important variables that can influence each focal concern. For example, Steffensmeier and colleagues identified biographical factors such as prior criminal history and offender's role in the offence as variables which increase offence severity thus helping the judges to assess the offender's level of blameworthiness and dangerousness (community protection), but not practical constraints concerns such as prison overpopulation. Richardson (2015) and Ishoy (2015) state that these two variables are not enough to explain the complicated dynamics by which judges take their decisions during the criminal sentencing phase because the variables that best constitute the concepts differ from court to court and from community to community.

Another critique put forward in regard to the empirical application of the Focal Concerns Theory is that the scientific research which tested this theory was based on information retrieved from datasets and therefore the methodology applied to test Focal Concerns Theory was a quantitative one, which exclude rich informative data that can be gathered through qualitative methods (Ishoy, 2015; Richardson 2015; Roberts, 2015). Richardson (2015) explains that:

“The frequent use of this dataset limits the generalizability of focal concerns research and places constraints on the variety of variables that are included in analytic models. The measures representing each of the key focal concerns have been dictated by the information available in the datasets rather than by theory” (p.20).

In her study Richardson (2015) provides a thorough breakdown of the pitfalls pertaining to each individual focal concern and specifies that the Focal Concerns Theory, although used effectively in explaining gender disparities in criminal court sentencing, needs to be reconceptualised. The

first focal concern under study is ‘blameworthiness’. Richardson (2015) explains that this focal concern should be determined on the characteristics of the criminal case and not on the characteristics of the offender. Richardson (2015) explains also that when taking into consideration the focal concern of ‘blameworthiness’, judicial authorities should also link it to the perception of offenders’ culpability. In other words, Richardson (2015) states that not only mitigating/aggravating circumstances should be taken into consideration, but also, for example, whether or not the offender has gone through experiences of victimisation before the perpetration of the crime. The example provided by Richardson (2015) to explain this notion is that a person who murders his/her spouse and that previously had experienced incidents of domestic violence is more likely to receive a more lenient sentence than any other offender perpetrating the same crime but who did not go through such experiences. Richardson (2015) provides a critical evaluation of the second focal concern stating that when judicial authorities take into consideration the protection of the community in the decision-making process, they frequently attribute community protection to whether or not the offender appearing before their court represents a dangerous /violent behaviour as well as the criminal nature of the perpetrator. Richardson (2015) states that by assessing these factors, judges/magistrates attempt at foreseeing the offender’s propensity to recidivism, and thus re-harm society. Richardson (2015) states that community protection should be reconceptualised as the “focal concern that embodies the objective of crime prevention” (p.24). Thus, when assessing this particular focal concern, judicial authorities have to take into consideration other significant indicators such as possible substance abuse/ dependence, health problems, mental health problems, employment history, work ethic and the level of education of the offender as well as her/his personal work-related skills. In her critical evaluation of the Focal Concerns Theory, Richardson (2015) refers to the last focal concerns, the practical constraints and states that these concerns can be seen as very pragmatic as they reflect the idea that criminal sentencing does not occur in a vacuum and

therefore there can be multiple factors determining the kind of punishment given. On the other hand, this focal concern is also a type of a “catch all category” (Richardson, 2015, p. 24). Richardson (2015) states that these limitations of the Focal Concern Theory could be addressed with more research especially survey research. However, according to Richardson (2015) this could also be problematic as:

“Response rates to paper-based surveys are low and falling, and judges are also unlikely to commit to completing questionnaires, which essentially amount to more paperwork, each and every time they hear a criminal case” (p.27).

Islam et al. (2014) in their analysis of criminological theories of female criminality explain that one of the main strengths of the Paternalism/Chivalry Theory is that it provides a framework to explain the important role played by the Criminal Justice system in explaining female crime and consequently the discrepancies in criminal sentencing with which female perpetrators are advantaged. Islam et al. (2014) state that on the other hand the Paternalism/Chivalry Theory can be seen as a fabrication and hidden discourse. In their critical evaluation of the Paternalism/Chivalry theory Islam et al. (2015) conclude that this theory could facilitate the public notion that “female offences get less importance than male ones in the criminal justice system” (p. 8).

As seen in the previous section, the Paternalism/Chivalry theory states that females are seen by the judiciary as weak, naïve and in need of protection (Embry & Lyons, 2012; Saxena, 2012) but Curry et al. (2004) state that this could jeopardise the principle of the rule of law. Curry et al. (2004) state that male offenders who commit crimes on female victims are consequently punished more harshly than if they perpetrate a crime against male victims. This in view of the

fact that females are considered as powerless, feeble and in dire need of being sheltered. On the other hand, the Evil Woman hypothesis stresses the fact that when females go against stereotypical gender based behaviour they, are met with harsher punishments than their male counterparts. Tillyer et al. (2015) explain that the Evil Woman Hypothesis has been supported by research that studied the motive for the offence or the criminal history and attributed these with the deviation from traditional gender roles as a result of harsher sentences. However, Rodriguez et al. (2006) states that research studies that included and addressed the offence type failed to support the differential treatment.

The information above offers a critical evaluation of both the Focal Concerns Theory as well as the Paternalism/Chivalry Theory. A main critical evaluation of the Focal Concerns Theory is that the domains within its framework have not been fully clarified (Richardson, 2015). Another critique is that many studies which involved the Focal Concerns Theory were quantitative in nature therefore excluding rich and informative data which qualitative studies can produce.

In their critical evaluation of the Paternalism/Chivalry Theory, Islam et al. (2015) state that this theory could send a message that offences perpetrated by female offenders are less important than those perpetrated by males. Curry et al. (2004) further their argument by stating that this theory could jeopardise the principle of the rule of law. In their critical evaluation of the Evil Woman Hypothesis, Rodriguez et al. (2006) argued that studies which controlled for type of offence as a variable in their analysis failed to support this hypothesis.

3. Conclusion

The information provided above implies that the issue of gender disparities in criminal court sentencing has been a matter of debate since the early twentieth century. Early research provided more insights on different aspects as to why there seems to be such discrepancies. Important factors such as the gender gap in crime (Haggart, 1973) and stereotypical roles attributed to female offenders (Kruttschnitt & Green, 1984) paved the way for female offenders to be treated in a more lenient manner by the criminal court. Early research also shed a light on other important extra-legal factors. These include factors such as familial female offenders versus unfamilial female offenders, having dependent children, and being the sole income provider for the family.

The above information also provides evidence that early research led to the conclusion that legal variables also play a very important role when studying gender disparities in criminal sentencing. The presence of a prior criminal record and the assessment of the severity of the offence committed are given due consideration by judicial authorities in the sentencing phase (Fenster & Mahoney, 1981). Early researchers also gave credit to independent variables such as race and how it can influence the judicial sentencing decisions (Spohn & Spears, 1997). Research also focused on the impact that judicial discretion can have on the criminal sentences meted out as well as any constringent effect that sentencing guidelines might have in sentencing offenders (Koons-Witt, 2002; Nagel & Johnson, 1994). Lastly, early research also provides evidence that white female offenders tend to receive non-custodial sentences they tend to receive harsher penalties than their male counterparts if they engage in recidivism, thus continuing with their criminal careers (Deakin & Spencer, 2003).

On the other hand, recent research shows that gender disparities in criminal sentencing is an established phenomenon which occurs on an international basis and this due to multiple factors (Gelb, 2010). Recent studies indicate that female offenders are more prone to receive a prison sentence if the crime they commit is a violent one. Even in such a scenario, there still would be discrepancies as female offenders who commit violent crimes are sentenced to a lesser prison sentence than their male counterparts (Gleb, 2010). Thus, this can be viewed as a clear reflection of the stereotypical associations on behalf of the magistrates (Hartley et al., 2011; Lu et al., 2013; Messing & Heering, 2009). Another factor that plays an important role during the sentencing phase is the presence/absence of pre-sentencing reports as such reports provide a detailed brief about the offender and therefore magistrates tend to opt for alternative sanctions to imprisonment (Jeffries & Bond, 2010). In those countries where sentencing guidelines are mandatory, research shows that there was an increase in the female prison population, especially for offenders who committed drug related crimes (Schlesinger, 2008). This type of mandatory sentencing guideline did not reach the aim for which they were established, to offer a more homogenous structure for criminal sentencing. This in view of the fact that female offenders received harsher penalties than their male counterparts especially in cases where recidivism recurs. The study by Norwacki (2015) and Roberts (2011) also shows that judicial authorities still hold on to their discretionary powers especially in cases where the offence is of a minor nature.

Recent studies also show that judicial adherence to sentencing guidelines depends on the type of aim the sanction is intended to achieve. A sanction which is intentioned to have a retributive goal is more likely to involve imprisonment, whereas a sanction intentioned for rehabilitation purposes tends to depart from sentencing guidelines and opt for non-custodial sentences (Etienne, 2010).

Social campaigns like ‘War on Drugs’ also helped in narrowing the gender gap in crime as different societies showed and demanded a no mercy attitude for those who perpetrated drug related crimes (Harmon & O’Brien, 2011). Another area on which different research projects have focused to better understand gender discrepancies in criminal court sentencing is gender gap in crime (Campaniello & Gavrilova, 2018, Estrada et al., 2015; Heiskanen & Leitonon, 2016). According to these studies gender gap in crime is narrowing because more females are committing property crimes. Moreover, more female offenders are engaging in criminal behaviour at a younger age, that of between 15 to 20 years of age (Estrada et al., 2015). Another important factor which influences the gender gap in crime is that more criminal cases committed by female offenders are more likely to be dropped at the early stages of court proceedings.

Mitigating and aggravating factors can also determine the level of the severity of criminal sentences. As seen in the literature provided in this chapter, mitigating factors are issues related to the offenders’ culpability like, for example, mental health problems, age, the role undertaken during the criminal act and the level of provocation experienced before committing the crime (Overarching Principles: Seriousness, 2004).

The theoretical foundations on which this research study is based are two distinct theories which attempt at providing an understanding as to why there exists gender discrepancies in criminal court sentencing. The Focal Concerns Theory argues that criminal sentencing disparities are linked to time constraints experienced by the judiciary, and which consequentially leads to quicken the decision-making process (Doerner, 2009; Rodriguez et al., 2006). Doerner (2009) and Holland (2010) explain that according to the Focal Concerns Theory, a quickened decision is generally based on three distinct variables. These are the defendant’s blameworthiness, the

danger that he or she may present to society at large and the practical constraints that may interfere with the sentencing decisions. Therefore, according to this theory, female defendants may be viewed as less blameworthy and thus envisaged as less responsible for their criminal actions. Roderiguez et al. (2006) state that the judiciary consider women as less dangerous than their male counterparts and therefore these stereotypes influence the judges' decision making. The third variable which judges refer to according to the Focal Concerns Theory is that certain constraints, such as prison overcrowding, will influence the judges' decision to opt for incarceration or an alternative to it.

The Paternalism/Chivalry Theory by Herzog and Oreg (2008), states that in a patriarchal society, women tend to be treated in a more lenient manner. Such behaviour derives from the fact that women are seen as the weaker sex and therefore there is an implicit understanding that they need protection from a society which is mainly ruled by men. Saxena (2012) argues that the preferential treatment by which the judicial system treats female offenders is a result of cultural scripts in which women are depicted as naive, fickle and not liable for their criminal actions. Holland (2010) states that according to Franklin and Fearne (2008), a patriarchal society is evident when there exist fundamental differences between males and female. Examples of such differences are wage differences between genders and female under representations in positions of authority (political and financial occupations). In addition to this theory, authors Herzog and Oreg (2008) suggest that only women who meet certain criteria can benefit from more leniency by the judicial system. Herzog and Oreg (2008) explain that such treatment can be regarded as a form of exchange in which society reserves leniency only to those women who maintain traditional gender role attributes and behaviours. The Evil Woman Hypothesis is used as an extension of the Paternalism/Chivalry Theory (Nagal & Hagan, 1983) so as to provide a

framework which explains the reasons why certain female offenders receive harsher sentences than their male counterparts.

As with all criminological theories the Focal Concerns Theory and the Paternalism/Chivalry Theory has been subject to critical evaluation. One of the critiques of the Paternalism/Chivalry Theory is that while it gives much importance to benevolent sexism (when female offenders are seen as frail and in need of protection) it is only via the adjoined Evil Woman Hypothesis that it addresses hostile sexism (when female offenders are treated in a harsher way because they violated socially established stereotypes) (Marsh 2006; Holland, 2010). Yet the major critique of this theory is put forward by Curry et al. (2004) who state that this theory could imply that there exists a loophole in the rule of law that states both male and female offenders should be treated equally. On the other hand the main critique of the Focal Concern Theory is that the three domains are not clearly specified and the variables to control them are not yet established. Richardson (2015) states that this theory can be ameliorated if the three focal concerns are reconceptualised. For example, 'Blameworthiness' needs to be more focused on the characteristics of the offender rather than that of the offence *per se*. 'Community protection' is to be viewed as means for crime prevention rather than to establish the probability of offenders' recidivism. 'Practical constraints' needs to be more specific and not a catch all phrase (Richardson, 2015). Another major critique to this theory is that past studies adopting this theoretical framework have used a quantitative methodology. This study is addressing this critical evaluation by adopting a mixed method approach. The next chapter provides an in-depth explanation of the research design and research methods used in this study.

Chapter 3

Methodology and Methods

The methodology chapter describes the way in which the various issues raised in the literature chapter are addressed in a scientific way and applied to the local setting. The methods used in this research study include a combination of both quantitative and qualitative approaches, making this a “Mixed Methods” approach, which is described and explained in further detail in this chapter. This chapter is divided into different sections: explains the rationale for using a Mixed Method approach and the ethically and the practical issues involved in this study; the second section is related to the quantitative phases of this research, namely data gathering and its analysis; while the last section of this chapter deals with the qualitative approach applied in this research study, namely the semi-structured interviews as well as a detailed explanation of the analytical tool used in analyzing the data retrieved via one to-one interviews.

3.1 Aims and objectives of research

The main aim of this study is to develop an understanding of whether or not there exist a criminal court sentencing discrepancy between male and female offenders who are found guilty of offences which fall under the same category. The following are the core objectives of the research:

1. To identify and analyse the types of crime committed by convicted female offenders who were brought before the Maltese Court of Magistrates: Criminal Judicature between the period 2005 to 2020;

2. To compare the above criminal court cases' related information with similar offences perpetrated by male convicted offenders who were brought in front of the same court, namely during 2005, 2010, 2015 and 2020;
3. To identify whether there are any particular instances where female offenders are treated in a different (harsher/more lenient) manner than their male counterparts and understand whether there are gender discrepancies in criminal court sentencing.

3.2 Research Questions

This research study is based on a number of research questions. The primary research question is whether or not male and female offenders who were brought before the Maltese criminal justice system for the same crimes were meted out the same punishments, and if not, what is/are the reason/s for such discrepancies? Other research questions also arise. What types of crime are female offenders most likely to be found guilty of by the Maltese criminal court? Consequently, do magistrates take decisions based on their own stereotypic perceptions associated with the defendants' characteristics? For example, being a female with no criminal history? Do roles that males and females defendants have within their family settings (Breadwinner vs Care-giver) influence the magistrates' sentencing outcomes? Another research question seeks to address the gender gap in sentencing, for example, is the gender gap wider in certain types of crimes or is it uniform across all types of criminal court cases? Yet another research question seeks to understand which types of sentencing from the non-incarceration options are more likely to be given in criminal cases concerning female offenders in Malta. Do mitigating factors such as offenders' cooperativeness, parental responsibility or mental health problems influence the severity of criminal sentencing? And if so, do these mitigating factors, when present, influence the severity of criminal sentencing to both female and male offenders?

The main hypothesis being brought forward in this research study is that the process through which the judicial sentencing in criminal court cases is dispensed is, in fact, a gendered process. To provide an academic answer to the research questions listed above, a Mixed Method research design is used.

3.3 Rationale for using a Mixed Methods Design

As evidenced in the Literature Review chapter, different authors who conducted research on gender differences in criminal sentencing did so by using different methods. The most prevalent research design is the quantitative method. In fact, quantitative research methods were used both in early research studies such as that of Fenster and Mahoney (1981); Daly (1987); Bickle and Peterson (1991) as well as more recent studies like those of Jeffries and Newbold (2016) and Estrada et al. (2015). Kleck et al. (2006) who, in their analysis of which type of research methods are mostly used in criminology and the criminal justice field, coded articles published in seven prominent criminology and criminal justice journals regarding the research methods applied. Kleck, et al. (2006) state that “The most striking finding concerns the data-gathering methods used in this field. Survey research dominates the field of criminology and criminal justice” (p. 149). Quantitative survey research could have suited this research study by asking the Maltese general public about their opinions as to whether or not there is a gender discrepancy in the Maltese criminal court sentencing. However, this would have limited this research study to examine the opinions and not to have solid factual data. The application of the Mixed Methods Approach in this research study is motivated by different reasons.

Brent and Kraska (2010) explain that the relatively new social science, which is the study of criminology and criminal justice, has over the past forty years, adopted the “presumption that research should be conducted either through a qualitative or quantitative approach” (p. 413). The

authors state that since both approaches hold a different epistemological and philosophical foundation, criminology has also experienced a methodological separation, which facilitated the traditional dogma, that the study of criminology had to apply an either/or approach.

Maruna (2010) states that the term “Mixed Methods” (p.124) is applied in a variety of ways and that different researchers might attribute different meanings to the application of the Mixed Methods approach. This in view that according to Maruna (2010) this term has several synonyms and can be confused with other similar terms but which meaning is slightly different. Maruna (2010) gives the examples of “mixed model research” and “mixed methodology” (p.124). This research project will adopt the definition as provided by Creswell (2003):

“Mixed method research employs strategies of inquiry that involve data collecting either simultaneously or sequentially to best understand research problems. The data collection also involves gathering both numeric information (e.g. on instruments) as well as text information (e.g. on interviews) so that the final database represents both quantitative and qualitative information” (p.20).

Maruna (2010) further states that the adoption of the Mixed Methods approach depends on the word limit of the research project. According to Maruna (2010) this type of research design is “ill-suited” (p.127) for criminology journals with the standard 8,000 word-limit because such a research approach can produce unwieldy findings, which is close to impossible to summarize whilst maintaining the objectivity of the data retrieved. Different authors (Fiorini et al., 2016; Shannon-Baker, 2016) explain that one of the main purposes for using a Mixed Methods approach is to facilitate a more in-depth and complex understanding of phenomena under study, and that such in-depth comprehension would otherwise be unachievable if the study limits itself to the adoption of either the qualitative or the quantitative methods. This view relates to the researcher’s positioning when stating that the adoption of the Mixed Methods approach in this research study encompasses a pragmatic perspective. According to Fiorini et al. (2016):

“Pragmatism values both objective and subjective knowledge in terms of methodologies focusing on what works and is oriented towards studying real world problems rather than the nature of knowledge. Pragmatism challenges claims by methodological purists that qualitative and quantitative methods represent two different worlds that cannot be integrated. Rather, in view of the different methods, respective strengths and weaknesses, pragmatism views them as complimentary and interdependent, with the ensuing advantages of mixing methods outweighing potential disadvantages” (p.40).

As explained by Trahan and Stewart (2013), emerging research questions in criminological studies cannot be answered in a comprehensive way when rigid qualitative or quantitative are applied and therefore the pragmatic approach needs to be adopted because “the pragmatic rule posits that the value of any given research methodology is based solely on its empirical and practical efficacy” (p 60). Thus, when considering that the main research question of this study focuses on whether or not the criminal court sentencing process is a gender based one, the methods used in this research need to be complimentary to each other so as to gather relevant and *de facto* data. This will result in gaining “Pragmatic Knowledge” (Johnson & Christensen, 2014; p.81). The pragmatic approach is also the best model to apply in this research study because as explained by Johnson and Christensen (2014):

“Starting in the 1990s, many researchers rejected the incompatibility thesis and started advocating the pragmatic position that says that both quantitative and qualitative research are very important and often should be thoughtfully mixed in single research studies. According to pragmatism, what is ultimately important and justified or “valid” is what works in particular situations in practice and what promotes social justice” (p.81).

The choice for using a Mixed Methods approach in this research study is the better decision given the limitations of both qualitative and quantitative methods of research when used in isolation. Such limitations mainly derive from each method’s ontological and epistemological orientations. Eyisi (2016) explains that qualitative researchers are constructionist while quantitative ones are objectivists in the type of research methods they use to conduct research.

With regards to the epistemological background, quantitative researchers are considered to be objectivists and positivists in their research approach while qualitative researchers tend to be subjectivists and anti-positivists. Quantitative researchers view “the world as concrete and real as the natural world” (Bahari, 2010; p. 25). On the other hand, subjectivists argue that reality is not objective but is given meaning by the people and therefore it is socially constructed. The focus of qualitative research methods is based on what people think and feel about the social phenomena under study.

Both individual methods entail certain significant limitations which, if used exclusively for this research study, could have limited the probability of answering the research questions. One major limitation of the quantitative method is that the researcher is detached from the participants., resulting in the inability to probe and gain a deeper meaning of the participants’ experiences, opinions and feelings (Eyisi, 2016). Moreover, the quantitative researcher deals with determined variables that will only allow the researcher to access some selected aspects of the participants’ beliefs or actions.

Research based on a qualitative approach also has significant limitations which suggests that if used exclusively, these can influence the quality of information needed to answer the questions of this research. An important limitation is that there can be researchers’ bias in the interpretation given to the data collected. Qualitative research has no structure procedure and it relies heavily on the researchers’ ability to collect, interpret and analyse data. This can give rise to another limitation, that is, that qualitative research is not replicable (Eyisi, 2016; Xiong, 2022). Another limitation of the qualitative research methods is that results cannot be generalised. Eyisi (2016) states that

“In testing hypothesis, quantitative researchers try to look at cause and effect relationships which perhaps enable them to predict and generalize their findings

to a relevant population. This is not possible with qualitative researchers who view human behavior as being dynamic, and as such, tries to understand the beliefs and values with respect to the research being conducted” (p.96).

Further justifications for adopting the Mixed Methods approach in this research study can be evidenced by what Maruna (2010) calls “the five primary purposes of mixed method research” (p.127). One of the most important purposes in using this type of method is that of triangulation. The Mixed Methods approach provides the ideal situation to facilitate the convergence and corroboration of data and results by using different methods. The purpose of providing complementarity to the research study is also important according to Maruna (2010) as this purpose calls for the elaboration, clarification and further enrichment of the results of one research method *via* the use of the other method. Another fundamental purpose of using the mixed method approach is because this model provides initiation to the specific study. According to Maruna (2010) initiation means that any contradictory findings can be easily detected and this consequently would help in reframing the research model or the research questions. Maruna (2010) also explains that the Mixed Methods approach also gives the opportunity to the development of the research because the findings from one method will help in developing the other method of data gathering. The last purpose put forward by Maruna (2010) is that by using the Mixed Methods approach, the research gains expansion because the different methods of data gathering facilitate the breadth or range of the research. The ‘integration component’ (McKim, 2017) is yet another important value that is achieved through the application of the Mixed Methods approach. McKim (2017) explains that, because of the integration component, the readers’ confidence in the results of the study are enhanced and it also enables readers to draw positive conclusions about such studies.

The methodology chapter incorporates a more in-depth philosophical discussion regarding Mixed Methods and triangulation. Specifically, it addresses how the study reconciles the

divergent ontological and epistemological foundations underlying the quantitative and qualitative approaches. The quantitative approach aligns with the positivist ontology, which seeks to objectively measure gender disparities in sentencing outcomes. In contrast, the qualitative approach is grounded in constructivist epistemology, acknowledging the influence of subjective experiences and socio-cultural contexts on judicial practices.

The philosophical underpinnings of this Mixed Methods study hinges on pragmatism. Pragmatism as a research design allows for flexibility in choosing methods that best address the research questions, regardless of their traditional association with either quantitative or qualitative paradigms (Fiorini et al., 2016). This approach is particularly fitting for a study exploring gender disparities in judicial sentencing, as it necessitates both the objective measurement of trends and the subjective interpretation of individual experiences.

By integrating these perspectives, the Mixed Methods approach allows for a comprehensive exploration of the research problem, examining both the quantifiable dimensions of judicial bias and the qualitative, experiential perspectives of stakeholders within the criminal justice system. The use of triangulation further strengthens this study by enabling cross-validation of the findings, thereby enhancing their credibility and reliability.

The rationale for triangulation is that its process involves using multiple data sources and methods to corroborate findings, thereby reducing the impact of individual biases and enhancing the validity of the results. In this study triangulation is achieved by combining statistical data from court records with narrative data from the interviews, allowing for a richer and more reliable understanding of gender bias in sentencing. The triangulated data helps in constructing a multi-faceted picture of how gender disparities are manifested, experienced, and perpetuated

within the criminal justice system. Such approach is rooted in Pragmatism (Creswell et al., 2017) which views the use of triangulation as one which stems from the belief that using different methods and perspectives can lead to more comprehensive, valid and reliable findings. It is also a way for allowing a more nuanced understanding of complex phenomena such as gender discrepancies in criminal court sentencing. In the pragmatic approach, quantitative data might help to generalise findings, while qualitative data provide more in-depth insights into context and meanings.

Another philosophical approach which is attributed to the process of triangulation is the Critical Realism perspective. Critical Realism as developed by philosophers such as Bhaskar (2008) is a philosophical outlook that emphasizes the importance of understanding both the empirical and transcendental aspects of reality. Bhaskar (2008) explains that Critical Realism sees reality as layered, where observable events (the empirical) are just one part of a deeper, often unseen, causal structure (the real). Triangulation in Critical Realism reflects the aim of uncovering these hidden structures through different methods. The epistemology from a Critical Realist perspective is that triangulation serves as means of engaging with these layers of reality. It combines different methods (quantitative and qualitative) to explore the phenomena (actual), and the experiences of people (empirical). Since knowledge is always mediated and fallible, triangulation is viewed as a way of cross checking findings to move closer to the underlying truth. Moreover, Critical Realism emphasizes causal mechanisms (Bhaskar, 2008) that underpin observed phenomena. These mechanisms are often hidden and may not be directly observable, but they can be inferred through research. By using quantitative (often descriptive) and qualitative (often interpretative) methods, researchers can better approximate and understand the hidden mechanisms that shape the phenomena. For example, quantitative methods can identify patterns and relationships that may point to underlying causes while qualitative methods can

explore the participants' experiences and interpretations about such underlying causes (Bhaskar, 1975). Critical Realism also incorporates a dialectical view of reality, which means that knowledge is seen as emerging from the tension and interaction between different methods. This resonates with triangulation as it encourages integrating different types of data to produce a fuller, more dialectically informed understanding of the subject under study (Archer, 1995).

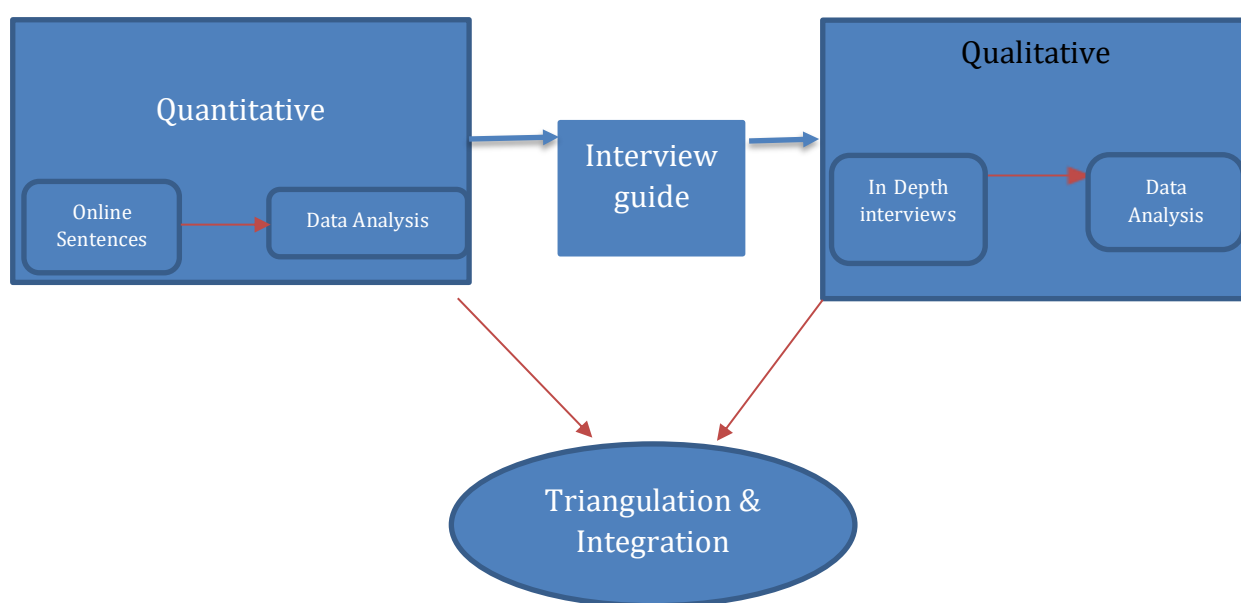
Through this philosophical lens, the Mixed Methods approach transcends the limitations typically associated with single-method research, thereby allowing for both breadth and depth in understanding the complexities of gender disparities in criminal court sentencing. This integration of perspectives not only offers a more holistic understanding of the systemic factors at play but it also strengthens the robustness of the conclusions drawn.

3.3.1 Mixed Method Design- Sequential Explanatory Design

Different authors explain that Mixed Methods research can take different forms/designs and follow different courses. This depends on the manner in which techniques pertaining to both the quantitative aspect as well as the qualitative ones are combined and used as well as to how the research is carried out (Bowen et al., 2017; Creswell 2003; Fiorini et al., 2016; Trahan & Stewart, 2013). Literature of past studies shows that the design which best fits this research study is the Sequential Explanatory Design (Creswell, 2006; Ivankanova et al., 2006; Maruna, 2010; Shannon-Baker, 2016; Subedi, 2016; Trahan & Stewart, 2013). Trahan and Stewart (2013) explain that the sequential explanatory design consists of two main steps. The first step is to gather and analyze the quantitative data and the second step is to use the findings of the quantitative method of research to guide a subsequent qualitative study. Figure 14 explains the Sequential Explanatory design as used in this research study. This design is deemed to fit best this research study because the qualitative method will facilitate the gathering of solid, factual

and numerical data. This is done by compiling data from an official database ‘*Sentencing online*’ and its analysis will serve as the foundations for the one-to-one interview with Magistrates presiding the Criminal Court. This in view that the research questions of this study aim at gathering specific answers which concern the differences, if any, in the type of sentences given to offenders of different gender but who have committed a similar crime. Therefore, it is necessary that specific data on the past criminal court sentences is gathered and analysed. Furthermore, as seen in Figure 14, the method being adopted in this study paves the way for a better triangulation as well as integration of methods⁶.

Figure 14
Sequential Explanatory Mixed Methods Design



Source: Fei Wu (2011; p.13)

⁶ Integration refers to the stage or stages in the research process where the mixing or integration of quantitative and qualitative methods occurs (Ivankova et al., 2006; p.11).

3.3.2 Sampling in Mixed Methods Research

Johnson and Christensen (2014) explain that choosing a “mixed sampling design” (p.373) involves the choice of a good sampling scheme and sample size for both the quantitative and qualitative components of this research study. As explained in the introduction, the second part of the Methodology Chapter is more focused on the quantitative and qualitative components and provides further detail and explanations on both procedural methods. However, at this stage, it is important to state that the sampling for this research study is based on what authors Johnson & Christensen (2014) describe as essential criteria when choosing the right sample strategy in Mixed Methods research. Johnson and Christensen (2014) explain that the “time orientation criterion” (p.373) refers to the way in which the samples are taken, which is either concurrent or sequential. In this research the samples are taken sequentially and therefore the researcher uses a sequential time orientation, which is that the quantitative phase is followed by the qualitative one. The second criterion as described by authors Johnson and Christensen (2014) is the “sample relationship criterion” (p.373). This research study adopts the multilevel relation (Johnson & Christensen, 2014; p.374). The authors explain that the multilevel sampling involves the use of quantitative and qualitative samples, which are obtained from different levels of the population being studied. Thus, the quantitative section of this study gathers information from an online database of the Maltese Criminal Sentences from 2005 to 2020. This involved downloading of each court sentence given to female defendants and checking whether they were found guilty or not. Those court sentences involving a convicted female offender are used as a database to ascertain which types of crimes female offenders were found guilty of. The choice behind opting for a sixteen-year sample was to acquire a strong sample with regards to the types of crimes committed by females in Malta. In fact, the sample consisting of females who were found guilty by the Court of Magistrates – Criminal Judicature was that of 1836. Following this procedure, similar cases perpetrated by males in the years 2005, 2010, 2015 and 2020 are compared and

analysed. After discussing with the supervisors, the five-year interval sample was chosen because of two main reasons, namely, time constraints and resource constraints. Collecting data and analyzing data over a long period of sixteen years can be time consuming and resource intensive. In contrast, a four –year sample might strike a balance between achieving meaningful insights and maintaining feasibility in terms of data collection, analysis and reporting. For the qualitative sampling, two plans were formulated. Plan A involved interviewing ten Magistrates who preside the Court of Magistrates Criminal Judicature. In the eventuality that Plan A could not be implemented, an alternative plan of action was to maintain one to one in depth interviews but with different interviewees, namely with professionals who work or used to work within the criminal justice system. These involved ex judiciary, probation officers, police inspectors and lawyers from the office of the Attorney General. Interviews with Magistrates who preside the Court of Magistrates Criminal Judicature could not be done because of the new regulations which prevented Magistrates in office to hold interviews with third parties. The recruitment of professionals who work in the criminal justice system was done by sending an email with the information about the study to the Director of Probation and Parole services, another email was sent to the police authorities as well as to the office of the Attorney General. The interviewees were chosen by their respective Director/ Superintendent. Ex judiciary interviewees were recruited via snowball sampling.

The sampling strategy utilized in this study was designed to comprehensively address the research questions by employing both purposive and convenience sampling techniques (Etikan et al., 2015). Purposive sampling was employed in the quantitative content analysis, which focused on Maltese criminal court final sentences from 2005 to 2020. This approach ensured that all pertinent cases involving female offenders who received a guilty verdict were included. The aim was not only to assess the prevalence of gender disparities but also to identify specific

instances where sentencing varied based on the offender's gender. Purposive sampling in this context allowed for the selection of cases that were particularly relevant to the research questions, thereby enhancing the depth of the analysis. The quantitative phase laid the groundwork for identifying patterns in judicial sentencing practices, enabling the researcher to concentrate on key discrepancies in treatment between male and female offenders. These data-driven insights then informed the qualitative phase, where deeper exploratory questions could be pursued.

Given the practical constraints of accessing participants, convenience sampling was used during the qualitative phase. The participants were professionals who are, or have been, involved in the criminal justice system. While convenience sampling enabled efficient data collection, it also introduced limitations concerning sample size. This aspect is acknowledged and discussed in the limitations section. The convenience sampling approach was selected due to the inherent difficulty in recruiting professionals actively involved in the criminal justice system. This often meant relying on accessible contacts and professionals willing to participate in such a study, despite their demanding schedules. The inclusion of participants with diverse roles within the criminal justice system – such as ex judges, probation officers and police inspectors holding a prosecutorial role, ensured that multiple perspectives on gender bias were captured, adding nuance to the findings.

3.3.3 Sequential Validity

Sequential validity is an important aspect in making use of a mixed method research design. Johnson and Christensen (2014) explain that sequential validity refers to the degree to which the researcher has appropriately built and gave structure to the prior stage in a sequential design. The authors explain that researchers need to ask themselves whether or not the outcome of the

study would have been different had the phases performed in the Mixed Methods approach been different. In other words, could this study have adopted the qualitative phase first and then followed by the quantitative one. When considering the research questions, one can conclude that the sequential validity has been given importance because the in-depth interview guide (qualitative phase) is based on facts and results gleaned from the analyses of a four-year period of criminal sentences (quantitative phase). As explained before, by using the quantitative method, the researcher gathered solid data which after being analysed, the quantitative data made it easier to capture the situation regarding gender disparity in criminal court sentencing within the period under study. This type of research method facilitated the formulation of an interview guide as lacunas and possible queries were identified and addressed by the qualitative research method.

3.3.4 Strengths and weaknesses of the Sequential Explanatory Mixed Methods Design

Mckim (2017) states that as a researcher one must always ask him/herself whether or not the use of a mixed method approach will add more value than a single method. By focusing on this question, one can justify the use of Mixed Methods in this research study because apart from gaining numerical and in-depth data, it is the most appropriate method to answer the different research questions that this research study poses. Furthermore, the Mixed Methods approach and more specifically the sequential explanatory design have significant strengths which one needs to consider.

One of the major strengths of using the Sequential Explanatory design is that it facilitates the use of one method to overcome the weaknesses of the other (Brent & Kraska, 2010). For example, whereas it is difficult to gather rich, in-depth data by using a quantitative method, this can be overturned by using the numerical facts as truthful and accurate information to help

formulating the semi-structured interview guide so that more rich data can be gathered. Therefore, there is a clear element of complementarity in using this design because the quantitative method used contributes to clarity and precision for collecting qualitative data. Another strength of using this design instead of a mono-method approach is the ability to increase the accuracy of answers to the research questions being presented. It further strengthens the research in a holistic manner because this design increases the specificity and generalizability of the results by drawing and integrating both methodological methods (Brent & Kraska, 2010; Fiorini et al., 2016; Maruna, 2010).

Another major strength of using the sequential explanatory design is that by mixing quantitative and qualitative techniques, the research becomes more valid and reliable (Bowen et al., 2017; Brent & Kraska, 2010; Fei Wu, 2011).

As with other methodological designs, the sequential explanatory design has its own weaknesses and disadvantages, Brent and Braska (2010) explain that one of the major disadvantages is the one which concerns the researcher's own limitations. The authors explain that "while some are uncomfortable with numbers and statistics, others may be ineffectual at achieving an empathetic understanding" (Brent & Braska, 2010; p. 420). Furthermore, this method of research tends to be more time consuming, more complicated and more expensive than other research methods as it may necessitate more resources than monomethod approaches (Brent & Braska, 2010; Ivankova et al., 2006).

3.4 Ethical and Practical Approach

On the 7th November 2017, a proposal presentation was given to the Doctoral committee within the Faculty of Social Wellbeing, University of Malta. Consequently, after applying through

formal ethics procedure, ethical clearance and approval for this research was gained from the Faculty Research Ethics Committee (FREC), University of Malta on the 14th January 2019.

In order to be able to carry out this research project and collect the necessary data while keeping in line with the University of Malta's ethics code, an email serving as an introductory letter was sent to Honorable Chief Justice Joseph Azzopardi and this to disclose information on the researcher as well as on the research project to be carried out (Appendix A). Attached to this email, the researcher also provided the information sheet in which the research project was explained in more detail (Appendix C).

Before commencing the interviews with the ten Magistrates, telephone contact was made with the office of the Chief Justice so as to inform them about the commencement of the one-to-one interviews. Unfortunately, the office of the Chief Justice withheld such permission, and this was due to the fact that a new policy stating that judicial authorities are not to hold any interviews with third parties has been put in place. After consulting with the Principal Supervisor and the Co-Supervisor it was decided that a submission with the amendments was submitted to FREC. Submission was made to get approval for the amendments made, that is, to interview probation officers, police inspectors, lawyers as well as ex-judiciary instead of interviewing the Magistrates. This submission was made on the 17th May 2023 and the FREC's approval was received on the 30th June, 2023. An informative email was sent to the different agencies so that approval for the interview could be granted (Appendix B). This email was also sent to ex-judicial members.

3.4.1. Informed consent for interviews

Informed consent is a very important way of ensuring that forthcoming participants are well informed about the project they will be participating in (Creswell, 2006). As the quantitative

phase of this study used online public data, in reality there was no need for informed consent. However, the informed consent of the interviewees was obtained through the use of information and consent sheets. An introductory email presenting information about this study was sent to the office of the Chief Justice (Appendix A) and in which his permission to contact the Magistrates presiding the Criminal Courts in Malta was asked. The email addresses of Magistrates who volunteered to give their contribution in the one-to-one in-depth interviews were given to the researcher. As already explained such permission was withheld due to the introduction of new guidelines that restrict Magistrates from being interviewed. An introductory email was sent to the different heads of agencies and ex judiciary so as to attain their permission to interview. The ten interviews with different professionals were performed during the months of July and August 2023. Before each interview, the information sheet (Appendix C) as well as the consent form (Appendix E) were explained and read to each participant and participants were also asked to sign the consent form. A semi-structured interview guide (Appendix D) was used during the one-to-one interviews. The one-to-one interviews took place between the 7th July, 2023 and the 28th August, 2023.

3.4.2. Translation and transcription

Due to the interviewees' position of prominence, the researcher decided not to record the interviews and opted to take hand-written notes during each interview. These notes were expanded and given more structure soon after each interview to maintain the gist of the interview and to facilitate as faithful as possible an accurate representation of what was shared by each participant.

The researcher translated all the interviews from the Maltese language to English. The reason behind this was to ensure that the translation would be genuine and to be the equivalent of the

gist of the interview. The interviews were transcribed almost verbatim, including the pauses and other non-verbal communication as shown by the interviewees. Creswell (2006) explains the importance that the researcher transcribes the interviews her/himself because this will give the researchers the opportunity to be immersed in the data and therefore recognize emergent insights.

3.5: Phase 1 - Quantitative research design

A quantitative content analysis of data from Maltese criminal courts cases final sentences, which are published online, covering the period between 2005 and 2020 is performed. Therefore, the “sampling population and the unit of analysis” (Ward, 2012; p.10) in this research project are the online criminal sentences in which female offenders received a guilty criminal sentence. These are gathered and subsequently analysed. These cases are compared with similar criminal cases in which the offender is male and this for the years 2005, 2010, 2015 and 2020 respectively. The type of content gathered from the criminal court final sentences is the Manifest Content Analysis (Rose et al., 2015) as it gathers elements which are written and countable thus avoiding any interpretation of data from the researcher’s side. Prasad (2008) states that although this method has been recognised for the past 85 years, it has gained recognition as a fully-fledged scientific approach after the U.S. government sponsored academic research to study enemy propaganda during World War 2. Ward (2012) states that Manifest Content Analysis was the first type of content analysis developed by researchers. This in view that academics focused on those easily observable and countable factors present in the texts under study (Ward, 2012) thus avoiding subjectivity related to interpretation of data. The coding schedule used is formulated while taking into account this study’s research questions and the important concepts which need to be identified to facilitate the analysis (Rose et al., 2015).

Neuendorf (2010) defines quantitative content analysis as:

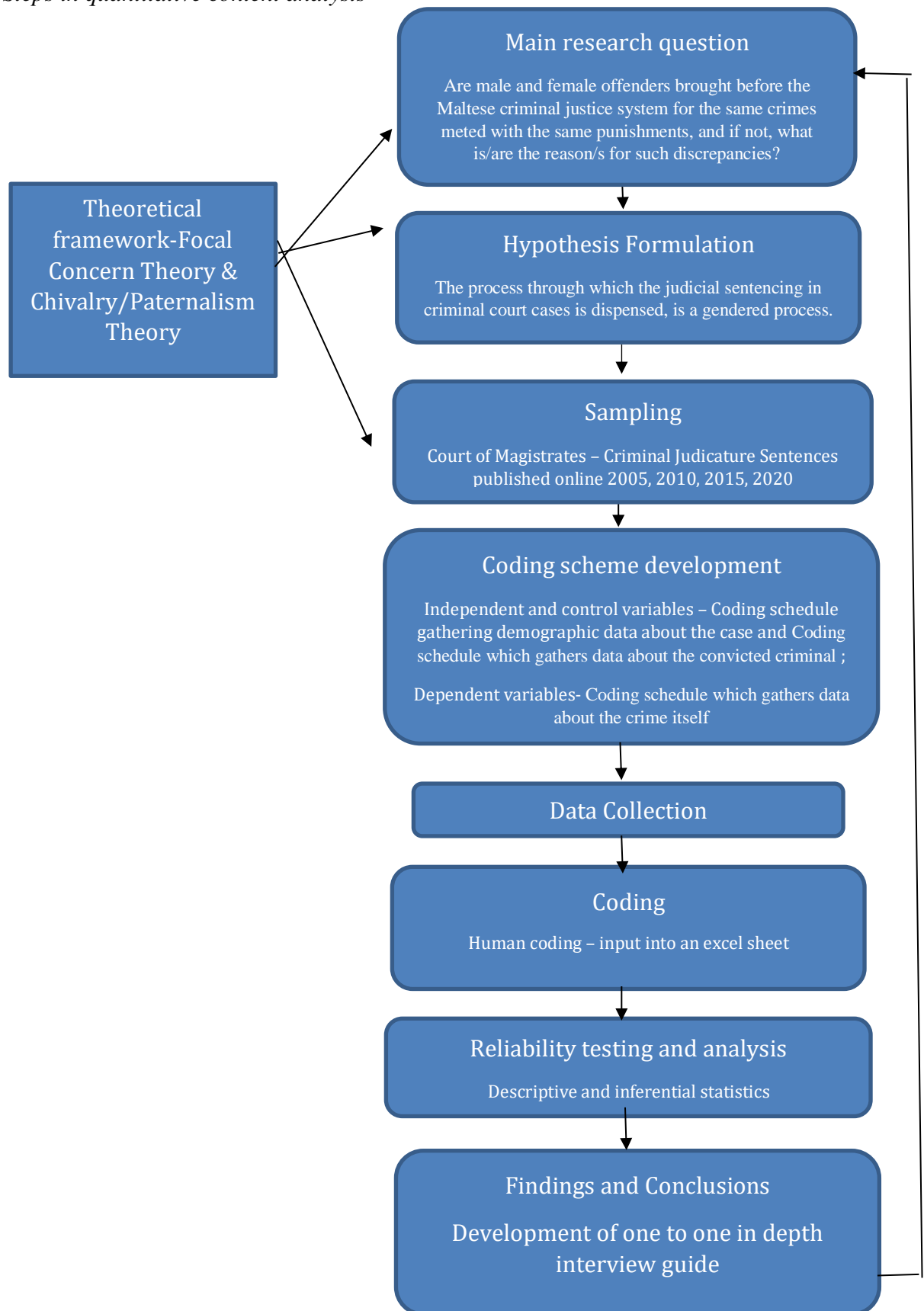
“Content analysis is a summarizing, quantitative analysis of messages that rely on the scientific method, including attention to objectivity/intersubjectivity, a priori design, reliability, validity, generalizability, replicability, and hypothesis testing” (p.277).

In her paper entitled ‘Content analysis a methodological primer for gender research’, Neuendorf (2010) delves deep into the important steps which a researcher must follow to ascertain that this type of analysis is scientifically based. Neuendorf (2010) explains that there are other ways of analysing written/auditory documents and these include rhetorical analysis, discourse analysis, semiotics, phenomenological analysis and narration. All the different types of methods mentioned are empirical methods and therefore are based on observations (Neuendorf, 2010).

Being a systematic method of investigation, content analysis requires appropriate planning and preparation (Neuendorf, 2010; Rose et al., 2015). Rose et al. (2010) proposes the following six preparation steps which need to be followed by researchers embarking on a research project involving the use of the Manifest Content Analysis. Figure 15 provides a summary of the process undertaken by the researcher to ensure a content analysis. Moreover, further explanation is given on the coding schemes used as these were identified and linked to academic literature covered in the literature review chapter.

Figure 15

Steps in quantitative content analysis



Source: Based on Rose et al. (2015; p.3)

As seen in the Figure above, the content analysis used in this research project is a deductive one.

Domas White and Marsh (2006) explain that:

“In quantitative content analysis the coding scheme is determined *a priori*, that is, before the coding begins. A coding scheme operationalizes concepts that may in themselves be amorphous. It establishes categories that are relevant and valid. Relevant means that they allow to test the hypothesis. Validity refers to the extent to which a measuring procedure measures the intended and only the intended concept” (p. 31).

To formulate a coding scheme that is both relevant and valid to test the hypothesis being put forward in this research, a pilot study was performed. The researcher downloaded and analysed the online criminal sentences of year 2006 and year 2016. This was done to gain insight into the criminal sentences found online and what type of information is available that could help in the hypothesis testing as well as to gather factual data that could help in the formulation of the one-to-one in-depth interview with the magistrates presiding the Maltese Criminal Court.

The coding scheme which records demographic data which emerges from the criminal cases:

- Offenders’ gender: Male; Female; Gender X
- Magistrate’s gender: Male; Female; Gender X
- Offenders’ citizenship status – Maltese; dual citizenship; EU citizens; non-EU citizens; indeterminate
- Offenders’ age at time of offence: Adolescent (12 -17 years), young adult (18 – 34 years); adult (35-64 years); late adult (65 years and over); indeterminate. This classification system is widely utilised in criminological research to analyse offending patterns across different age groups (Parrott et al., 2021)
- Offenders’ age at time of sentence: Adolescent (12-17years); young adult (18-34 years); adult (35-64 years); late adult (64 years and over); indeterminate

Coding scheme which gathers data about the crime itself:

- Date of crime

- Location of crime
- Aggravating factors categories: Mode of theft or criminal activity, Offender characteristics, Victim characteristics, Other
- Date of sentence

Type of offence: types of crime as categorized by CrimeMalta

- Type of sentence- Imprisonment; non incarceration options; both incarceration and non-incarceration; incarceration and effect of previous suspended sentence/breach of probation
- Length of imprisonment: up to 4 years; over 4 years
- Length of sentence imposed (non-incarceration options): up to 2 years; over 2 years

Coding scheme which gathers data about the convicted criminal:

- Past criminal history of the defendants: yes; no; indeterminate
- Presence of dependants (e.g. parental responsibilities): yes; indeterminate
- Guilty plea (mitigating factor as stated by the Overarching Principles: seriousness, 2004) submitted; not submitted; indeterminate.
- Collaboration with police authorities (mitigating factor as stated by the Sentencing Guidelines Council, 2004): present; not present; indeterminate.
- Sympathetic life circumstances (Starr, 2013): mental health problems; substance abuse, homelessness, etc.

As seen above, the three distinct categories of coding schemes are intended to gather the needed information from the criminal court sentences to provide a scientific basis to the research questions being put forward in this study. In fact, Lin and Jeng (2015) state that:

“A major step in the instrumentation process of a content analysis research is to construct an informative and valid coding scheme. While the determination of categories (codes) depends on the substantial questions being investigated, an important decision to make is whether the categories are mutually exclusive” (p.88).

Moreover, Prasad (2008) explains that coding schemes can be defined as compartments or “pigeon holes” (p.183) through which explicit boundaries into which the units of contents are coded for eventual analysis. Prasad (2008) states that these coding schemes must flow directly from the research question and should be “anchored in a review of relevant literature and related studies” (p.183). In view of this, the coding schemes that this research study uses are grounded in the academic literature provided in the literature review chapter.

3.5.1: Strengths and weaknesses of quantitative Manifest Content Analysis.

Rose et al. (2015) and Vitouladiti (2014) state that quantitative Manifest Content Analysis as a research method has many advantages over other methods of research. This in view that since the early 1920’s different disciplines, such as political science, psychology and communications have acknowledged its legitimacy as a research tool. Vitouladiti (2014) and Treadwell (2016) explain that content analysis can be applied to a variety of data sources/recorded mediums, including written documents, pictures, texts, audio clips, videos, photographs, billboards, lawn signs, tweets and ‘situations’ (Vitouladiti, 2014; p.280). Another major strength of content analysis is that it is a research method which is not expensive to carry out while it can facilitate repetition if problems arise.

Treadwell (2016) stresses the fact that one major strength of this methodological method is “its emphasis on the systematic coding, counting and analysis of content” (p.216). This implies that

this method of research provides the opportunity to conduct an explicit, precise as well as a replicable study so that other researchers can corroborate the results attained. In fact, Vitouladiti (2014) states that:

“Of all the research methods, content analysis scores the highest with regard to ease of replication. Usually the materials can be made available for others” (p.280).

Furthermore, Vitouladiti (2014), Rose et al. (2015) and Prasad (2008) explain that this methodological approach is unobtrusive in the sense that it is marked by its discreteness as it does not automatically require contact with human participants. This, in turn, is helpful in the reduction of the social desirability bias amongst participants when research on sensitive topics is being carried out. As in the case of this research study, content analysis as a research tool is facilitating the gathering of longitudinal data (Rose et al., 2014), thus enabling further analysis to be carried out.

Treadwell (2016) states that one of the major weaknesses of content analysis is that it might give rise to interpretation. This weakness is addressed in this research study as only Manifest Content Analysis is used, thus avoiding the problem of inconsistencies in the researcher's interpretations. Rose et al. (2015) argue that one potential weakness when using content analysis as a methodological tool is the availability of documents. The research must therefore ensure that the documents that will form the base of the study are readily available to other researchers. In addition, when using content analysis, the researcher must pay particular attention to what is being unsaid within the content, as information which is omitted can be as significant as that which is included (Rose et al., 2015).

Another major weakness of this method is that it is a purely descriptive method (Vitouladiti, 2014). Specifically, this research tool provides a clear description of “what is there but may not

reveal the underlying motives for the observed patterns (‘what’ but not ‘why’)) (Vitouladiti, 2014; p.280). To address this methodological disadvantage, a qualitative method of research is developed to gain in-depth data and address any lacunae in data to answer the research question.

3.5.2: Quantitative analyses method

To address this study’s research questions, a number of strategies for the analysis of categorical data were employed. In general, the analytical interest is to explore the relation between pairs of categorical variables, each featuring a varying number of groups (also called “levels”). In the following analytical sections, after producing cross-tabulations (i.e., contingency tables) tabulating pairs of variables, and before engaging with inferential analyses discussed later in this work, an overall description of any given table is provided. On a case-by-case basis, either row or column proportions are used in order to make categories comparable to one another by removing the effect of different marginal totals. Also, marginal proportions are employed to provide a sort of yardstick to which individual (either row- or column-) proportions can be compared (Greenacre, 2007).

It is important to note that the use of separate tables for counts and for either row or column percentages complies with principles of effective data visualisation and reporting (Tufte, 2001; Swires-Hennessy, 2014). This approach ensures that the information is presented in a clear and uncluttered manner, allowing readers to easily extract the specific type of information they are interested in without unnecessary cognitive load. Counts provide a raw representation of the data, essential for understanding absolute differences, while percentages facilitate comparisons between categories by accounting for varying marginal totals. Presenting these tables separately aligns with best practices for clarity and accessibility in data reporting (Few, 2012; Knaflitz, 2019).

The description of each cross-tabulation is then followed by the analysis from an inferential point of view. In other words, the goal is to formally test for a statistically significant association (dependence) between the cross-tabulated variables (Agresti, 2018; Azen & Walker, 2011; Everitt, 1992; Reynolds, 1977). With this overarching goal in mind, two different approaches are employed. For cross-tabulations larger than 2x2, and for stratified 2x2 tables with large counts discussed later in this work, the chi-squared test is used to ascertain if the null hypothesis of independence can be accepted or rejected (Azen & Walker, 2011; Everitt, 1992). For each chi-square test, the associated p-value based on a permutation approach (Beh & Lombardo, 2014) is reported. In case of a significant result (p-value smaller than 0.05), in order to pinpoint which table's cell features a significant departure from independence, adjusted standardized chi-squared residuals are reported (Agresti, 2018; Reynolds, 1977; Sharpe, 2015). Residuals whose absolute value is larger than 1.96 are significant at least at alpha 0.05. Positive residuals indicate that the corresponding cell features larger-than-expected counts, while negative residuals indicate that the cell contains smaller-than-expected counts. Furthermore, in order to quantify the strength of the dependence, Cramer's V coefficient is employed (Healey, 2013; Reynolds, 1977; Sheskin, 2000). It spans from 0.0 (indicating no association) to 1.0 (indicating perfect association). Acknowledging that it is not easy to attach labels to values of association coefficients since what can be deemed as weak, or moderate, or strong, is indeed field-specific, for tables up to 5 degrees of freedom the guidelines of Cohen (1988) are employed. For larger tables, the guidelines of Healy (2013) are followed (namely: weak 0.00-0.10; moderate 0.11-0.30; strong association 0.31-1.00).

A partially different approach is employed for stratified 2x2 tables featuring a mixture of large and small counts. Stratified tables, used to analyse the relation between three categorical variables, cross-tabulate the first two variables for every level of a third one (Agresti, 2018).

This provides the basis to ascertain whether there is a significant three-way interaction between variables: in other words, it allows to assess if the association (if any) between the first two variables changes across the level of the third one (Azen & Walker, 2011). For each partial table (i.e., for each level of the third variable), the Fisher's exact test (Agresti, 2018; Azen & Walker, 2011) was performed to formally test for a dependence between the first two variables being cross-tabulated. Also, for each partial table the odds ratio is employed as an effect size measure (Agresti, 2018; Azen & Walker, 2011; Reynolds, 1977) or, to put it another way, to measure the strength of the association between the first two variables being analysed. The rationale of the use of the odds ratio in place of Cramer's V rests on the fact that in the stratified 2x2 tables produced in this research there is a mixture of large and small counts, and the chi-squared test (as well as chi-squared-based measures like Cramer's V) may prove not appropriate in such circumstances. For the calculation of the odds ratios, when only one cell features zero count, the Haldane-Anscombe correction is used (Anscombe, 1956; Haldane, 1945). This entails adding 0.5 to every table's cell before calculating the associated odds ratio.

As for the odds ratio, while the interested reader can consult relevant literature (Agresti, 2018; Azen & Walker, 2011; Rudas, 1997; Sheskin, 2000), it suffices here to say that (as the word says) the odds ratio is the ratio of two odds. The odds are another way of expressing the likelihood of something happening. To make a fictitious example: if 40 females like brand A and 5 females like brand B, the odds for a female liking brand A are 40:5, that is 8:1, that is 8. For every female liking brand B, eight like brand A. If 10 males like brand A and 70 males like brand B, the odds for a male liking brand A are 10:70, that is 1:7, that is 0.142. For every male liking brand A, 7 like brand B. So, it seems that the odds for females to like brand A are larger than the odds for males liking the same brand. How much larger? The ratio of the two odds is 8:0.142, that is 56.34. The odds ratio indicates that females are about 56 times more likely than

males to like brand A. Therefore, one can conclude that there is a strong association between females and brand A. An odds ratio larger or smaller than 1 indicates the existence of an association (in either of the two different directions), while an odds ratio of 1 means no association.

When it comes to the analysis of the dependence in stratified 2x2 tables featuring large counts, in order to formally ascertain whether the hypothesis of homogeneous association holds, the Breslow-Day test is employed (Azen & Walker, 2011). If the associated p-value is larger than 0.05, the null hypothesis of homogenous association can be accepted, indicating that the conditional odds ratios (i.e., the odds ratios relative to each partial table) are not statistically significantly different from one another. This indicates that the association between the two cross-tabulated variables is not significantly different across the levels of the third variable. This makes it possible to calculate a common odds ratio, which is a weighted average of the level-specific odds ratios. This is done using the Mantel-Haenszel estimate of a common odds ratio (Azen & Walker, 2011; Sheskin, 2000), which indicates the association that exists between the first two variables after having controlled for the third variables.

Finally, all the calculation and hypothesis tests were performed in R (R Team Core, 2013) with the help of the ‘chisquare’ (Alberti, 2022), ‘DescTools’ (Signorelli, 2021), and ‘vcd’ (Mayer et al., 2021) packages. Descriptive bar charts were produced in Microsoft Excel.

Before moving to the next section, it is crucial to note that the quantitative part of this research focuses on exploring associations between variables without making assumptions of directional dependence. This analytical approach reflects the exploratory nature of the study, where the primary goal is to uncover patterns and relationships between categorical variables rather than

to construct predictive models through dependency frameworks. While directional dependence could theoretically be assumed for certain variables, it is important to note that the diversity of potential dependent variables (e.g., type of sentence, length of sentence, etc) would necessitate the construction of multiple logistic regression models (Pampel, 2000; Hosmer et al., 2013), each tailored to a specific dependent variable. This would introduce significant complexity, as well as the risk of overfitting and interpretive challenges, especially given the size and structure of the dataset.

By adopting a segmented approach based on bivariate analyses and stratification (to control for third variables where appropriate; see below), the study allows for a detailed examination of associations while maintaining interpretability. This approach avoids the complexity of managing multiple logistic regression models and ensures that the results are accessible and relevant to both academic and non-academic audiences. Furthermore, the choice to focus on associations rather than dependencies ensures that the analyses remain true to the descriptive and exploratory objectives of the study. While multivariate techniques, like the mentioned logistic regression, could complement this research in future studies, they are less aligned with the current focus on uncovering (non-directions) associations between variables in a flexible and interpretable manner.

3.6: Phase 2- Qualitative research design.

Following the gathering and analysis of the quantitative data, a semi-structured interview guide was developed. Morris (2015) defines a semi-structured in-depth interview as “a conversation in that there are two individuals discussing a topic of mutual interest and ideally the discussion is relaxed, open and honest” (p.3). The purpose behind using a semi-structured interview guide, which is based on the factual knowledge as yielded from the quantitative method of research, is

to gather more in-depth information from the main stakeholders. As explained by Ryan, Coughlan and Cronin (2009) qualitative research, is mainly concerned with providing explanations as well as a better understanding of the phenomena being studied. In fact, one-to-one interviews are frequently and widely used as a method of data collection in qualitative research (Ryan et al., 2009).

Interviews with professionals are conducted face-to-face and both time and location of interviews were chosen by the interviewees. The importance of conducting a face-to-face interview lies in the fact that it:

“...offers the researcher the opportunity to interpret non-verbal cues through observation of body language, facial expression and eye contact and thus may be seen to enhance the interviewers understanding of what is being said” (Ryan et al., 2009, p. 425).

This research project adopts the use of a semi-structured interview guide to provide the needed guidance and enable the researcher to gather relevant data to answer the research questions. Adhabi et al. (2017) explain that semi-structured interview guides do not adhere to a rigid structure. On the other hand, they are formulated to give the researcher time to adapt to the way in which the respondent answers the questions, thus rendering this type of interview a very flexible one (Adhabi et al., 2017). Particular attention was given to “issues of rigour” (Ryan et al., 2009; p. 427). Rigour refers to the accuracy with which the data gathered during the interviews is collected and processed. In other terms, rigour entails concepts of transferability, credibility and dependability. The researcher paid particular attention to the way in which the professionals contributing to this research were selected and this to avoid issues of bias as much as possible. According to Ryan et al. (2009) bias can also undermine the research outcome if the interview in any way, shape or form, influences the interviewee. A hypothetical example could be that the researcher experiences confirmation bias. Hallihan and Shu (2013) explain that

“Confirmation bias is an innate and pervasive human tendency to preferentially attempt to validate beliefs instead of invalidating them” (p.19). In order to avoid this bias, the information gathered during each one-to-one interview is transcribed immediately after each interview. Ryan, et al., (2009) and Adams (2015) suggest that researchers who do not audio tape the interviews are to keep a reflective diary in which the interviewer keeps records of any difficulties encountered during the interview as well as any particular observations made during the process. Such a diary was kept by the researcher as the interview process progressed.

3.6.1: Strengths and Weaknesses of Semi-Structured In-Depth Interviews

One of the major strengths of semi-structured in-depth interviews is that they provide the ideal ambiance for collecting data on personal experiences and perspectives (Hofisi et al., 2014). Hofisi et al. (2014) explain that in-depth interviews have several qualities as they produce new insights about the topic under study. These types of interviews are also very flexible and enable the researcher to explore, clarify, probe and investigate underlying responses. Thus, the researcher has the opportunity to minimise the possibility of misinterpretations as such interviews provide the needed opportunity to rephrase what is being said during the process of gathering data (Morris 2015, Hofisi et al., 2014). By using a semi-structured interview guide, the interviewer has a list of topics or specific questions to be asked which helps the researcher in covering all topics which need to be addressed (Hofisi et al., 2014). Furthermore, when semi-structured interview guides are used during in-depth interviews, “the interviewee has a great deal of leeway in how to reply” (Hofisi et al., 2014; p. 62). Morris (2015) stresses the fact that one of the major strengths of this type of data collection is that it is a very flexible and versatile method and provides the opportunity for the researcher to observe both verbal cues and non-verbal ones.

On the other hand, it is important to acknowledge the weaknesses in this data collecting method so that they may be addressed (Hofisi et al., 2014; Morris, 2015). Morris gives an overview of the possible weaknesses that this method can have. Amongst these there is the possibility that interviewees are not accurate in the information they give during the interviews. Another possible limitation is that it is difficult for researchers to draw a random sample of interviewees (Morris, 2015). One must also mention that in-depth interviews are very time consuming and expensive, especially in the transcribing phase. Hofisi et al. (2014) explain that in-depth interviews require a lot of effort and time in organising the setting up of meetings so that interviews can take place. Furthermore, Hofisi et al. (2015) also specify that the data collected by means of interviews cannot be generalised to the population as it only represents a small section of it.

3.6.2: Use of thematic analysis to analyse data gathered from one-to-one interviews with professionals

The previous section explained how rich informative data is gathered. This section will explain in detail the method used to analyse the data gathered during the interviews to provide the most adequate answers to the research questions. Ryan et al. (2009) provide guidance on how such data should be transcribed as well as how it should be processed. Ryan et al. (2009) identify three major segments involved in the analysis of data and this to assure that rigour is maintained:

“Data reduction: data are transcribed, simplified and focused. This occurs throughout the data collection process. Data Display: data are visibly presented on a graph or chart perhaps to show possible relationships and similarities. Verification: possible conclusions and explanations are made from data” (p.427).

The method of analysis chosen for this research study is the qualitative approach of thematic analysis. The conceptual framework of the thematic analysis used in this research study is built

on the theoretical views of Braun and Clarke (2006). According to Braun and Clarke (2006) this method is used for “identifying, analysing, and reporting patterns (themes) within the data” (p. 79). One important reason behind the choice of this method is that a “rigorous thematic approach can produce insightful analysis that answers particular research questions” (Braun and Clarke, 2006; p. 97). Vaismoradi et al. (2013) explain that there are different methods of “qualitative descriptive approaches” (p. 399). These include descriptive phenomenology, content analysis and thematic analysis. All these approaches meet the researchers’ expectations to employ a relatively low level of interpretation of data findings when compared to other approaches such as grounded theory or hermeneutic phenomenology (Vaismoradi et al., 2013). Another important reason for choosing thematic analysis as an approach for data analysis is because, as stated by Vaismorandi et al. (2013)

“It has also been introduced as a qualitative descriptive method that provides core skills to researchers for conducting many other forms of qualitative analysis. In this respect, qualitative researchers should become one familiar with thematic analysis as an independent and reliable qualitative approach to analysis” (p. 400).

In view of the above-mentioned information, it is important to remark that the study is being undertaken by a researcher who has already had the opportunity to work a dissertation for a postgraduate degree, which entailed this type of research method analysis tool. Braun and Clarke (2006) explain that the crucial aspect of performing an effective thematic analysis is that the researcher needs to build and identify a theme which captures important information in the data. Braun and Clarke (2006) state that such themes must always provide effective answers *vis-a-vis* the research questions. These authors include that such themes must also comprise/represent patterned responses from interviewees which give meaning to a particular aspect within the data set. Moreover, the type of thematic analysis used in this research study is a “theoretical thematic analysis” (Braun and Clarke, 2006; p. 84). As opposed to the inductive thematic analysis, Braun

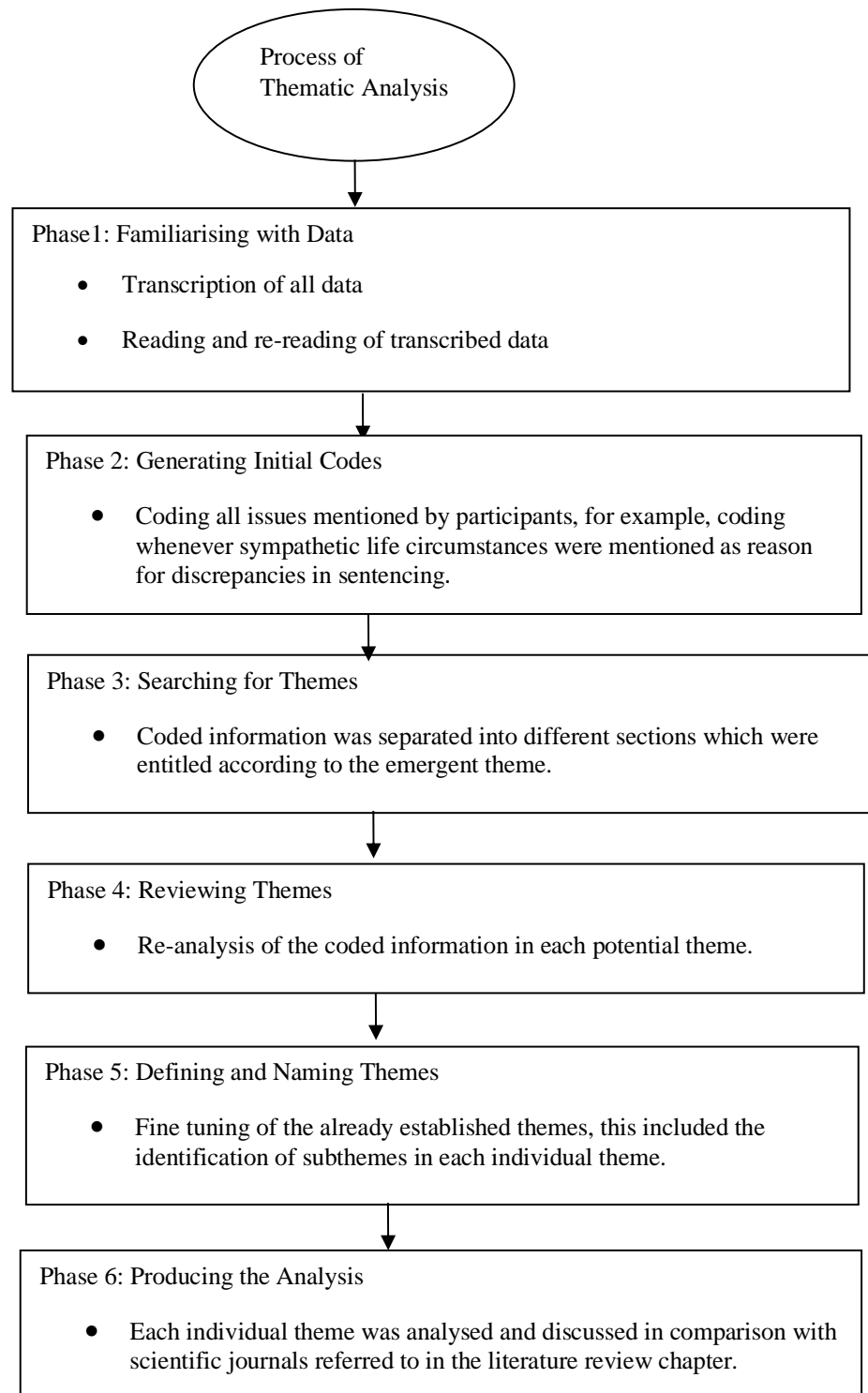
and Clarke (2006) explain that the theoretical thematic analysis is driven by the researcher's theoretical interest in a specific area of the study and it tends to provide a more detailed analysis of the data which answers the research questions, whereas in the "inductive thematic analysis" (Braun & Clarke, 2006; p. 84), the research question is derived from the themes collected. Another decision in the choice of the type of thematic analysis to use in this research is whether to use the semantic or latent themes. In this research semantic themes are identified, as the researcher uses what is said explicitly in the interviews and refrains from giving interpretation (latent thematic analysis) to the data gathered. All this involves a process which needs to be clear for the researcher. Figure 16 provides an overview of the process in which the progression of the thematic analysis was conducted in this research study.

As seen in Figure 16 an analysis of the data through a thematic analysis procedure entails a series of subsequent phases. The first phase of the thematic analysis is to transcribe all the data gathered from the one-to-one interviews. This enables the researcher to be more conscious of the type of data gathered. By going through and re-reading the transcribed data, the researcher is enabled to note down initial ideas and get a clear gist of the strongest/main emergent themes. The second phase entails the generation of new codes. During this phase, the researcher pays particular attention to the coding of all issues as raised by the interviewees; for example, the coding of any issues that might/might not render the criminal sentencing phase a gendered process. Phase three involves the separation of coded information into different sections with each section being entitled accordingly. The next phase consists of a re-analysis of the coded information in each potential theme. This assures that there is no overlapping between themes. Phase 5 entails the fine tuning of the established themes. It includes the identification of subthemes. This phase is important because it ensures that the themes and subthemes being presented are explained in an

orderly manner. The last phase is the one involving the analysis and discussion of each individual theme and subtheme. This is done by comparing each individual theme to the scientific data presented in the Literature Review Chapter.

Figure 16

Process of Thematic Analysis used.



Source: Farrugia (2016; p. 57)

3.6.3: Strengths and weaknesses of thematic analysis as an analytic tool

One of the major strengths of thematic analysis is that it is a straight-forward approach to analysing qualitative data (Braun & Clarke, 2006; Nowell et al., 2017). Nowell et al. (2017) stress that when performed in a correct manner, thematic analysis provides the researcher with a necessary tool to explore and analyse different perspectives. Braun and Clarke (2006) and Nowell et al. (2017) state that thematic analysis is also a very efficient tool when the research needs to summarise key features of large data sets. This is because, thematic analysis guides the researcher to take a well-structured and systematic approach (as seen in Figure 16) in handling data. In return this helps the researcher produce a well-defined and well-organised final report.

On the other hand, Nowell et al. (2017) state that the main disadvantage of thematic analysis is

“The lack of substantial literature on thematic analysis - compared to that of grounded theory, ethnography, and phenomenology, for example - may cause novice researchers to feel unsure of how to conduct a rigorous thematic analysis” (p.2).

Braun and Clarke (2006) state that the thematic analysis’s own flexibility might have counter-productive effects as it can lead to inconsistencies and lack of coherence during the theme development phase. Nowell et al. (2017) explain that this weakness can be addressed by applying the research epistemological position. In fact, Javadi and Zarea (2016) explain that issues of lack of coherence and consistency in themes developed by thematic analysis are most frequently due to researchers’ possible biases. The authors state that to avoid these pitfalls and possible weaknesses of thematic analysis as an analytical tool it is imperative that all aspects of the data gathered are analysed.

3.7: Conclusion

The information gathered in this chapter aims at providing an in-depth understanding of the methodology used in this research study. The principal aim of this study is to understand gender differences (if any) in the Maltese criminal court sentencing. There are several research questions emanating from the main aim of this study. The primary research question is whether or not female offenders who are brought in front of the Maltese criminal court receive the same kind of punishment as male offenders who commit the same crimes , and if not, what reasons lie behind such discrepancies.

To provide scientific answers to the research questions, a mixed method approach is used. The reason behind opting for a Mixed Methods approach as the means for collecting data is because it provides the most appropriate and comprehensive way to apply both quantitative and qualitative research methods. As explained in this chapter, the Mixed Methods approach contributes to this research study because it provides the needed framework to ensure triangulation as well facilitating convergence and corroboration of data by using different methods. Furthermore, this approach provides complementarity to the research as well as intuition because contradictory findings can be easily identified (Maruna, 2010). The different methodological approaches undertaken facilitate the research' expansion as it can ensure that a wider spectrum of data is gathered.

The Mixed Methods approach follows the Sequential Explanatory design as it consists of two main parts: the first part consists of a quantitative method (coding and analysis of online criminal court sentences covering a period of fifteen years) and comparison with similar crimes committed by male offenders in the years 2005, 2010, 2015 and 2020. The second one, which is qualitative, which depends on the quantitative data for the formulation of an interview guide.

The sampling used in this method is a multi-level one (Christensen, 2014) because it involves the use of quantitative and qualitative samples which are obtained from different levels of the population under study. The main strength of the Mixed Methods approach is that it facilitates triangulation. This method also increases specificity and generalisability of the results (Brent and Kraska, 2010). Furthermore, the use of both quantitative and qualitative techniques facilitates the validity and reliability of the research.

The data gathered through the quantitative method is analysed by using the Manifest Content Analysis system. A coding scheme is appositely formulated to be in line with this research hypothesis and which also addresses the main issues being raised by the research questions. The Manifest Content Analysis is the most viable method as it provides a systemic and longitudinal way of coding, counting and analyzing the content of the media under analysis. It is also a method which is easily replicable as the material used is generally accessible to other researchers while it maintains an unobtrusive approach because it does not require any contact with human participants. One of the major weaknesses of the Manifest Content Analysis is that, even though it provides a clear picture of the information being reported, it may not expose underlying causes in connection with observed patterns (Vitouladiti, 2014).

All data gathered from the Manifest Content Analysis is put through different analytic tools as the quantitative results set the basis for the formulation of an interview guide. As explained previously, ten professionals who worked or are still working in the criminal justice system are interviewed on a one-to-one basis. Particular attention is given to ensure participants' informed consent. The interview guide is a semi-structured one enabling both participants and interviewer to engage in a conversation/discussion about the issues under study. One-to-one in-depth interviews are a method by which rich and informative data is gathered (Hofisi et al., 2014). The

data gathered during the qualitative phase of this research study is analysed by using the thematic analysis method. To ensure that thematic analysis is done in an efficient way and that the themes reflect the interviewees' views and opinions, the semantic method is used and a systematic process (Figure 16) is adhered to.

The stages described in the chapter provide the researcher with both quantitative and qualitative data. The scientific and disciplined manner in the data collecting process contributes to the presentation and findings which will be discussed in the next chapter. The phases described above enable the researcher to present the findings and analysis, discussed in the next chapter, in a more systematic and clear way

Chapter 4

Findings– Quantitative Analysis

This chapter presents the quantitative research method employed to investigate the research questions outlined in this study. Quantitative research is grounded in the systematic collection and statistical analysis of numerical data, enabling the identification of patterns, relationships, and causal inferences. This approach is particularly suitable for testing hypothesis, measuring variables objectively, and generalising findings to larger populations.

4.1 Baseline of data sample results

The whole sample consists of 1836 court sentences involving female offenders, 1908 court sentences served to male offenders, and five cases involving Gender X offenders with a total of 3749 cases. The small difference in the size of the sample of the two genders is because while the number of female convicts is from a fifteen-year period, while, the number of the male convicts is from a four-year period, more specifically the years 2005, 2010, 2015 and 2020. The decision behind this research strategy was that a fifteen-year period would give a clearer indication of the most common types of crime in which female offenders engage. On the other hand, the data gathering for male offenders who perpetrated same crimes as the ones most frequently committed by females were gathered at an interval of 5 years. An important aspect from this data is that there were five court sentences meted out to a Gender X offender. Table 6 shows the total sample under study. The low numbers of male convicts in the years other than 2005, 2010, 2015 and 2020 is due to the number of males who committed a crime in accomplice

with a female offender. This table was produced to make it easier for the reader to appreciate the differences in numbers between male and female offenders who were found guilty of a crime in Malta.

Table 6

Total Sample under Study

Years	Female	Gender X	Male	Total
2005	82		309	391
2006	102		33	135
2007	101		10	111
2008	122		37	159
2009	103		10	113
2010	168	1	644	813
2011	137	3	21	161
2012	155	1	18	174
2013	199		20	219
2014	137		7	144
2015	140		507	647
2016	85		17	102
2017	83		5	88
2018	87		10	97
2019	84		10	94
2020	51		250	301
Total	1836	5	1908	3749

The data in Table 6 shows the actual number of male perpetrators who were found guilty of a crime as opposed to their female counterparts. As one can notice there is a significant discrepancy between the number of female offenders who were found guilty of a crime/s as compared to male offenders who also were found guilty by the Magistrates' Court-Criminal Judicature. Table 6 evidentiates the gender gap in crime. More males than females tend to commit crime and hence are found guilty by the competent court (Jeffries & Bond, 2010).

The information below in Table 7 represents a different scenario, one in which the gender gap in crime is consistent in all the crimes and years under investigation. Estrada et al. (2015) clearly state that many important findings in the study of criminology have found that males have a higher propensity towards committing crime and the difference between male and female offending is a significant one.

Table 7

Offenders who were found Guilty of Similar Crimes

Years	Female	%	Male	%	Gender X	%
2005	82	20.97%	309	79.03%	0	0%
2010	167	20.54%	645	79.34%	1	0.12%
2015	140	21.64%	507	78.36%	0	0
2020	51	16.94%	250	83.06%	0	0
Total	440		1711		1	

. Table 7 demonstrates that, in each observed year, male offenders consistently constitute the majority, ranging from 78.36% to 83.06% of the total offenders, whereas female offenders account for a significantly smaller proportion, ranging from 16.94% to 21.64%. The consistent disparity in offender counts by gender aligns with Haggart's (1973) observation that such trends are reflected internationally, with males being overrepresented among offenders. In fact, he specifies that it can be found "in all communities, all nations, all periods of history for which organised statistics are available" (p.42). Therefore, the situation in Malta is consonant with the situation as described by Haggart (1973). Another important factor which comes out of the information found in Table 7 is that compared to other years, the year 2020 had the least number of convicted offenders. This is attributed to the fact that the Maltese Courts of Law had to close their doors due to lockdown enforcement because of the Covid-19 pandemic.

4.1.1 Age at time of offence

Offenders' age at time of offence was also a variable which was gathered as it was deemed necessary to understand the local situation vis a vis gender and crime. Table 8 shows the offenders' age group at the time of committing the crime. It is apparent that the largest group of both males and females who were found guilty of a similar offence in Malta was within that of 20 to 24 years. Rocque et al. (2015) state that one of the main founding fathers of criminology, Adolphe Quetelet, in his 1831 publication, was the first scientist whose research showed that criminal activity rose with age and that it gradually increased reaching its peak at the age of 25. One of the main theories explaining the age-crime curve is Moffitt's (1993) "Group-based typology" (Rocque et al., 2015; p.5) Moffitt provides an explanation to the information provided in Table 8 which shows that there is a peak between the ages of 20 to 24 years, which she calls the "adolescent-limited group" (Moffitt 1993, as quoted by Rocque et al., 2015; p.5). Rocque et al. (2015) explain that the peak in crime is one of prevalence since the adolescents who resort to criminal activities are most probably immature and under peer pressure. Moffitt (1993) further explains the reasons why criminal activity does linger onto other age groups.

As seen in Table 8, criminal activity remains on the higher end till it reaches the group of 40 to 45 years. Moffitt (1993) calls this group the "Life-Course persistent" and explains it as a group which represents a small percentage of criminals who are chronic criminals. It is interesting to note that while both male and female offenders continue to commit crime up to the age group 60 to 64 years, involvement in criminal activities seem to decrease drastically from age group 65 to 69 years to 80 to 84 years where it tapers to a minimum of offences.

Another interesting information provided by Table 8 is that age plays an important role in understanding gender differences in offending patterns. The table indicates that the highest

proportions of offenders for both males and females fall within younger age groups, particularly between 20 to 29 years, where male offenders are most concentrated at 15.71% for ages 20 to 24 and 13.20% for ages 25 to 29. Female offenders, while fewer in total, also show the highest representation in the 20 to 24 age group at 3.76%. These patterns suggest that younger individuals, particularly males, are more likely to engage in criminal activities leading to sentencing, and this distribution diminishes in older age groups for both genders.

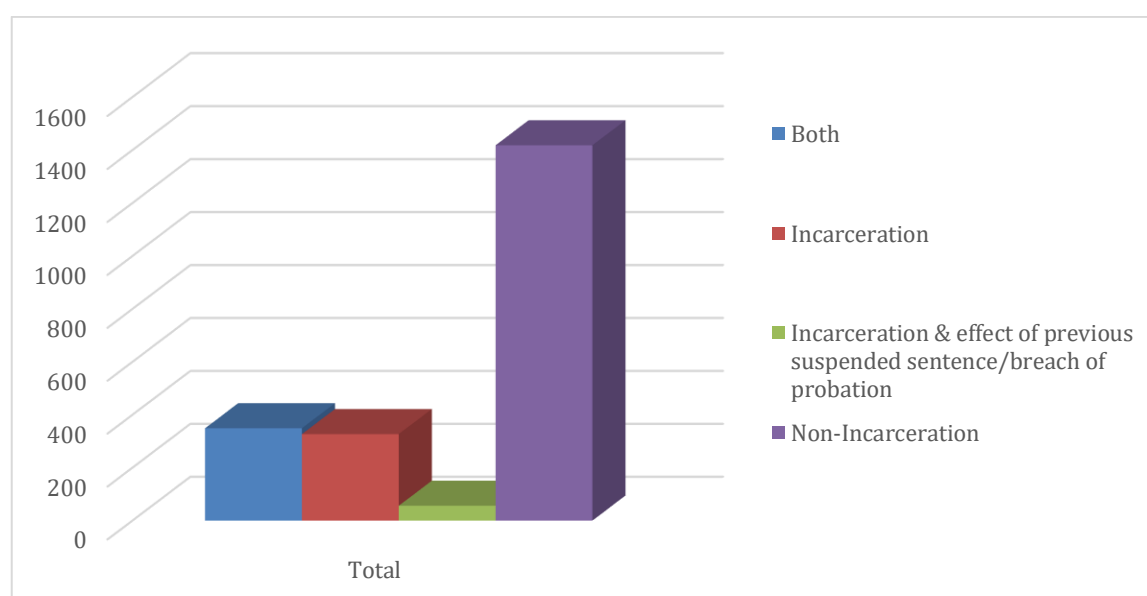
Table 8
Age of Offenders Convicted of Similar Crimes

Age Groups	Female	%	Male	%	X	%	Total Count	Total Count in %
12 to 17	11	0.51%	63	2.93%			74	3.44%
18 to 19	25	1.16%	113	5.25%			138	6.41%
20 to 24	81	3.76%	338	15.71%			419	19.47%
25 to 29	73	3.39%	284	13.20%			357	16.59%
30 to 34	52	2.42%	257	11.94%			309	14.36%
35 to 39	51	2.37%	162	7.53%	1	0.05%	214	9.94%
40 to 44	40	1.86%	114	5.30%			154	7.16%
45 to 49	34	1.58%	76	3.53%			110	5.11%
50 to 54	14	0.65%	87	4.04%			101	4.69%
55 to 59	6	0.28%	37	1.72%			43	2.00%
60 to 64	6	0.28%	23	1.07%			29	1.35%
65 to 69	2	0.09%	3	0.14%			5	0.23%
70 to 74	7	0.33%	2	0.09%			9	0.42%
75 to 79		0.00%	1	0.05%			1	0.05%
80 to 84	1	0.05%	2	0.09%			3	0.14%
Indeterminate	37	1.72%	149	6.92%			186	8.64%
Grand Total	440	20.45%	1711	79.51%	1	0.05%	2152	100.00%

Figure 17 shows the type of sentences meted out to the sample under study. As seen below, the most common sentence meted out was the non-incarceration option. This means that both male and female offenders were mostly given non-custodial sentences. The non-custodial sentences include probation order, supervision order, community work, etc. The section referred to as 'both' featuring in the graph's legend includes offenders who receive a prison sanction as well as a non-custodial sentence such as a fine or treatment order.

Figure 17

Type of Sentences meted out of Sample Under Study



4.1.2 Accomplices of same crime and the respective sentences meted out

Figure 18 shows the actual number of offenders who were found guilty of a crime in complicity with other offender/s and the type of sentence which was meted out vis a vis those offenders who did not have an accomplice. The highest proportion of convicts who were accomplices with other offenders got a non-incarceration sentence (N=338). This means that they were punished either by being subjected to a period of probation, suspended sentence, or community work, etc.

Figure 18

Type of Sentences meted out to Accomplices and Non-Accomplices.

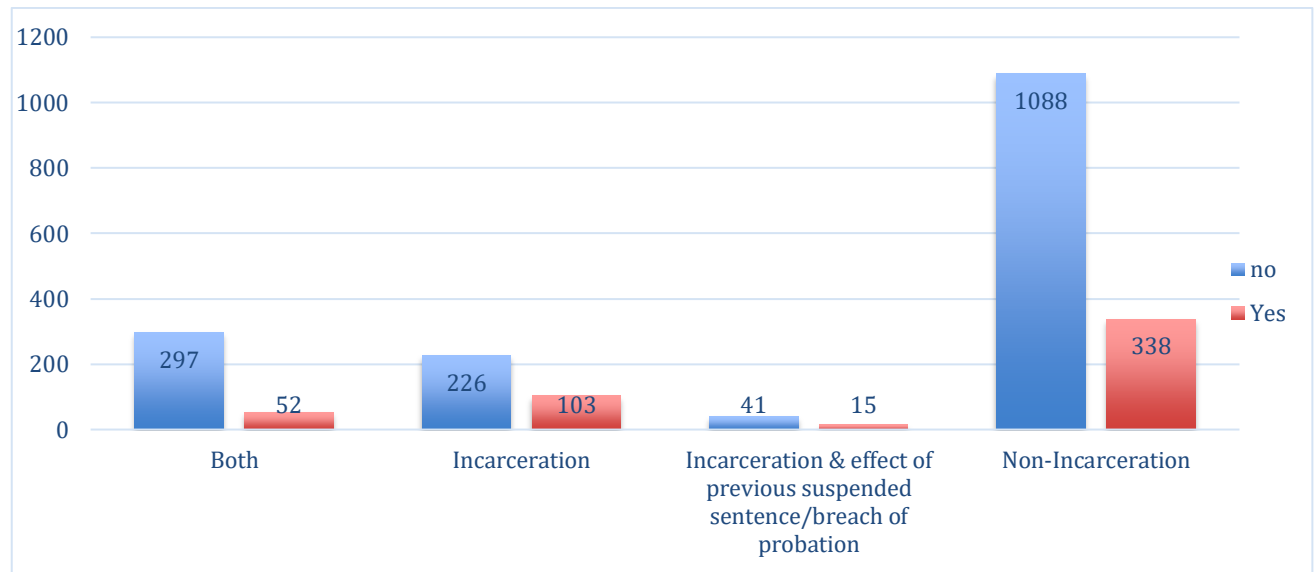


Figure 18 shows information regarding the number of accomplices (red column) and non-accomplices (blue column) versus the type of sentence they received. This information dovetails (or is consistent) with one of the pillars of Focal Concerns Theory, more specifically the pillar of Practical Concerns (Steffenmeier et al., 1980). This particular pillar attributes the meting out of criminal sentences that involve a non-incarceration and one possible reason can be that the courts are aware that the local prison is already full and needs refurbishments and upgrades before it can take more prisoners. The percentage of male convicts being given a prison sentence is almost double that of female accomplices (Table 9 and Table 10 below). The information below also shows that 46 female convicts and 303 male convicts were given both incarceration as well as non-incarceration sentences. This means that, while they had to serve a prison sentence, they had to carry out a form of non-incarceration sentence as a means of retribution for the committed criminal acts.

Table 9*Types of Sentences given to Accomplices and Non-accomplices*

Sentence Type	Female	Gender	Male	Omisses	Total
	X			⁷	
Both	46		303		349
Incarceration	41	1	286	1	329
Incarceration & effect of previous suspended sentence/breach of probation	1		55		56
Non-Incarceration	352		1066	8	1426
Grand Total	440	1	1710	9	2160

Table 10*Percentage of Accomplices' Sentences*

Sentence Type	Female	Gender	Male	Omisses	Total
	X				
Both (Incarceration & Non-Incarceration)	28.05%	0.00%	71.95%	0.00%	100%
Incarceration	33.92%	0.58%	64.91%	0.58%	100%
Incarceration & effect of previous suspended sentence/breach of probation	17.65%	0.00%	82.35%	0.00%	100%
Non-Incarceration	43.39%	0.13%	54.40%	2.07%	100%
Total	40.21%	0.19%	57.97%	1.63%	100%

The information in Table 10 can be explained by quoting Philippe (2017; p.12) who states that:

“When a crime is committed in a group, judges are supposed to punish the offenders who have the largest responsibility more severely. If men are more often the leaders of the duos or frequently commit a larger share of the crime (e.g. sell more drugs, land more punches) this could explain the pattern observed”.

⁷ Omisses refers to an offender whose name is not divulged by the criminal court.

The argument brought forward by Philippe (2017) explains the reason why there is a large gender gap even between male and females who are accomplices in a crime, and it seems to be consonant with the local situation.

4.1.3 Gender differences in filing a guilty plea

Table 11 shows the actual number of offenders who filed a guilty plea, whereas Table 12 shows the percentages of offenders who pleaded guilty of the crime they were indicted with. The percentage of both females and males who pleaded guilty is high, as seen in Table 12, 72.7% of female offenders pleaded guilty while male offenders scored a lower percentage (66%).

Table 11

Number of Offenders Pleading Guilty.

Gender	Indeterminate	No	Yes	Total
Female	0	120	320	440
Male	6	575	1130	1711
Gender X	0	0	1	1
Total	6	695	1451	2152

Table 12

Percentage of Offenders Pleading Guilty

Gender	Indeterminate	No	Yes	Total
Female	0%	27.3%	72.7%	100%
Male	0.3%	33.6%	66%	100%
Gender X	0%	0%	100%	100%
Total	0.3%	32.3%	67.43%	100%

It is evident that the vast majority of both genders pleaded guilty thus facilitating the presiding magistrates' sentence. Authors Gormley et al. (2020) in their document submitted to the Scottish

Sentencing Council explain that filing a guilty plea happens for different reasons. One of the reasons they call “Utilitarian rationale” (p.13). Gormley et al. (2020) state that since the sentence meted out would be lessened by certain degrees when an offender pleads guilty, it is the court system which encourages such decision so that court resources and time would be saved. In fact, while gathering the data from the court sentences the researcher encountered a significant number of court sentences that evidence this consideration, where the magistrate’s decision was based on whether the offender had pleaded guilty at an early stage or not. Some examples are cases 1231/2006; 905/2008; 169/2010

With regards the degree of punishment, the court has considered the early admission of the offender and this since the very beginning of the court proceedings. (Il-Pulizija (Spettur Mario Tonna) v. Caroline Degiorgio, 2007, p. 3)⁸.

With regards to punishment the court has taken into consideration the fact that the offender has co-operated with police, made an early admission of guilt and the offender has no criminal record. (Il-Pulizija (Spettur Anthony Portelli) v. Dennis Mizzi & Therese Mizzi, 2008, p. 2)⁹.

With regards to punishment, the court considered the fact that the offenders registered a guilty plea in the initial phases of the court proceedings, they co-operated with police in their investigations and the fact that an agreement was reached with the injured party. (Il-Pulizija (Spettur Angelo Gafa’) v. Theresa Bellotti & Antonia Attard sive Bellotti, 2010, p. 3)¹⁰.

Another important aspect considered by Gormley et al. (2020; p.16) is the “Remorse Rationale” which means that a remorseful defendant would find it easier to file a guilty plea and this to ease his/her guilt. There were many cases where Magistrates presiding the Court of Magistrates

⁸ – “Ghal finijiet ta’ piena l-Qorti kkunsidrat l-ammissjoni bikrija ta’ l-imputata sa mill-bidu nett ta’ dawn il-proceduri....”

⁹ “Illi dwar il-piena l-Qorti hadet in konsiderazzjoni l-koperazzjoni ta’ l-imputati mal-pulizija, l-ammissjoni f’l-aktar stadju bikri ta’ dawn il-proceduri u l-fedina penali ta’ l-imputati” .

¹⁰ “Ghal finijiet ta’ piena l-Qorti kkunsidrat il-fatt li l-imputati rregistraw ammissjoni fi stadju bikri tal-proceduri, l-fatt li kkoperaw fil-kors tal-investigazzjonijiet u l-fatt li intlahaq ftehim mal-parti civili”

Criminal Judicature acknowledge that the defendant is genuinely remorseful, and this reflects in the sentences. Initial data in this research suggests that female offenders do file a guilty plea more than their male counterparts.

In fact, this topic could be delved into deeper by asking the interviewees the following question: In your opinion what is/are the reasons for this discrepancy between genders in filing a guilty plea? Could it be because the defence lawyer advises them to do so, or does it reflect more on the fact that female offenders tend to be more remorseful?

4.1.4 Offenders' past criminal record

Another important variable when trying to understand whether there exist any discrepancies between genders in criminal sentencing is to take into consideration the sample's previous criminal record as this could determine the severity of the sentence.

Table 13 below provides an overview of the sample's past criminal record. The data gathered shows that the highest number is that pertaining to the indeterminate section. This is due to the fact that the information provided in the court sentences does not always indicated the offender's past criminal record. The data shows that the vast majority of the sample under study had a past criminal record. In fact, the sample was divided into two groups, one that had a past criminal history and the other that did not have a past criminal record. The group with a past criminal record was subsequently divided into three groups, that is, those who have committed minor offences (such as contraventions), others who have committed multiple offences and/or who were found guilty of less than ten crimes, while those with a lengthy record had a voluminous past conviction sheet.

Table 13**Cross-tabulation of Gender and Past Criminal Record (whether present/absent)**

Gender	Past Criminal Record		Total
	No	Yes	
Female	146	98	244
Male	294	850	1144
Total	440	948	1388

Note. Aaa.**Table 14****Cross-tabulation of Gender and Past Criminal Record (whether present/absent)**

Gender	Past Criminal Record		Total
	No	Yes	
Female	59.84	40.16	100
Male	25.70	74.30	100
Total	31.70	68.30	100.00

Note. Percentages are calculated row-wise based on the total number of observations for each gender in Table 13.**Table 15****Cross-tabulation of Gender and past Criminal Record (whether minor, multiple, or lengthy)**

Gender	Past Criminal Record			Total
	Yes Minor	Yes Multiple	Yes Lengthy	
Female	9	41	2	52
Male	58	398	7	463
Total	67	439	9	515

Note. Aaa.

Table 16
Cross-tabulation of Gender and past Criminal Record (whether minor, multiple, or lengthy)

Gender	Past Criminal Record			Total
	Yes Minor	Yes Multiple	Yes Lengthy	
Female	17.31	78.85	3.85	100.00
Male	12.53	85.96	1.51	100.00
Total	13.01	85.24	1.75	100.00

Note. Percentages are calculated row-wise based on the total number of observations for each gender in Table 15.

The number of female convicts who had a prior criminal record is much smaller (N=440) than that their male counterpart (N=1707). A high number of both male and female offenders with a criminal history of multiple (more than ten) offences can also be seen (N=440). This data can be compared to the aggravating factors' variable, where recidivism is listed as an important aggravating factor, and this for reliability purposes. With reference to the above-mentioned information and also considering the information in Figure18 which clearly shows that magistrates chose the non-incarceration option as part of their sentence, a question to ask the interviewees could be: how can they explain the fact that there seem to be offenders who despite having a significant criminal record are not given a prison sanction.

This first section aims at providing an idea of some of the areas of interest in this study, which areas will be further explained and developed in the research. . An explanation of the sample under study was deemed necessary. Information about the offenders' age at time of offence was also provided to identify which age group was most likely to commit crime in Malta as well as to see if there were any discrepancies in age when it comes to gender and crime. The evaluation of which type of sentencing options were received by accomplices was yet another way how to

present data which addressed the research questions and provided an insight to the fact that most of the offenders who committed a crime together with an accomplice/s received a non-incarceration sentence. The importance of having an offender filing a guilty plea was also brought to the fore, together with the presentation of data showing that a discrepancy exists between male and female offenders who plead guilty. Finally, information about the sample's past criminal record was also provided. This data showed that male offenders are more prone to have a lengthier criminal record than female offenders. The next section will focus on data concerning the types of crimes committed as well as the offenders' citizenship.

4.2 Gender, number of crimes committed, and citizenship area

Table 17 cross-tabulates gender, the number of crimes committed (6 groups), and the citizenship area. The term 'citizenship' in this study adopts the meaning of nationality. In order to understand the proportion of the number of crime categories among each citizenship area, in Table 17 (see also Figure 19) raw frequencies are turned into raw percentages; the last row (shaded in dark grey) represents the average proportion of number of crime categories in the overall sample (i.e., disregarding gender and citizenship area). The rows in lighter grey represent the average proportion for Females and Males individually. For easiness of read, individual proportions have been highlighted in bold when they prove larger than the individual averages. Average proportions can be used as a baseline to which one can compare the individual percentages (Greenacre, 2007). The bar chart in Figure 19 is based on the average proportions reported in Table 18.

Table 17
Cross-tabulation of Offender's Citizenship Area and Number of Crimes Committed, stratified by Gender

Gender	Citizenship Area	Number of Crimes Committed			
		1	2	3	4
Female	Maltese	174	84	45	17
	European Union	25	9	3	3
	Non European Union	36	8	3	1
	Dual	1	3	1	0
	Indeterminate	10	7	0	0
	total Females	246	111	52	21
Male	Maltese	400	430	295	123
	European Union	37	22	10	7
	Non European Union	106	54	38	13
	Dual	1	0	0	0
	Indeterminate	48	26	14	5
	total Males	592	532	357	148
Total		838	643	409	169

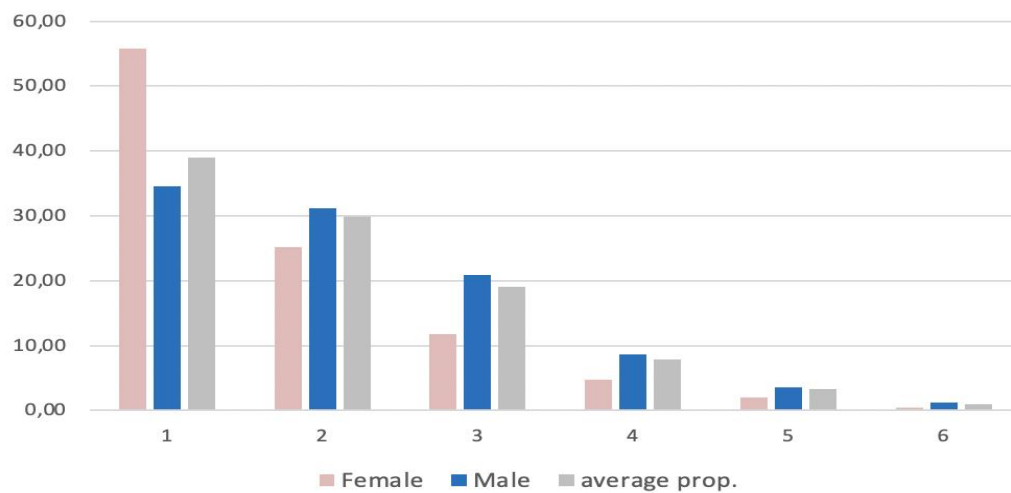
Table 18
Cross-tabulation of Offender's Citizenship Area and Number of Crimes Committed, stratified by Gender

Gender	Citizenship Area	Number of Crimes Committed						Total
		1	2	3	4	5	6	
Female	Maltese	52.73	25.45	13.64	5.15	2.42	0.61	100.00
	European Union	62.50	22.50	7.50	7.50	0.00	0.00	100.00
	Non European Union	75.00	16.67	6.25	2.08	0.00	0.00	100.00
	Dual	20.00	60.00	20.00	0.00	0.00	0.00	100.00
	Indeterminate	55.56	38.89	0.00	0.00	5.56	0.00	100.00
	aver. prop. Females	55.78	25.17	11.79	4.76	2.04	0.45	100.00
Male	Maltese	30.49	32.77	22.48	9.38	3.81	1.07	100.00
	European Union	48.05	28.57	12.99	9.09	1.30	0.00	100.00
	Non European Union	47.11	24.00	16.89	5.78	4.44	1.78	100.00
	Dual	100.00	0.00	0.00	0.00	0.00	0.00	100.00
	Indeterminate	50.53	27.37	14.74	5.26	0.00	2.11	100.00
	aver. prop. Males	34.62	31.11	20.88	8.65	3.57	1.17	100.00
Aver. prop.		38.96	29.89	19.01	7.86	3.25	1.02	100.00

Note. Percentages are calculated row-wise based on the total number of observations for each Citizenship Area in Table 17.

Figure 19

Proportion of Number of Crimes committed among Gender (see Table 18)



From a descriptive standpoint, if we disregard the citizenship area, it is apparent from Table 17 and Figure 19 that the 1-crime category has a larger-than-average proportion among Females (55.78 % vs an overall average of 38.96%). In all the remaining cases, Males represent a larger proportion compared to Females, and those proportions prove in some cases slightly above the average proportion: see, e.g., the 3-crime category that represents the 20.88% of all the crimes committed by Males is larger than the average proportion by about 2%. In general, however, in all the crime categories from 2 to 6, the proportion of Females is smaller than the average.

From an inferential point of view, the association between the ‘number of crimes’ variable and gender proves significant (chi-squared value: 70.69; df: 5; permuted p-value: <0.001) (Everitt, 1992; Kateri, 2014; Reynolds, 1977). Cramer’s V (0.181; 95% CI 0.142-0.224) points to an association that, a table with 5 degrees of freedom, can be deemed as moderate (Cohen, 1988). The adjusted standardised residuals are presented in Figure 20.

Figure 20

Chi-squared adjusted standardised residuals for Number of crimes vs. Gender

Analysis report		
<i>Adjusted standardized residuals</i>		
	Female	Male
1_crime	8.125	-8.124
2_crimes	-2.430	2.429
3_crimes	-4.336	4.336
4_crimes	-2.710	2.710
5_crimes	-1.611	1.610
6_crimes	-1.333	1.332

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)

Highlighted residuals are significant at least at alpha 0.05

The analysis of adjusted standardised residuals helps pinpoint which cell contributes to the rejection of the null hypothesis of independence, therefore pointing at cells containing a significant difference between the observed and the expected count (Everitt, 1992; Healey, 2013; Sharpe, 2015). The highlighted residuals are significant at least at alpha 0.05. They indicate that there is a significant larger-than-expected frequency of Females in the 1-crime category, while there is a significant larger-than-expected frequency of Males in the 2, 3, and 4-crimes categories. The residuals relative to the top two ‘number of crimes’ categories are not significant, pointing to a non-significant deviation from independence. Overall, the analysis indicates that Females are significantly associated with the lowest ‘number of crimes’ category, while Males are significantly associated with 2, 3, and 4 crime categories. In other terms, female offenders are indicted with only one offence whereas male offenders are indicted with 2 or more offences in the same court hearing.

If the citizenship area is taken into account, a more nuanced scenario can be sketched up. Data indicate that there is a larger-than-average proportion of 2-crime and 3-crime categories among the Maltese Females and Males offenders, while both Females and Males of Eu and Non-Eu

citizenship have a larger-than-average proportion of 1-crime category. Non-Eu Male offenders have a larger-than-average proportion of the 5-crime category. Overall, it seems that Eu and Non-Eu offenders (both Males and Females) are mainly associated with the 1-crime category, whereas Maltese males and females are comparatively more linked to the 2- and 3-crime categories. The picture for the Male offenders is confirmed, from an inferential standpoint, by the chi-squared test. While this proves not significant for Female offenders (chi-squared value: 22.15; df: 20; permuted p value: 0.282), the association between citizenship area and ‘offense number’ category is weak (Cramer’s V: 0.09) but significant for Males (chi-squared value: 54.08; df: 20; permuted p value smaller than 0.05). Figure 21 reports the adjusted standardised residuals, which indicate that male Maltese offenders are significantly associated to the 2- and 3-crimes categories, whereas Eu and Non-Eu offenders are associated to the 1-crime category.

Figure 21

Chi-squared adjusted standardised residuals for Number of crimes vs. Citizenship (Males only)

Analysis report						
<i>Adjusted standardized residuals</i>						
	1_crime	2_crimes	3_crimes	4_crimes	5_crimes	6_crimes
Maltese	-6.522	2.697	2.969	1.924	0.986	-0.715
European_Union	2.535	-0.493	-1.743	0.139	-1.098	-0.976
Non_European_Union	4.226	-2.472	-1.579	-1.647	0.762	0.910
Dual	1.376	-0.670	-0.512	-0.306	-0.187	-0.101
Indeterminate	3.353	-0.811	-1.515	-1.210	-1.928	0.873

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)
Highlighted residuals are significant at least at alpha 0.05

The information provided in this section clearly shows that, in general, female offenders are indicted with one crime whereas males tend to be indicted with more crimes per court sitting. It

is interesting to note that when citizenship is identified, Maltese female and male offenders have a higher propensity to be indicted with the 2nd and 3rd crime category. This means that local offenders are more likely to be found guilty of more crimes (because they are indicted with more offences in one court sitting) than EU and Non-EU offenders.

4.3 Gender vs crime type

The database includes 2,162 offenders whose gender is known. For every observation (i.e., offender) the number of crimes committed across 14 broad categories has been registered (Table 19).

Table 19
Cross-tabulation of Crime Type and Offender's Gender

Crime Type	Offender's Gender		Total
	Male	Female	
Assault	39	21	60
Bodily Harm	360	76	436
Damage	262	28	290
Domestic violence	29	9	38
Drugs	324	57	381
Financial Crimes	280	105	385
Firearms Acts offences	64	3	67
Health	6	2	8
Homicide	1	0	1
Other	938	222	1160
Sexual offences	6	15	21
Theft	1267	176	1443
Threats	24	27	51
Traffic	143	24	167
Total	3743	765	4508

Table 19 cross-tabulates Crime Category against Offender's Gender; a total of 4,508 crimes are recorded. In order to understand the proportion of crime categories among each gender, in Table 20 (see also Figure 22) raw frequencies are turned into column percentages; the last column to the right represents the average proportion of crime categories in the overall sample (i.e., disregarding gender), and (as stressed earlier on) can be used as a baseline to which one can compare the individual percentages relative to gender.

It is worth noting that the "Other" category, while large in terms of overall counts, comprises a wide variety of offence types, each of which has a relatively low frequency in the dataset. These offences include, but are not limited to, perverting the course of justice, immigration offences, absconding from lawful custody, breaches of probation, and begging. Given the small counts for each individual offence within this grouping, they were combined under "Other" to ensure manageable analysis and avoid overly fragmented categories. This grouping provides a practical solution for dealing with rare offence types while maintaining the integrity of the analysis.

Table 20
Cross-tabulation of Crime Type and Offender's Gender

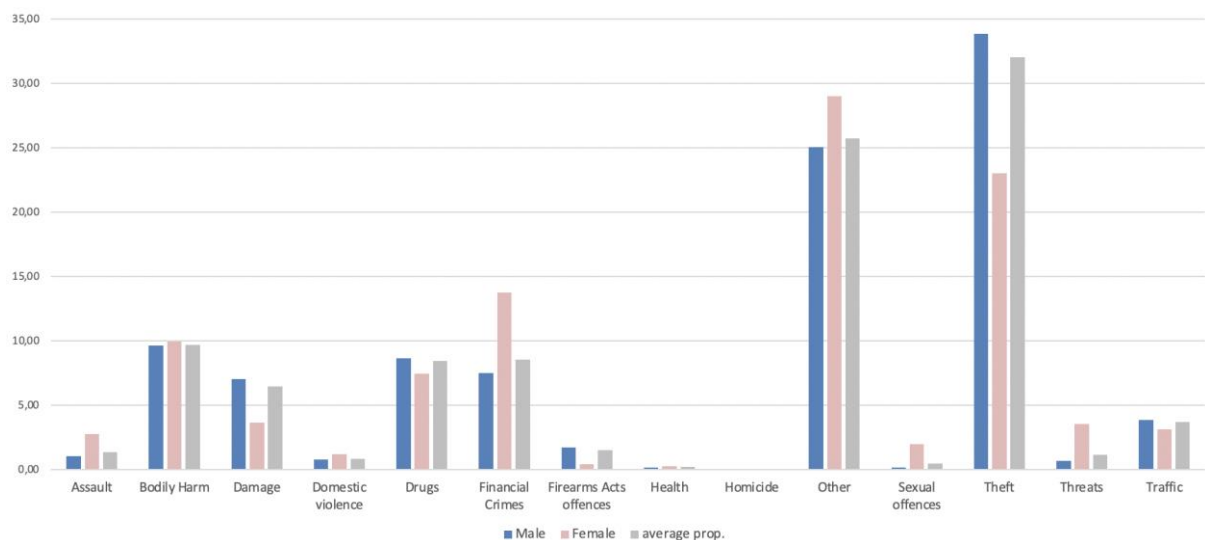
Crime Type	Offender's Gender		Averag. prop.
	Male	Female	
Assault	1.04	2.75	1.33
Bodily Harm	9.62	9.93	9.67
Damage	7.00	3.66	6.43
Domestic violence	0.77	1.18	0.84
Drugs	8.66	7.45	8.45
Financial Crimes	7.48	13.73	8.54
Firearms Acts offences	1.71	0.39	1.49
Health	0.16	0.26	0.18
Homicide	0.03	0.00	0.02
Other	25.06	29.02	25.73

Sexual offences	0.16	1.96	0.47
Theft	33.85	23.01	32.01
Threats	0.64	3.53	1.13
Traffic	3.82	3.14	3.70
Total	100.00	100.00	100.00

Note. Percentages are calculated column-wise based on the total number of observations for each gender in Table 19.

Figure 22

Proportion of Crime type among Gender (see Table 20)



From a descriptive standpoint, it is apparent that there is a gender difference in relation to a number of crime categories. Assault is proportionally more associated with Females, with a proportion (2.75%) which is 1.04% higher than that for Males and 1.33% higher than that of the average population. The same applies, with different percentages, to Domestic violence, Financial Crimes, Sexual Offence, and Threats (see the mentioned Table 20 and Figure 22 for details about the individual percentages). On the other hand, Damage, Drugs, Firearm Acts, and Theft, are higher (in a comparative fashion) among Males.

From an inferential point of view, there is a significant categorical association between Crime category and Gender. If we exclude the Other category (since it proves ambiguous from an interpretative point of view), the chi-squared test proves significant (chi-squared value: 184, df: 12, permuted p value: <0.01) (Everitt, 1992; Kateri, 2014; Reynolds, 1977). The strength of the association can be deemed as moderate (Cramer V: 0.235; 95% Confidence Interval: 0.202-0.269) (Healey, 2013).

Figure 23

Chi-squared adjusted standardised residuals for Crime type vs. Gender

Analysis report		
<i>Adjusted standardized residuals</i>		
	Male	Female
Assault	-3.981	3.982
Bodily_Harm	-0.738	0.737
Damage	3.172	-3.172
Domestic_violence	-1.256	1.256
Drugs	0.707	-0.708
Financial_Crimes	-6.256	6.255
Firearms_Acts_offences	2.634	-2.633
Health	-0.676	0.675
Homicide	0.440	-0.437
Sexual_offences	-6.885	6.885
Theft	5.494	-5.495
Threats	-7.169	7.169
Traffic	0.665	-0.665

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)

Highlighted residuals are significant at least at alpha 0.05

The standardised residuals in Figure 23 indicate that Females are significantly associated with Assault, Financial crimes, Sexual offenses, and Threat, whereas Males are significantly associated with Damage, Firearm acts, and Theft.

Figure 22 shows that there seems to be a higher percentage of female offenders who were found guilty of violent crime – assault and threats in particular. Traditionally, these kind of crimes used to be linked to male perpetrators. As already explained in the literature review section, women are viewed as less aggressive and therefore less harmful to society because female are brought up in a socialisation process (Eitle et al., 2014) where females need to be and are expected to exhibit a behaviour which is characterised by “friendliness, unselfishness and expressiveness, which are traits that inhibit criminality” (Rivera & Veysey, 2015; p.1110). Therefore it seems that the results transpiring from this research do not reflect the results of the research by Eitle, et. al,(2014) and Rivera and Veysew (2015).

While women remain a minority of overall violent offenders, assault represents a higher proportion of their offending. As stated previously, FBI data from 2023 shows that 36.0% of female offenders were charged with assault, compared to 31.9% of male offenders (FBI, 2023). This does not mean females are more violent than males; rather, it indicates that when females do offend, their criminal behaviour is more likely to fall into the category of assault compared to other types of crime (e.g., property or drug offences). Considering the above data and the quantitative results obtained about this issue, it would be ideal to gather more in depth information about this issue. Assault and Threats represent a higher proportion of female offending compared to other crime categories, though males still account for the majority of these offences in absolute terms. Therefore, the question which arises from this statement is - how can one of the pillars of Focal Concerns Theory, that is, that women are less dangerous to society be explained? To what do you attribute this change in criminal activity by females?

The results from this quantitative research method show that Domestic violence is also more associated with the female gender. This might be due to different reasons. Grevio's Baseline Evaluation Report Malta (2020) specifically states that:

“Many factors prevent the emergence of a detailed picture in Malta of the different forms of violence against women in relation to women's victimisation, reporting to police, seeking help and how they are being responded to” (p.210).

A possible explanation for this result is the dark figure of crime, meaning that many domestic violence incidents go unreported and are not reflected in official data. An important study which was carried out by the Department of Gender Studies at the University of Malta in 2017 aimed to identify the barriers faced by females who were experiencing domestic violence when seeking help about their situation. The results showed that the Maltese society is, for the most part, a patriarchal society and this serves as a barrier facilitating gender inequalities through its social attitudes, the roles which are assigned to each gender and also the presence of dominant discourse.

It is important to note that generally, when there is a domestic violence case, the court provides information about the particular case. For example, in the court case numbered 803/2002 dated 09/12/2005 the magistrate clearly states in the sentence that:

The offender who has a clean criminal record, went through a lot of torments during her marriage and so that she can have food for her and her daughter. (Il-Pulizija (Spettur Edel Mary Camilleri) v. Silvana Debrincat, 2005, p.3)¹¹.

Figure 22 also shows a very high percentage of female offenders found guilty of financial crimes. In this research, the financial crimes category is made up of cheque and credit card fraud, general frauds, forgery, bribery, trade offences, usury, customs and revenue offences, money laundering,

¹¹ “*L-imputata, illi għandha fedina penali netta, għaddiet minn tormenti kbar matul il-ħajja taż-żwieġ tagħha u sabiex ikollha biex tiekol hi u titma' lil bintha*”

embezzlement and use of false prescription drugs. As seen in the literature review chapter, this type of crime is referred to as ‘Pink Collar Crime’ (Pope, 2013) and also incorporates ‘street economic crimes’ (Van Slyke & Bales, 2013). The data shows that it is congruent with research studies and which found that female offenders who perpetrate white collar crime are on the increase (Marquet 2014; Pope 2013). The perpetration of Pink Collar crime seems to go against one of the main pillars of the Focal Concerns Theory, that is, blameworthiness. This in view of the fact that in order to commit these crimes, female offenders have to plan their crime in advance which in turn leads one to believe that they have a higher level of criminal intent (Pope 2013).

Hence a question that should be asked to the professionals participating in the one-to-one interviews is: The findings from this quantitative study show that females are highly associated with financial crimes. Do you agree that financial crimes by females are on the increase and if so, why?

The above information shows that male and female offenders are found guilty of different types of crime. While female offenders in Malta are more associated to Assault, Financial crimes and Sexual offences, male offenders are more associated with Damage, Drugs and Theft, the following section will focus on the offenders’ citizenship and the crime type committed.

4.4 Gender, crime type and citizenship area

Table 21 cross-tabulates crime type against the offenders’ citizenship area, the latter classified into Maltese, EU, Non-EU, Dual, and Indeterminate. For easiness of read, the crime type categories are listed in rows. In Table 22, the counts are turned into column percentages, which

allow one to appreciate the proportion that each crime type has within each citizenship area category.

Table 21
Cross-tabulation of Crime Type and Offender's Citizenship Area

Crime Type	Citizenship Area				
	Maltese	European Union	Non European Union	Dual	Indeterminate
Assault	38	7	11	0	4
Bodily Harm	352	16	54	2	15
Damage	242	12	23	1	12
Domestic violence	35	0	3	0	0
Drugs	307	22	42	1	9
Financial Crimes	325	22	22	1	15
Firearms Acts offences	45	4	13	0	5
Health	5	3	0	0	0
Homicide	1	0	0	0	0
Sexual offences	13	2	5	0	2
Theft	1127	84	165	3	73
Threats	46	0	1	1	3
Traffic	153	0	11	0	3
Other	884	36	169	2	72
Total	3573	208	519	11	213

Table 22
Cross-tabulation of Crime Type and Offender's Citizenship Area

Crime Type	Citizenship Area					average prop.
	Maltese	European Union	Non European Union	Dual	Indeterminate	
Assault	1.06	3.37	2.12	0.00	1.88	1.33
Bodily Harm	9.85	7.69	10.40	18.18	7.04	9.70
Damage	6.77	5.77	4.43	9.09	5.63	6.41
Domestic violence	0.98	0.00	0.58	0.00	0.00	0.84
Drugs	8.59	10.58	8.09	9.09	4.23	8.42
Financial Crimes	9.10	10.58	4.24	9.09	7.04	8.51
Firearms offences	1.26	1.92	2.50	0.00	2.35	1.48
Health	0.14	1.44	0.00	0.00	0.00	0.18
Homicide	0.03	0.00	0.00	0.00	0.00	0.02

Sexual offences	0.36	0.96	0.96	0.00	0.94	0.49
Theft	31.54	40.38	31.79	27.27	34.27	32.10
Threats	1.29	0.00	0.19	9.09	1.41	1.13
Traffic	4.28	0.00	2.12	0.00	1.41	3.69
Other	24.74	17.31	32.56	18.18	33.80	25.71
Total	100.00	100.00	100.00	100.00	100.00	100.00

Note. Percentages are calculated column-wise based on the total number of observations for Citizenship Area in Table 21.

The most common (31.54%) crime by Maltese offenders is theft. This percentage is not particularly different from that for the overall average (32.10%) or from the average for Non-Eu offenders (31.79%). In contrast, the average proportion of theft crime among Eu offenders is higher (40.38%). If we focus on proportions featuring a positive departure from the average, data indicate that Assault is more “documented” among Eu offenders (3.37% against an average of 1.33%), Bodily harm is slightly larger than the average among Non-Eu offenders (10.40% against an average of 9.70%), Drugs and Financial crimes are more represented among Eu offenders (10.58% against an average of 8.42% and 8.51% respectively), Firearm offences are more represented among Non-Eu offenders (2.50% against an average of 1.48%), Traffic is more represented among Maltese offenders (4.28% against an average of 3.69%).

From an inferential point of view, excluding the Dual and Indeterminate categories, there is a significant association between crime type and citizenship area (chi-square value: 105.16; df: 26; permuted p value: <0.001). Cramer’s V (0.111; 95% CI: 0.092-0.131) points to an association of moderate strength. Figure 24 shows the adjusted standardised residuals.

Figure 24*Chi-squared adjusted standardised residuals for Crime type vs. Citizenship area*

Analysis report			
<i>Adjusted standardized residuals</i>			
	Maltese	European_Union	Non_European_Union
Assault	-3.062	2.690	1.751
Bodily_Harm	0.184	-1.055	0.483
Damage	1.961	-0.405	-1.989
Domestic_violence	1.490	-1.395	-0.794
Drugs	-0.186	1.026	-0.463
Financial_Crimes	2.671	1.054	-3.767
Firearms_Acts_offences	-2.224	0.597	2.167
Health	-1.556	4.309	-1.048
Homicide	0.450	-0.220	-0.368
Sexual_offences	-2.165	1.079	1.779
Theft	-1.427	2.658	-0.109
Threats	2.717	-1.553	-2.104
Traffic	3.554	-2.943	-2.150
Other	-1.953	-2.726	4.043

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)
Highlighted residuals are significant at least at alpha 0.05

The residuals indicate that: (a) Maltese offenders are significantly associated with Damage, Financial, Threats, and Traffic crimes; (b) EU offenders are significantly associated with Assault, Health, and Theft; (c) Non-EU offenders are significantly associated with Firearms Acts and Other crimes.

However, data indicate that gender has a bearing on the association between crime type and citizenship area. Table 23 cross-tabulates the three above-mentioned variables, while Table 24 provides columns proportions. In the latter table, for easiness of read, larger-than-average proportions are highlighted in bold. Figures 25 and 26 visually represent the proportion of crime types by citizenship area and are based on the mentioned table 24.

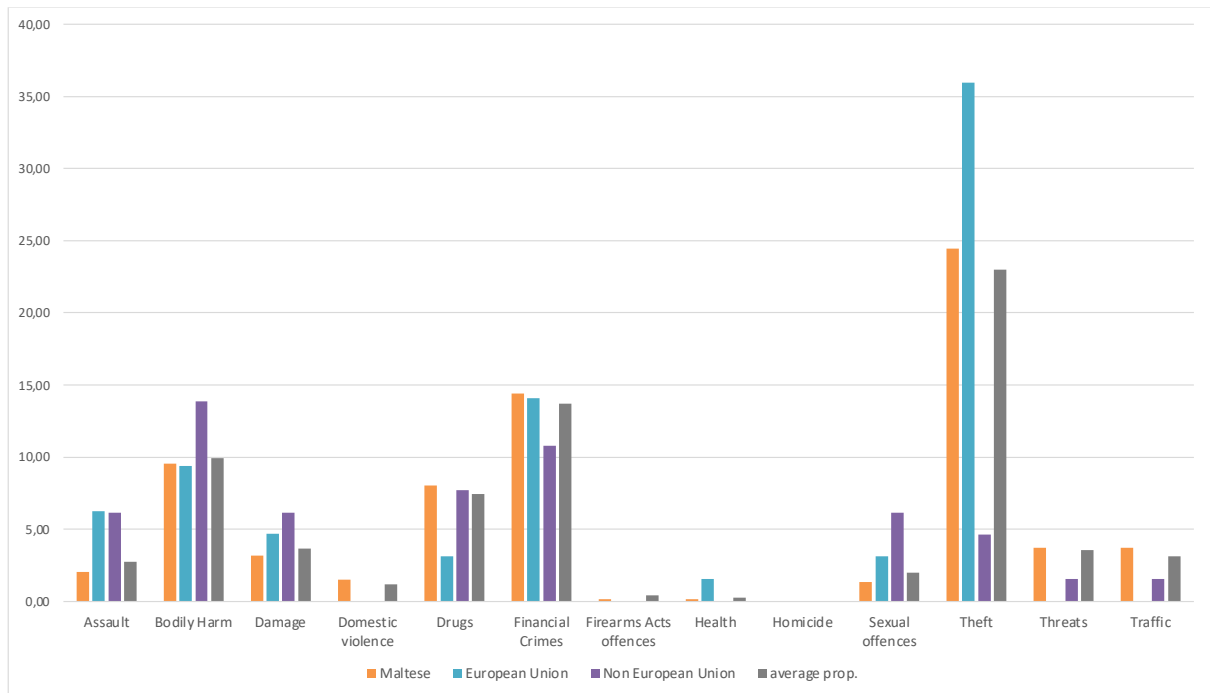
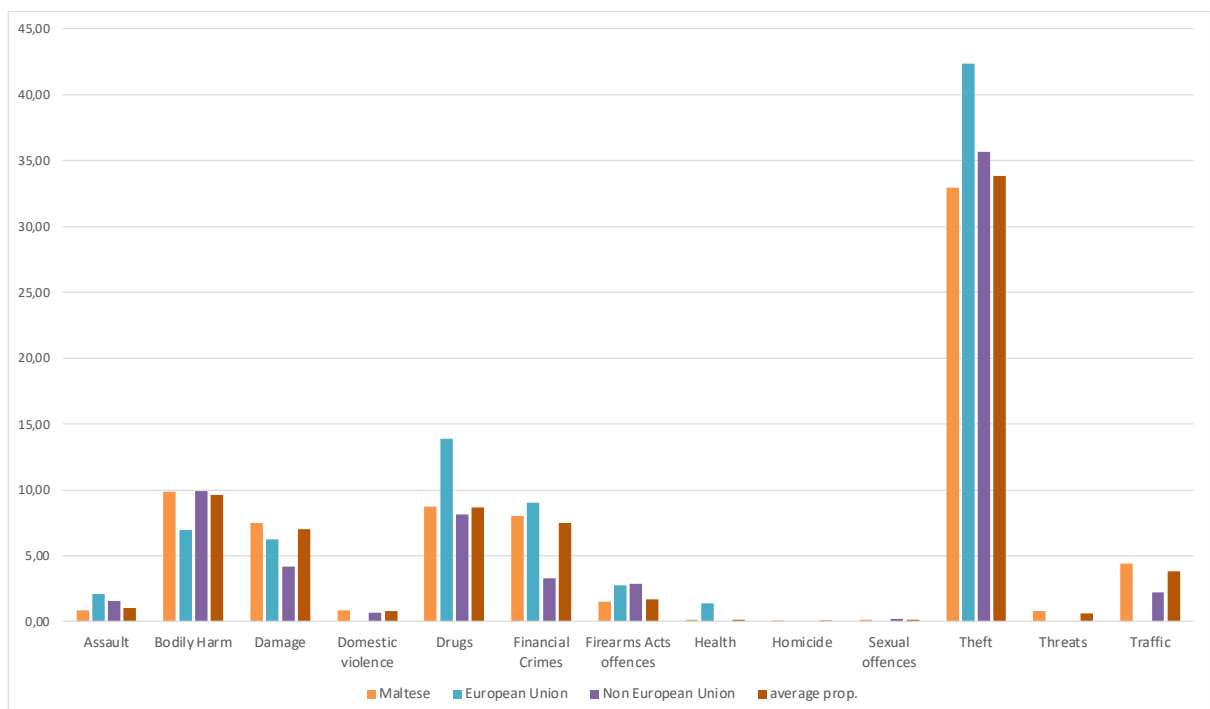
Table 23
Cross-tabulation of Crime Type and Citizenship area, split by Offender's Gender

Crime Type	Gender												Total
	Female						Male						
	Citizenship Area												
	Maltese	European Union	Non European Union	Dual	Indeterminate	Total Female	Maltese	European Union	Non European Union	Dual	Indeterminate	Total Male	
Assault	12	4	4	0	1	21	26	3	7	0	3	39	60
Bodily Harm	57	6	9	2	2	76	292	10	45	0	13	360	436
Damage	19	3	4	1	1	28	223	9	19	0	11	262	290
Domestic violence	9	0	0	0	0	9	26	0	3	0	0	29	38
Drugs	48	2	5	1	1	57	259	20	37	0	8	324	381
Financial Crimes	86	9	7	1	2	105	239	13	15	0	13	280	385
Firearms Acts offences	1	0	0	0	2	3	44	4	13	0	3	64	67
Health	1	1	0	0	0	2	4	2	0	0	0	6	8
Homicide	0	0	0	0	0	0	1	0	0	0	0	1	1
Sexual offences	8	2	4	0	1	15	5	0	1	0	0	6	21
Theft	146	23	3	2	2	176	979	61	162	1	64	1267	1443
Threats	22	0	1	1	3	27	24	0	0	0	0	24	51
Traffic	22	0	1	0	1	24	131	0	10	0	2	143	167
Other	166	14	27	2	13	222	717	22	142	0	57	938	1160
Total	597	64	65	10	29	765	2970	144	454	1	174	3743	4508

Table 24
Cross-tabulation of Crime Type and Citizenship area, split by Offender's Gender

	Gender												
	Female						Male						
	Citizenship Area												
	Maltese	European Union	Non European Union	Dual	Indeter.	average prop. Male	Maltese	European Union	Non European Union	Dual	Indeter.	average prop. Female	average prop.
Assault	2.01	6.25	6.15	0.00	3.45	2.75	0.88	2.08	1.54	0.00	1.72	1.04	1.33
Bodily Harm	9.55	9.38	13.85	20.00	6.90	9.93	9.83	6.94	9.91	0.00	7.47	9.62	9.67
Damage	3.18	4.69	6.15	10.00	3.45	3.66	7.51	6.25	4.19	0.00	6.32	7.00	6.43
Domestic violence	1.51	0.00	0.00	0.00	0.00	1.18	0.88	0.00	0.66	0.00	0.00	0.77	0.84
Drugs	8.04	3.13	7.69	10.00	3.45	7.45	8.72	13.89	8.15	0.00	4.60	8.66	8.45
Financial Crimes	14.41	14.06	10.77	10.00	6.90	13.73	8.05	9.03	3.30	0.00	7.47	7.48	8.54
Firearms Acts offences	0.17	0.00	0.00	0.00	6.90	0.39	1.48	2.78	2.86	0.00	1.72	1.71	1.49
Health	0.17	1.56	0.00	0.00	0.00	0.26	0.13	1.39	0.00	0.00	0.00	0.16	0.18
Homicide	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.00	0.00	0.00	0.00	0.03	0.02
Sexual offences	1.34	3.13	6.15	0.00	3.45	1.96	0.17	0.00	0.22	0.00	0.00	0.16	0.47
Theft	24.46	35.94	4.62	20.00	6.90	23.01	32.96	42.36	35.68	100.00	36.78	33.85	32.01
Threats	3.69	0.00	1.54	10.00	10.34	3.53	0.81	0.00	0.00	0.00	0.00	0.64	1.13
Traffic	3.69	0.00	1.54	0.00	3.45	3.14	4.41	0.00	2.20	0.00	1.15	3.82	3.70
Other	27.81	21.88	41.54	20.00	44.83	29.02	24.14	15.28	31.28	0.00	32.76	25.06	25.73
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

Note. Percentages are calculated column-wise based on the total number of observations for Citizenship Area in Table 23.

Figure 25*Proportion of Crime type among Citizenship area (Females) (see Table 24)***Figure 26***Proportion of Crime type among Citizenship area (Males) (see Table 24)*

From a descriptive point of view, if we take into account gender, Assault has a larger-than-average proportion among females (average proportion disregarding gender: 1.33%; average proportion among Females: 2.75%; average proportion among Males: 1.04%). Among Females,

the mentioned crime has a larger-than-average proportion among EU and Non-EU offenders (6.25% and 6.15% respectively). Bodily harm has a larger-than-average proportion among Non-EU female offenders. Damage has a larger-than-average proportion among Non-EU female offenders and among Maltese male offenders. Drug criminality is comparatively more associated with Males and EU offenders. Financial crimes have a larger-than-average proportion among Females and, among Maltese and European female offenders. Sexual offence has a larger-than-average proportion among EU and Non-EU female offenders. Theft has a larger-than-average proportion among Males and, among EU and Non-EU offenders. Notably, the same crime is associated with female EU offenders. Traffic crimes are proportionally more associated with Maltese male offenders.

From an inferential standpoint, the chi-square test proves significant for both the partial tables that make up Table 24. If we disregard the Dual and Indeterminate categories, the chi-square test for both Females and Males is associated with a permuted p value smaller than 0.01 (Female: chi-square value: 51.27; df: 24; Males: chi-square value: 82.15; df: 26). The strength of the association can be deemed as moderate (Cramer's V 0.188 and 0.107 respectively). Figures 27 and 28 report the adjusted standardized residuals for Females and Males respectively.

Figure 27*Chi-squared adjusted standardised residuals for Crime type vs. Citizenship area (Females)*

Analysis report			
<i>Adjusted standardized residuals</i>			
	Maltese	European_Union	Non_European_Union
Assault	-2.637	1.789	1.755
Bodily_Harm	-0.717	-0.152	1.111
Damage	-1.244	0.499	1.170
Domestic_violence	1.404	-0.937	-0.946
Drugs	1.017	-1.408	0.037
Financial_Crimes	0.594	0.003	-0.798
Firearms_Acts_offences	0.465	-0.307	-0.311
Health	-1.195	2.060	-0.442
Sexual_offences	-2.479	0.730	2.597
Theft	1.043	2.413	-3.791
Threats	1.712	-1.514	-0.786
Traffic	1.712	-1.514	-0.786
Other	-0.906	-1.231	2.438

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)
Highlighted residuals are significant at least at alpha 0.05

Figure 28*Chi-squared adjusted standardised residuals for Crime type vs. Citizenship area (Males)*

Analysis report			
<i>Adjusted standardized residuals</i>			
	Maltese	European_Union	Non_European_Union
Assault	-1.777	1.316	1.216
Bodily_Harm	0.478	-1.150	0.143
Damage	2.465	-0.376	-2.541
Domestic_violence	0.930	-1.108	-0.386
Drugs	-0.637	2.170	-0.567
Financial_Crimes	2.852	0.718	-3.622
Firearms_Acts_offences	-2.343	1.009	2.030
Health	-1.088	3.651	-0.934
Homicide	0.450	-0.199	-0.379
Sexual_offences	0.007	-0.501	0.290
Theft	-2.043	2.248	0.962
Threats	2.206	-1.007	-1.876
Traffic	3.135	-2.484	-2.048
Other	-1.700	-2.674	3.483

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)
Highlighted residuals are significant at least at alpha 0.05

The residuals indicate that there is a significant association between Health and Theft crime and Eu female offenders, while Non-EU females are significantly associated with Sexual offences.

As for Males, Maltese offenders are significantly associated with Damage, Financial, Threats, and Traffic crimes; EU offenders are significantly associated with Drugs, Health, and Theft; Non-Eu offenders with Firearms acts and other crimes.

Table 25 cross-tabulates gender against crime type and a more specifically area of citizenship, while Table 26 reports row proportions; in the latter table, larger-than-average proportions are highlighted in bold.

Table 25
Cross-tabulation of Citizenship area and Crime Type, split by Offender's Gender

Gender	Citizenship Area	Crime Type														Total
		Assault	Bodily Harm	Damage	Domestic violence	Drugs	Financial Crimes	Firearms Acts offences	Health	Homicide	Sexual offences	Theft	Threats	Traffic	Other	
Female	Malta	12	57	19	9	48	86	1	1	0	8	146	22	22	166	597
	Europe	5	9	4	0	7	2	0	1	0	1	4	0	1	9	43
	Eastern Europe	2	2	2	0	0	9	0	0	0	2	20	0	0	12	49
	North America	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
	South America	0	0	0	0	0	0	0	0	0	1	0	0	0	2	3
	Australia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Africa	1	2	0	0	0	0	0	0	0	0	0	0	0	13	16
	Asia	0	2	0	0	0	3	0	0	0	2	1	1	0	5	14
	Dual	0	2	1	0	1	2	0	0	0	0	3	1	0	2	12
	Indeter.	1	2	1	0	1	2	2	0	0	1	2	3	1	13	29
	Total Female	21	76	28	9	57	105	3	2	0	15	176	27	24	222	765
Male	Malta	26	292	223	26	259	239	44	4	1	5	979	24	131	717	2970
	Europe	2	14	9	0	26	8	3	2	0	0	63	0	3	33	163
	Eastern Europe	1	2	2	0	9	9	2	0	0	0	28	0	0	6	59
	North America	0	0	0	0	1	0	0	0	0	0	5	0	0	1	7
	South America	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Australia	1	3	2	0	7	6	1	0	0	0	27	0	5	12	64
	Africa	4	30	13	3	13	5	11	0	0	1	77	0	2	98	257
	Asia	2	6	2	0	1	0	0	0	0	0	23	0	0	14	48
	Dual	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
	Indeter.	3	13	11	0	8	13	3	0	0	0	64	0	2	57	174
	Total Male	39	360	262	29	324	280	64	6	1	6	1267	24	143	938	3743
Total		60	436	290	38	381	385	67	8	1	21	1443	51	167	1160	4508

Table 26
Cross-tabulation of Citizenship area and Crime Type, split by Offender's Gender

Gender	Citizenship Area	Crime Type														Total
		Assault	Bodily Harm	Damage	Domestic violence	Drugs	Financial Crimes	Firearms Acts offences	Health	Homicide	Sexual offences	Theft	Threats	Traffic	Other	
Female	Malta	2.01	9.55	3.18	1.51	8.04	14.41	0.17	0.17	0.00	1.34	24.46	3.69	3.69	27.81	100.00
	Europe	11.63	20.93	9.30	0.00	16.28	4.65	0.00	2.33	0.00	2.33	9.30	0.00	2.33	20.93	100.00
	Eastern Europe	4.08	4.08	4.08	0.00	0.00	18.37	0.00	0.00	0.00	4.08	40.82	0.00	0.00	24.49	100.00
	North America	0.00	0.00	50.00	0.00	0.00	50.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00
	South America	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	33.33	0.00	0.00	0.00	66.67	100.00
	Australia															
	Africa	6.25	12.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	81.25	100.00
	Asia	0.00	14.29	0.00	0.00	0.00	21.43	0.00	0.00	0.00	14.29	7.14	7.14	0.00	35.71	100.00
	Dual	0.00	16.67	8.33	0.00	8.33	16.67	0.00	0.00	0.00	0.00	25.00	8.33	0.00	16.67	100.00
	Indeter.	3.45	6.90	3.45	0.00	3.45	6.90	6.90	0.00	0.00	3.45	6.90	10.34	3.45	44.83	100.00
	aver. prop. Female	2.75	9.93	3.66	1.18	7.45	13.73	0.39	0.26	0.00	1.96	23.01	3.53	3.14	29.02	100.00
Male	Malta	0.88	9.83	7.51	0.88	8.72	8.05	1.48	0.13	0.03	0.17	32.96	0.81	4.41	24.14	100.00
	Europe	1.23	8.59	5.52	0.00	15.95	4.91	1.84	1.23	0.00	0.00	38.65	0.00	1.84	20.25	100.00
	Eastern Europe	1.69	3.39	3.39	0.00	15.25	15.25	3.39	0.00	0.00	0.00	47.46	0.00	0.00	10.17	100.00
	North America	0.00	0.00	0.00	0.00	14.29	0.00	0.00	0.00	0.00	0.00	71.43	0.00	0.00	14.29	100.00
	South America															
	Australia	1.56	4.69	3.13	0.00	10.94	9.38	1.56	0.00	0.00	0.00	42.19	0.00	7.81	18.75	100.00
	Africa	1.56	11.67	5.06	1.17	5.06	1.95	4.28	0.00	0.00	0.39	29.96	0.00	0.78	38.13	100.00
	Asia	4.17	12.50	4.17	0.00	2.08	0.00	0.00	0.00	0.00	0.00	47.92	0.00	0.00	29.17	100.00
	Dual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	100.00
	Indeter.	1.72	7.47	6.32	0.00	4.60	7.47	1.72	0.00	0.00	0.00	36.78	0.00	1.15	32.76	100.00
	aver. prop. Male	1.04	9.62	7.00	0.77	8.66	7.48	1.71	0.16	0.03	0.16	33.85	0.64	3.82	25.06	100.00
	aver. prop.	1.33	9.67	6.43	0.84	8.45	8.54	1.49	0.18	0.02	0.47	32.01	1.13	3.70	25.73	100.00

Note. Percentages are calculated row-wise based on the total number of observations for Citizenship Area in Table 25.

The above tables further clarify some of the patterns that emerge from an analysis of Table 23 and 24. Assault proves more documented among European, Eastern European, and African female offenders, while among Males it proves to have a larger-than-average proportion among Asian offenders. Bodily harm has a larger-than-average proportion among European and African female offenders, while among Males it is more documented among Africans and Asians. Damage is more documented among European and North American female offenders, while among the Males it suggests a larger-than-average proportion among Maltese offenders. Drugs is more documented among European female offenders, while among Males it proves to have a larger-than-average proportion among European, Eastern European, North American, and Australian offenders. Financial crimes prove more associated with female Maltese, Eastern European, and Asian offenders. Firearm act offences prove more associated with Eastern European and African male offenders, while Sex offences prove having a larger-than-average

proportion among Eastern European, South American, and Asian female offenders. Theft, which (as seen earlier on) has a larger-than-average proportion among Males, proves to be more documented among European, Eastern European, North American, Australian, and Asian offenders of that gender.

The above-mentioned results are in agreement with those studies by Steffenmeier et al., (2013), and Heiskanen and Leitonon (2016) who state that their research has proved that crime is not gender neutral and that males and females perpetrate different crimes. The authors explain that the gendered nature of crime is tangibly visible in domestic and sexual offences but much less apparent in fraud related offences. In fact, this study shows that European countries have experienced the highest share of females who were suspected to be involved in fraud, money laundering and theft.

The above analysis clearly indicates that citizenship is another important variable when understanding gender and crime and provides a clear picture of how it is linked to different types of crimes. This research shows that males and females of different nationalities commit different types of crimes. A possible question to the Magistrates could be that with this information in mind, what is their opinion on offenders of different nationality who chose to commit a crime in Malta? Is this deemed as an aggravating factor and therefore might it influence the type of sentence meted out? If not, should the court as an important institution convey the message that criminal acts by who come to Malta and commit a crime are to be condemned and punished accordingly? This is pertinent as the Court of Magistrates has expressed its views on this matter on different occasions. Hereunder are two examples of foreign offenders who appeared in front of the court and on whom the court has explicitly shared its views. In the case of *The Police vs Elena Stoycheva & Yana Nikolova*, Case number 797/2009, the Magistrate stated that:

The Court believes that an effective imprisonment sentence needs to be given to Elena Stoycheva and this as a deterrent for those individuals who come to Malta with the specific intention to commit crimes like pickpocketing and shoplifting. (Il-Pulizija (Spettur Pierre Micallef Grimaud) v. Yana Marinova Nikolova & Elena Stoycheva, 2009, p.3)¹²

Another case where the court has expressed its concern is that of The Police vs Mihova Gyurga, Case number 851/2010, where the Magistrate stated that:

The Court is of the opinion that it is dutybound to send a clear message in regards to the seriousness of the crimes being examined even when one considers the fact similar crimes are becoming widespread. (Il-Pulizija (Spettur Anne Marie Micallef) v. Mihova Gyurga Miteva, 2010, p.3)¹³

This section provided a more in-depth study of different variables. More specifically, it focused on understanding which gender is most likely to be indicted with more crimes (in one court sitting). Gender versus crime type were analysed in an effort to better understanding the research question, that is, the identification of the types of crime that female offenders are most likely to be found guilty of by the Maltese criminal court. In order to provide a clearer picture, variables such as gender, type of crime and offenders' citizenship area were analysed. Results show that offenders of different nationalities commit different types of crime. In actual fact, results show the substantial association between EU female offenders and health and theft crimes, while non-EU offenders are more associated with sexual crimes. On the other hand, financial crimes are more correlated with Maltese, Eastern European and Asian female offenders. The next section

¹² "Il-Qorti jidhrilha li anki fil-kas ta Elena Stoycheva għandha tiġi imposta piena karċerarja effettiva u dan bħala deterrent għal min jidhirlu jiġi hawn Malta bl-intenzjoni speċifika li jikkommetti serq fit-toroq (pick pocketing) u fil-hwienet (shoplifting)".

¹³ "Il-Qorti pero hija tal-fehma li għandha l-obbligu li tibgħat messaġġ ċar dwar is-serjeta tar-reati in ezami tenut kont tal-mewġa ta' każijiet simili". The Court is of the opinion that it is dutybound to send a clear message in regards to the seriousness of the crimes being examined even when one considers the fact similar crimes are becoming widespread.

focuses on the analysis of variables such as offenders' gender, sentence type and Magistrates' gender.

4.5 Offender's genders vs. sentence type vs. magistrate's gender

Table 27 is a three-way cross-tabulation where the gender of the offender is tabulated against the type of sentence (whether it was incarceration or non-incarceration) for each level of a third variable (i.e., gender of the magistrate). The table provides the basis to explore whether a three-way association exists between the mentioned variables; in particular, the analytical interest focuses on whether there is a significant association between type of sentence and gender of the offender, controlling for the gender of the magistrate. Table 28 is based on table 27 for each sub-table, columns percentages are calculated in order to represent the proportion of sentence types among offender's gender.

Table 27
Cross-tabulation of Offenders' Gender and Sentence type, controlling for the Magistrates' Gender

Magistrate Gender	Sentence Type	Offender Gender		Total
		Male	Female	
Female	Non incarceration	549	173	722
	Incarceration	189	25	214
	Total Female	738	198	936
Male	Non incarceration	517	180	697
	Incarceration	152	17	169
	Total Male	669	197	866
Total	Non incarceration	1066	353	1419
	Incarceration	341	42	383
	Total	1407	395	1802

Table 28
Cross-tabulation of Offenders' Gender and Sentence type, controlling for the Magistrates' Gender

Magistrate Gender	Sentence Type	Offender gender		average prop.
		Male	Female	
Female	Non incarceration	74.39	87.37	77.14
	Incarceration	25.61	12.63	22.86
	Total Female	100.00	100.00	100.00
Male	Non incarceration	77.28	91.37	80.48
	Incarceration	22.72	8.63	19.52
	Total Male	100.00	100.00	100.00
Total	Non incarceration	75.76	89.37	78.75
	Incarceration	24.24	10.63	21.25
Total		100.00	100.00	100.00

Note. Percentages are calculated column-wise based on the total number of observations for each Gender in Table 27.

The bottom section of Table 28 (also called marginal table, which disregards the gender of the magistrate) shows that non-incarceration sentences are more common (i.e., have a larger proportion) both for male (75.76%) and female offenders (89.37%). Notably, the former proportion is smaller than the average (78.75%), whereas the latter proportion is larger than the average. This means that, in general, non-incarceration sentences are over-represented among females and under-represented among males. The opposite holds true for incarceration sentences, which are over-represented among male offenders than among females. If we analyse the two conditional tables (also called partial tables, where the magistrate gender is controlled for), the scenario proves similar. Non-incarceration sentences feature a larger-than-average proportion among female offenders and incarceration sentences are over-represented among males both when the magistrate is a male and when the magistrate is female.

From an inferential point of view, there is a significant association in the marginal table. As the chi-square test indicates (chi-square value: 34.1; df 1; p-value: <0.01), the sentence type depends on the gender of the offender. The same holds true for both conditional tables: for the one corresponding to the gender of the magistrate being “female”, the chi-square statistic is 14.9 with an associated p-value smaller than 0.01 (df: 1). For the one corresponding to the gender of the magistrate being “male”, the chi-square statistic is 19.2 with an associated p-value smaller than 0.01 (df: 1). In the three mentioned scenarios the association can be deemed as of moderate strength (Cramer’s V 0.138, 0.126, and 0.149 respectively) and the adjusted standardised residuals indicate a significant positive association between non-incarceration sentences and female offenders, and between incarceration sentences and male offenders (Figure 29-31).

Figure 29

Chi-squared adjusted standardised residuals for Offender’s gender vs. Sentence type (Magistrate female)

Analysis report		
Adjusted standardized residuals		
	Male	Female
Non incarceration	-3.865	3.863
Incarceration	3.862	-3.863

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)

Highlighted residuals are significant at least at alpha 0.05

Figure 30

Chi-squared adjusted standardised residuals for Offender's Gender vs. Sentence Type (Magistrate male)

Analysis report		
<i>Adjusted standardized residuals</i>		
	Male	Female
Non incarceration	-4.385	4.386
Incarceration	4.387	-4.387

BLUE: significant negative residuals (< -1.96)
 RED: significant positive residuals (> 1.96)
 Highlighted residuals are significant at least at alpha 0.05

Figure 31

Chi-squared adjusted standardised residuals for Offender's Gender vs. Sentence Type (disregarding Magistrate gender)

Analysis report		
<i>Adjusted standardized residuals</i>		
	Male	Female
Non incarceration	-5.838	5.84
Incarceration	5.839	-5.84

BLUE: significant negative residuals (< -1.96)
 RED: significant positive residuals (> 1.96)
 Highlighted residuals are significant at least at alpha 0.05

The analysis indicates that there is a significant association between the gender of the offender and sentence type, both when disregarding and when controlling for the magistrate gender. When controlling for the gender of the magistrate, the nature of the association between sentence type and offender gender does not change in direction: females keep being significantly associated with non-incarcerations sentences, whereas males keep being significantly associated with incarceration sentences. The presence of a homogeneous association (i.e., the absence of a three-way interaction between the three variables under discussion) is confirmed by the Breslow–Day test (chi-squared value: 0.570; df: 1; p-value: 0.45) (Azen & Walker, 2011), which proves to be not significant.

This formally indicates that there is a homogeneous association between sentence type, offender's gender, and magistrate's gender: the conditional association between sentence type and offender's gender is the same across the levels of the magistrate's gender; or, to put it another way, the gender of the magistrate does not affect the association between offender's gender and the type of sentence. Finally, since the hypothesis of homogeneous association holds, the Mantel-Haenszel estimate of a common odds ratio (controlling for magistrate's gender) is 0.372. It means that, on average, female offenders are (1:0.372) 2.69 time more likely than male offenders to receive a non-incarceration sentence (controlling for the gender of the magistrate). In other words, for every male receiving a non-incarceration sentence, about three female offenders receive the same type of sentence.

An important factor which needs to be addressed, and which can be linked to the Paternalism/Chivalry approach is whether given that most of the Magistrates presiding the Court of Magistrates, Criminal Judicature are women. This could have facilitated the "Feminization of the legal process" (Menkel-Meadow, 1986; p.898). As explained in the literature review chapter this can occur when there is a growing participation of female magistrates as is the current situation in the Maltese context. It can also occur because female magistrates can bring about change via the qualities, such as empathy and nurturance associated with females (Menkel-Meadow, 1986).

The above information details an important finding. It is imperative to ask participants for more information about the fact that there seems to be no difference between magistrates' gender and the sentences meted out. So, the question to ask interviewees would be whether the participant agrees with the statement that the introduction of more female Magistrates in the Maltese

Criminal Court has brought about change and if so, what type of change can be identified by the interviewee?

This section focused on providing a scientific answer as to whether or not the Magistrate's gender plays a role in the criminal sentencing of female and male offenders. This information was also important to test the Paternalism/Chivalry hypothesis. Results show that the Magistrate's gender plays no significant part in gender discrepancies in criminal sentencing. In fact, female offenders keep being associated with non-incarceration sentences, while male offenders keep being significantly associated to incarceration sentences irrespective of the Magistrate's gender.

4.6: Offender's gender vs. sentence type controlling for (a) offenders' age and (b) number of crimes

Table 29 is a three-way cross-tabulation where the gender of the offender is tabulated against the type of sentence (whether it was incarceration or non-incarceration) for each level of the offender's age variable. The latter consists of four groups: adolescent (age 12-17), young adult (18-34), adult (35-64), late adult (65 and over). The table also reports the odds ratio expressing the likelihood of females receiving a non-incarceration sentence as opposed to male offenders, and the p-value of the Fisher's exact test.

Table 29
Cross-tabulation of Offenders' Gender and Sentence type, controlling for the Offender's Age

Offender's Age Class	Sentence Type	Female	Male	Total	OR	Fisher's test p-value
Adolescent	Non incarceration	10	52	62	2.20	1
	Incarceration	0	5	5		
	Total	10	57	67		
Young Adult	Non incarceration	191	604	795	2.67	<0.001
	Incarceration	23	194	217		
	Total	214	798	1012		
Adult	Non incarceration	111	318	429	2.23	0.006
	Incarceration	15	96	111		
	Total	126	414	540		
Late Adult	Non incarceration	8	7	15	0.23	0.284
	Incarceration	2	0	2		
	Total	10	7	17		
Total	Non incarceration	320	981	1301	2.40	<0.001
	Incarceration	40	295	335		
	Total	360	1276	1636		

Note. The cross-tabulation shows the relationship between offenders' gender and sentence type across age classes. For each age class, OR values represent the odds of an offender being female (versus male) among those who received non-incarceration sentences. Fisher's exact test p-values indicate significant gender differences in non-incarceration sentences. In this and similar tables, when a zero is present in either table diagonal, the OR is computed using the Haldane-Anscombe correction (see § 3.5.2).

Consistent with what was previously seen, there is a significant association between non-incarceration sentences and female offenders. In fact, the marginal odds ratio indicates that females are 2.4 times more likely than males to be non-incarcerated. Notably, the same scenario is repeated in the partial tables, where the age of the offender is controlled for. Female offenders are more likely to receive a non-incarceration sentence virtually across all the levels of the age group. In almost all the cases, females are more than 2 times more likely to be given a non-incarceration sentence, and the odds ratios prove statistically significant in relation to Young adult and Adult. The association reverses (but it does not achieve statistical significance) for

Late Adult, where males are (1: 0.23) about 4 times more likely than females to receive a non-incarceration sentence.

Table 30 is a three-way cross-tabulation where the gender of the offender is tabulated against the type of sentence (whether it was incarceration or non-incarceration) for each level of the ‘number of crimes committed’ variable. The latter includes two levels: “low” if the number of crimes is equal to or less than 3, “high” if larger than 3 (up to 6, which is the maximum value registered in the dataset). Table 31 is based on table 30: in each sub-table, columns percentages are calculated to represent the proportion of sentence types among offender’s gender.

Table 30
Cross-tabulation of Offenders’ Gender and Sentence type, controlling for Number of Crimes

Number of Crimes	Sentence Type	Offender Gender		Total
		Male	Female	
High	Non incarceration	260	52	312
	Incarceration	165	10	175
	Total	425	62	487
Low	Non incarceration	806	301	1107
	Incarceration	176	32	208
	Total	982	333	1315
Total	Non incarceration	1066	353	1419
	Incarceration	341	42	383
Total		1407	395	1802

If we consider the marginal table, it is apparent that non-incarceration sentences are proportionally more than incarceration sentences both among male and female offenders. However, the proportion of non-incarceration sentences among males (75.76%) is smaller than

the average (78.75%), whereas the proportion among females (89.37%) is larger than the average. The opposite holds true for incarceration sentences, which are under-represented among males (24.24% vs. an average of 21.25%) and over-represented among females (10.63%). The same scenario, albeit with different percentages, is repeated in the two partial tables where the number of crimes committed is controlled for. Incarceration sentences are proportionally more documented among males, whereas non-incarceration sentences are proportionally more documented among female offenders.

From an inferential standpoint, there is a significant association between offender's gender and sentence type in each of the tables previously described. For the marginal table (where the number of crimes committed is disregarded) the chi-squared statistic is 34.1 with an associated p-value smaller than 0.01 (df 1). For the partial tables corresponding to a high number of crimes, the chi-squared statistic is 12.1 with an associated p-value smaller than 0.01, while for the second partial table (low number of crimes) the chi-squared value is 12.9, again with an associated p-value smaller than 0.01. The association can be deemed as being of moderate strength in the marginal table (Cramer's V 0.137) and in the first partial table (0.157), while it is weak in the second partial table (0.1). The adjusted standardised residuals indicate that there is a significant association between female offenders and non-incarceration, on the one hand, and between males and incarceration, on the other hand, in the two partial tables as well as in the marginal one (Figure 32-34).

Figure 32

Chi-squared adjusted standardised residuals for Offender's Gender vs. Sentence Type (High number of crimes)

Analysis report		
Adjusted standardized residuals		
	Male	Female
Non_incarceration	-3.478	3.479
Incarceration	3.481	-3.479

BLUE: significant negative residuals (< -1.96)
 RED: significant positive residuals (> 1.96)
 Highlighted residuals are significant at least at alpha 0.05

Figure 33

Chi-squared adjusted standardised residuals for Offender's Gender vs. Sentence Type (Low number of crimes)

Analysis report		
Adjusted standardized residuals		
	Male	Female
Non_incarceration	-3.593	3.593
Incarceration	3.593	-3.592

BLUE: significant negative residuals (< -1.96)
 RED: significant positive residuals (> 1.96)
 Highlighted residuals are significant at least at alpha 0.05

Figure 34

Chi-squared adjusted standardised residuals for Offender's Gender vs. Sentence Type (Disregarding the number of crimes)

Analysis report		
Adjusted standardized residuals		
	Male	Female
Non_incarceration	-5.838	5.84
Incarceration	5.839	-5.84

BLUE: significant negative residuals (< -1.96)
 RED: significant positive residuals (> 1.96)
 Highlighted residuals are significant at least at alpha 0.05

All in all, the analysis indicates that there is a significant association between the gender of the offender and sentence type, both when disregarding and controlling for the number of crimes committed (whether low or high). When controlling for the number of crimes, the nature of the association between sentence type and offender gender does not change in direction: females keep being significantly associated with non-incarcerations sentences, whereas males keep being significantly associated with incarceration sentences. The Breslow–Day test (chi-squared value: 0.1327; df: 1; p-value: 0.249), which is not significant, indicates that the hypothesis of homogeneous association can be accepted. This formally indicates that there is a homogeneous association between sentence type, offender's gender, and number of crimes: the conditional association between sentence type and offender's gender is the same across the levels of number of crimes; in other words, the number of crimes does not affect the association between offender's gender and the type of sentence. Lastly, since the hypothesis of homogeneous association holds, the Mantel-Haenszel estimate of a common odds ratio (controlling for number of crimes) is 0.431. It means that, on average, female offenders are (1: 0.431) 2.32 times more likely than male offenders to receive a non-incarceration sentence (controlling for the number of crimes). In other words, for every male offender receiving a non-incarceration sentence, more than two females receive the same type of sentence. This information is congruent with different international research studies (Doerner, 2009; Gleb, 2010; Holland, 2010; Jeffries, 2001; Jeffries & Bond, 2010; Philippe, 2017; Rodriguez et al., 2006) which claim that female offenders receive lighter sentences than males and that there are fewer female offenders who get an incarceration sentence. Hence, this suggests that the Criminal Justice system treats females in a more lenient way when compared to their male counterparts.

Keeping the above information in mind, one question that could be asked to interviewees is that considering that this data is showing that irrespective of the number of crimes female offenders

would have committed, they still are given a non-incarceration sentence. This information adheres to two of the concepts of the Focal Concerns Theory which specifically state that females are seen as less dangerous and less blameworthy than males. Discuss.

Another important question which derives from the above information and which needs to be given an answer is: This research results show that irrespective of the offenders' age and number of crimes committed, females keep receiving non incarceration sentences while males receive incarceration sentences. What is your opinion on the introduction or implementation of sentencing guidelines in the Maltese criminal court?

The information in this section continues to strengthen the hypothesis that the criminal court sentencing process is a gendered process. Results show that, despite the number of crimes that female/male offenders were found guilty of (within one court sitting), female offenders kept receiving non incarceration sentences. When the offenders' age group was analysed, the same results were obtained except from the fact that male offenders who belong to the 'late adulthood' age group, were about four times more likely than their female counterparts to receive a non-incarceration sentence. The next section analyses important confounding variables such as aggravating and mitigating factors and sympathetic life circumstances This is done to identify (if any) which are the aggravating/mitigating factors and sympathetic life circumstances which could influence the criminal sentencing process.

4.7: Offender's gender vs. sentence type controlling for (a) type of crime, (b) aggravating and (c) mitigating factors, (d) sympathetic life circumstances

The analysis of sentence type vs. gender controlling for magistrate's gender, offender's age, and for the number of crimes committed showed that (regardless of those three potentially

confounding factors) female offenders are more likely to receive a non-incarceration sentence. This begs the questions: does the type of crime, as well as other potential confounding variables, affect the relationship between gender and type of sentence? In other words, when studying the relationship between offender's gender and sentence type, we need to control for other potential confounding factors, such as type of crime, aggravating and mitigating factors, and sympathetic life circumstances.

Table 31 is a 3-way cross-tabulation where the gender of the offender is tabulated against the type of sentence for each level of a third variable, namely type of crime. In the mentioned table, the suffix "plus" refers to the fact that the indicated crime is accompanied by other ones.

Table 31
Cross-tabulation of Offenders' Gender and Sentence type, controlling for Crime Type

Crime Type	Offender's Gender	Sentence Type		Total	OR	Fisher's test p-value
		Incarceration	Non incarceration			
Crime against a person	Female	0	16	16	2.05	1
	Male	4	72	76		
	Total	4	88	92		
Crime against a person_plus	Female	2	41	43	2.37	0.361
	Male	14	121	135		
	Total	16	162	178		
Crime against property	Female	10	84	94	1.16	0.852
	Male	31	225	256		
	Total	41	309	350		
Crime against property_plus	Female	10	48	58	2.43	0.011
	Male	184	364	548		
	Total	194	412	606		
Drug crime	Female	0	16	16	-	1
	Male	0	46	46		
	Total	0	62	62		
Drug crime_plus	Female	0	4	4	2.55	0.571
	Male	9	33	42		
	Total	9	37	46		
Financial crime	Female	1	45	46	9.31	0.014
	Male	12	58	70		
	Total	13	103	116		
Financial crime_plus	Female	3	24	27	2	0.404
	Male	21	84	105		
	Total	24	108	132		
Other	Female	12	42	54	10.5	<0.001
	Male	57	19	76		
	Total	69	61	130		
Other_plus	Female	4	17	21	3.83	0.091
	Male	9	10	19		
	Total	13	27	40		
Traffic	Female	0	11	11	-	1
	Male	0	22	22		
	Total	0	33	33		
Traffic_plus	Female	0	5	5	-	1
	Male	0	12	12		
	Total	0	17	17		
Total	Female	42	353	395	2.689	<0.001
	Male	341	1066	1407		
	Total	383	1419	1802		

Note. The cross-tabulation shows the relationship between offenders' gender and sentence type across types of crime. For each crime type, OR values represent the odds of an offender being female (versus male) among those who received non-incarceration sentences. Fisher's exact test p-values indicate significant gender differences in non-incarceration sentences.

As mentioned earlier, there is indeed a significant association between offender's gender and type of sentence, a more nuanced scenario can be observed once the type of crime is controlled for. Leaving aside, for the time being, the statistical significance of the association in each level

of the crime type, it is apparent that female offenders are always more likely to be given a non-incarceration sentence compared to males. The odds ratios span from values as low as 1.16 to 10.5. Interestingly, when it comes to financial crimes not accompanied by any other offenses, females are about 9 times more likely than males to be given a non-incarceration sentence. In case of crime against property, females committing this crime together with other offenses are about 2.5 more likely to receive a non-incarceration sentence. From an inferential point of view, in the mentioned table, the odds ratios that achieve statistical significance are the ones highlighted bold. Table 32 cross-tabulates the two variables of interest across the levels of the aggravating factors, which are broken down in Table 33.

Table 32
Cross-tabulation of Offenders' Gender and Sentence type, controlling for Aggravating Factors

Aggravating Factors	Offender's Gender	Sentence Type		Total	OR	Fisher's test p-value
		Incarceration	Non incarceration			
Mode of theft or criminal activity	Male	135	516	651	1.734	0.079
	Female	13	86	99		
	Total	148	602	750		
Mode of theft or criminal activity_	Male	63	40	103	2.625	0.266
	Female	3	5	8		
	Total	66	45	111		
None	Male	97	428	525	2.72	<0.001
	Female	21	252	273		
	Total	118	680	798		
Offender characteristics	Male	15	18	33	0.12	0.229
	Female	3	0	3		
	Total	18	18	36		
Offender characteristics_plus	Male	9	8	17	2.25	1
	Female	1	2	3		
	Total	10	10	20		
Other	Male	17	22	39	3.091	0.634
	Female	1	4	5		
	Total	18	26	44		
Victim characteristics	Male	5	32	37	1.523	1
	Female	0	4	4		
	Total	5	36	41		
Victim characteristics_plus	Male	0	2	2	-	1
	Female	0	0	0		
	Total	0	2	2		
Total	Male	341	1066	1392	2.689	<0.001
	Female	42	353	387		
	Total	383	1419	1802		

Note. The cross-tabulation shows the relationship between offenders' gender and sentence type across aggravating factors. For each aggravating factor, OR values represent the odds of an offender being female (versus male) among those who received non-incarceration sentences.

Fisher's exact test p-values indicate significant gender differences in non-incarceration sentences.

Table 33

Breakdown of the Aggravating Factors Categories listed in Table 32

Aggravating Factors
Mode of theft or criminal activity
Aggravated drugs_possession
Aggravated drugs_proximity of youth centre
Aggravated theft_mode
Driving under the influence
Mastermind of crime
Series of fraud schemes
Series of theft
Offender characteristics
Acted without being provoked
Long criminal record
No co-operation with authorities
Offender was a public officer
Recidivism
Showed no remorse
Victim characteristics
Consequences suffered by victim
Elderly victims
Victim was a police officer
Victim was a relative/or in an intimate relationship
Other
Different chances given by court

All the odds ratios indicate that females are more likely to receive a non-incarceration sentence, with the exception of when the aggravating factor is about the offender characteristics. In this case, females are (1: 0.12) 8.3 times more likely than males to receive an incarceration sentence. Interestingly, when there is no aggravating factor, females are about 3 times more likely than males to being non-incarcerated. This association, together with the one related to the 'mode of theft or criminal activity', proves statistically significant.

The Court of Magistrates – Criminal Judicature has expressed its view on the matter via a series of court sentences. Some examples of when the court highlighted the importance of aggravating factors in meting out the criminal sentence are the following.

(Il-Pulizija (Spettur Victor Aquilina) v. Elaine Muscat, 2013, p.3)¹⁴.

“Never or at any stage in time cooperated with the police, considering that her involvement was a result of wrong company, her love for expensive items which she could ill afford or not at all” (The Police (Inspector Yvonne Fenech) v. Charity Ofame Ovbias, 2014, p.3).

This type of behaviour on behalf of a person who teaches in school is not acceptable, whatever the circumstances. Il-Pulizija (Spettur Ramon Mercieca & Spettur Kevin Farrugia) v. Antoine Cachia, 2010, p. 5)¹⁵.

The Court also took cognition of the fact that the defendant is a pluri-recidivist in the crime of theft. (Il-Pulizija (Spettur Fabian Fleri) v. Shirley Micallef, 2014, p.4)¹⁶.

After the incident, the defendant kept boasting and using obscene phrases on Facebook regarding the parte civile and the injuries she had inflicted on her. (Il-Pulizija (Spettur Sarah Magri) v. Naomi Pace, 2014, p.4)¹⁷.

This data confirms that when female offenders do break socially attributed norms such as being unremorseful or having a long criminal record, the court as a social institution is harder in its sentence as such offenders are seen by the magistrates as being less able to reform (Jeffries & Bond, 2010). In fact, this research shows that female offenders whose case is marked by the aggravating factors related to offenders’ characteristics, are eight times more likely than males

¹⁴ “Il-fedina penali aggornata li hija wahda raffrettarja li fiha 25 kundanna minn dawn il-Qrati li l-maggoranza huma relatati ma serq u tlajjar ghal prostituzzjoni. Jidher li l-imputata ma tridx tirriforma ruhha”

¹⁵ *Din l-imgieba minn persuna li tghallem fi skola m'hijiex accettabli, kienu x' kienu c-cirkostanzi..*

¹⁶ “Il-Qorti hadet konjizzjoni wkoll tal-fatt li l-imputata hija plurirecidiva fir-reat tas-serq”

¹⁷ : “Wara dan l-incident, l-imputata qaghdet tiftahar mal-parte civile fuq facebook bil-griehi li kienet ikkagunatilha u tuza kliem oxxen”

to receive an incarceration sentence. Considering that this research is showing that female offenders whose criminal case incorporates aggravating factors pertaining to the offenders' characteristics section are 8 times more likely than males to receive an incarceration sentence, one cannot but question whether or not these female offenders are given a harsher sentence because of the fact that they go against typical gender stereotypes.

Table 34 cross-tabulates offender's gender and sentence type, controlling for mitigating factors, which are broken down in Table 36. Again, controlling for the mitigating factors, females prove more likely to receive a non-incarceration sentence in virtually all instances. The only exception is in relation to 'value and material impact': in this case, female offenders are (1: 0.82) 1.22 times more likely than males to be incarcerated. However, this odds ratio does not achieve statistical significance.

Table 34
Cross-tabulation of Offenders' Gender and Sentence type, controlling for Mitigating Factors

Mitigating Factors	Offender's Gender	Sentence Type		Total	OR	Fisher's test p-value
		Incarceration	Non incarceration			
Age and health	Male	4	17	21	2.314	1
	Female	0	4	4		
	Total	4	21	25		
Age and health_plus	Male	1	12	13	2.76	1
	Female	0	11	11		
	Total	1	23	24		
Character traits and actions	Male	71	261	332	3.718	0.025
	Female	3	41	44		
	Total	74	302	376		
Character traits and actions_plus	Male	48	347	395	2.213	0.062
	Female	7	112	119		
	Total	55	459	514		
Indeterminate	Male	2	13	15	3.148	0.526
	Female	0	18	8		
	Total	2	21	23		
Legal proceedings	Male	2	19	21	2.436	1
	Female	0	9	9		
	Total	2	28	30		
Legal proceedings_plus	Male	0	6	6	-	1
	Female	0	1	1		
	Total	0	7	7		
None	Male	207	366	573	2.881	<0.001
	Female	32	163	195		
	Total	239	529	768		
Provocation or extenuating circumstances	Male	0	4	4	-	1
	Female	0	0	0		
	Total	0	4	4		
Value and material impact	Male	3	12	15	0.84	1
	Female	0	1	1		
	Total	5	9	16		
Value and material impact_plus	Male	3	9	12	2.579	1
	Female	0	3	3		
	Total	3	12	15		
Total	Male	341	1066	1407	2.689	<0.001
	Female	42	353	395		
	Total	383	1419	1802		

Note. The cross-tabulation shows the relationship between offenders' gender and sentence type across mitigating factors. For each mitigating factor, OR values represent the odds of an offender being female (versus male) among those who received non-incarceration sentences. Fisher's exact test p-values indicate significant gender differences in non-incarceration sentences.

Table 35*Breakdown of the Mitigating Factors Categories listed in Table 34*

Mitigating Factors
Age and health
Accused is of old age
Accused is of tender age
Accused suffers from mental health problems
Character traits and actions
Accused completed rehab programme successfully
Accused is a parent of dependent child/ren
Accused paid back his dues
Accused willing to quit criminal career
Clean criminal record
Co-operated with authorities
Court is giving last opportunity to reform
Early admission of guilt
Leading a stable life
Paid for damages caused
Positive pre-sentencing report
Res furtiva returned to parte lesa
Showed true remorse for his actions
Victim no longer seeking legal action
Victim pardoned the accused
Legal proceedings
Facing social/family problems
Long court procedures
Long court proceedings
Pre-sentencing report in favour of non custodial sentence
Provocation or extenuating circumstances
Acted under provocation
Value and material impact
Small amount-injuries
Small amount-value or material

Similar to the previous findings, females with no mitigating factors are about three times more likely than males to be non-incarcerated. The odds ratios when the mitigating factor is about ‘character traits and actions’ and ‘character traits and actions plus’ are statistically significant (the second one extremely close to it). Interestingly, in the former case (character traits and actions), female offenders are about four times more likely than males to be non-incarcerated.

Examples of how these mitigating factors influence the type of sentence meted out are the following paragraphs cited from court sentences:

The clean criminal record, the early admission of guilt and the fact that the offender is ready to pay for the damages caused. Since the offender needs to use her own car to be able to work, the court is not going to disqualify her driving licence (Il-Pulizija (Spettur Keith Arnaud) v. Natasha Azzopardi, 2009, p. 3)¹⁸.

She was left without alimony for 3 months and she had 3 children to take care of. Therefore, she had no other choice to be able to take care of her children who were dependent on her. (Il-Pulizija (Spettur Maurice Curmi) v. Theresa Rosales, 2009, p. 4)¹⁹

The court is going to take into consideration the offender's early admission of guilt and above all the fact that the offender is 5 months pregnant with twins and even the fact that the offender apologised to the victims. (Il-Pulizija (Spettur Kevin Farrugia) v. Amina Mohammed Heybe, 2009, p. 3)²⁰.

"The court is going to take into consideration the fact that the stolen items were returned to their rightful owner. It is also considering the fact that the offender is pregnant. Therefore, due to these circumstances, the offender needs to be helped to quit her drug addiction. (Il-Pulizija (Spettur Alfred Mallia) v. Jolene Camilleri, 2009, p.3)²¹.

Furthermore, these findings are congruent with the findings of Robinson et al. (2012) which showed the importance of mitigating factors such as showing remorse for the actions committed and the offender's will to quit a criminal career as important mitigating factors. Denver (2011) stresses the fact that filing an early guilty plea and that the offender has no previous criminal record as other important factors which can mitigate the sentence meted out. The research

¹⁸ : *"Il-fedina penali nadifa, l-ammissjoni bikrija tal-imputata u l-fatt li l-imputata lesta li thallas l-hsara kagonata minnha. Illi peress li l-imputata ghandha bzonn il-vettura taghha biex tmur ghax-xoghol, ghaliex altrimenti tispicca minghajr impjeg, il-Qorti ma hijiex ser tghaddi ghall-iskwalifikazzjoni tal- licenzja tas sewqan"*.

¹⁹ : *"Sfat bla manteniment ghal 3 xhur, u bit-trobbija ta' 3 ulied minuri u li kienet kostretta taghmel dak li ghamlet sabiex tkun f'pusizzjoni titma u tindokra 3 itfal li kienu jiddependu minnha"*

²⁰ *"Il-Qorti sejra tiehu in kunsiderazzjoni l-ammissjoni bikrija magħmulha mill-imputata u fuq kollox l-istat tal-imputata li għandha 5 xhur tqala b'tewmin u l-fatt li l-imputata skuzat ruhha għal dan l-incident ma l-uffiċċjali pubbliċi involuti"*

²¹ *Il-Qorti sejra tiehu in konsiderazzjoni il-fatt illi l-oggetti derubati konsistenti fil-magna u l-oggetti li kien hemm fiha gew illum ritornati lil sidha. Kif ukoll il-fatt li llum l-imputata qieghdha tistenna t-twelid ta' tarbija. Għalhekk f'dawn ic-cirkostanzi l-imputata għandha tiġi mhejuna sabiex tegħleb l-vizzju tad-droga- jekk din għadha ezistenti"*

performed by Jacobson & Hough (2007) showed that other important mitigating factors are that the offender has dependent children and that the offender leads a stable life. According to authors when such mitigating factors is present, it is generally used to reduce the severity of the sentence.

Finally, Table 37 cross-tabulates the variables under discussion across the levels of the sympathetic life circumstances, which are broken down in Table 38.

Table 36
Cross-tabulation of Offenders' Gender and Sentence type, controlling for Sympathetic Life Circumstances

Sympathetic Life Circumstances	Offender's Gender	Sentence Type		Total	OR	Fisher's test p-value
		Incarceration	Non incarceration			
Family and caregiving issues	Male	71	38	109	5.83	<0.001
	Female	10	32	42		
	Total	81	70	151		
Family and caregiving issues_plus	Male	9	10	19	8.14	0.127
	Female	0	4	4		
	Total	9	14	23		
Financial and social difficulties	Male	5	23	28	1.3	1
	Female	1	6	7		
	Total	6	29	35		
Health and wellness concerns	Male	5	31	35	1.05	1
	Female	2	13	15		
	Total	7	43	51		
Health and wellness concerns_plus	Male	0	5	5	-	1
	Female	0	1	1		
	Total	0	6	6		
None	Male	201	803	1004	2.92	<0.001
	Female	23	268	291		
	Total	224	1071	1295		
Substance abuse and addiction	Male	40	141	181	1.28	0.818
	Female	6	27	33		
	Total	46	168	214		
Substance abuse and addiction_plus	Male	10	14	24	3.62	0.508
	Female	0	2	2		
	Total	10	16	26		
Total	Male	341	1066	1407	2.689	<0.001
	Female	42	353	395		
	Total	383	1419	1802		

Note. The cross-tabulation shows the relationship between offenders' gender and sentence type across sympathetic life circumstances. For each sympathetic life circumstance, OR values represent the odds of an offender being female (versus male) among those who received non-incarceration sentences. Fisher's exact test p-values indicate significant gender differences in non-incarceration sentences.

Table 37

Breakdown of the Sympathetic Life Circumstances Categories listed in table 36

Sympathetic life circumstances
Family and caregiving issues
Asylum seeking
Domestic violence
Family problems
Main carer of disabled relative
Offspring in need of medical intervention/with special needs
Unknown father
Financial and social difficulties
Financial problems
Homeless
Social problems
Unemployed
Health and wellness concerns
Behavioral problems
Health problems
Mental health problems
Old age
Pregnant
Substance abuse and addiction
Alcohol abuse problems
Drug abuse problems
Gambling addiction

The analysis indicates that, even when controlling for sympathetic life circumstances, female offenders are again more likely than males to be non-incarcerated. Consistent with what was seen earlier on, when controlling for aggravating and mitigating factors, without sympathetic life circumstance, females are about three times more likely than males to be non-incarcerated, and the association proves statistically significant. The same holds true when the circumstance is related to ‘family and caregiving issues’: females are about six times more likely than males to receive a non-incarceration sentence. The remaining cases, overall, indicate the same type of association, but the respective odds ratios do not achieve statistical significance. The following are examples from criminal court sentences which show the importance of sympathetic life circumstances in determining the sentences meted out.

(Il-Pulizija (Spettur Edmond Cuschieri) v. Antoinette El-Ichati, 2010, p. 2)²².

The defendant is a recidivist but the court is taking into account the fact the defendant is an elderly lady and therefore the court is of the opinion that in those circumstances a suspended sentence is more appropriate. (Il-Pulizija (Spettur Anthony Portelli & Spettur Kevin Farrugia) v. Dolores Deguara, 2010, p. 6)²³.

The Court is considering the tender age of the defendant and the fact that she has a baby with disability. (Il-Pulizija (Spettur Joseph Mercieca & Spettur Keith Arnaud) v. Chantelle Camilleri, 2012, p. 6)²⁴.

The defendant has made huge changes in her life, she is leading a stable life and is pregnant with her child. (Il-Pulizija (Spettur Johann Fenech) v. Stephanina Carabott, 2013, p. 3)²⁵.

“The Court is considering the fact that the defendant is the mother of two very young children and also of a baby of 3 months. Moreover, there are absolutely no relatives to take care of the children” (The Police (Inspector Geoffrey Azzopardi) v. Rachida Ommo Aluko, 2010, p. 2).

This information is congruent with the research performed by Starr (2013) in which she concluded that females who are going through sympathetic life circumstances are more likely than their male counterparts to receive a non-incarceration sentence. Consequently, the following question comes to mind to understand better the local situation and the reasons why such a thing occurs.

This question is to be asked to interviewees and is: This data is showing us that in cases where female offenders are going through sympathetic life circumstances pertaining to the provision of care for their family members, or else are victims of domestic violence, or seeking asylum,

²² “*Il-Qorti giet infurmata li l-incident kien wiehed ta’ ftit importanza kagunat mill-fatt illi t-tifel taghha hu minuri bi problemi serji ta komportament, taht il-kura ta’ psikologu, u dan l-incident inqala minhabba fih. Minbarra dan taghmel rakkomandazzjoni li hi l-unika breadwinner ghalha u ghal binha*” The

²³ “*L-imputata hija recidiva izda kkunsidrat ukoll li l-mara hija anzjana u ghalhekk jidhrilha li fic-cirkostanzi piena karcerarja sospiza tkun aktar idonea*”

²⁴ “*Il-Qorti qed tikkunsidra l-eta’ giovanili taghha u l-fatt li l-imputata ghandha tarbija b’ dizabilita’*”

²⁵ “*L-imputata ghamlet kambjament kbir f’hajjitha, ghandha hajja stabbli u qieghda wkoll tistenna tarbija*”

they are about 6 more times more likely than their male counterparts (who are also going through the same sympathetic life circumstances) to be non-incarcerated. What are your views on this matter?

The information in this section clearly shows the importance of including and analysing confounding variables such as aggravating and mitigating factors and sympathetic life circumstances when studying gender discrepancies in criminals sentencing. The results identify aggravating factors pertaining to ‘offender’s characteristics’ as the type of aggravating factors that can influence the sentencing outcome. As seen in the above-mentioned information, female offenders are 8 times more likely than males to receive an incarceration sentence when aggravating factors related to Offenders’ Characteristics are present. This research also identifies Character Traits and Actions as those mitigating factors that can lead to a more lenient sentence of female offenders. In fact, female offenders presenting such mitigating factors are 4 times more likely than male offenders to receive a non-incarceration sentence. The analysis of offenders’ gender and sentence type versus Sympathetic Life Circumstances led to the results that female offenders are six times more likely than males to receive a non-incarceration sentence when they are going through Family and Caregiving Issues. The next section analyses whether the number of crimes committed can impinge on the length of the sentence meted out to both male and female offenders.

4.8 Offender’s gender vs. length of (a) incarceration and (b) non-incarceration, controlling for the number of crimes committed.

Table 39 cross-tabulates the offender’s gender against the length of incarceration for each level of the number of crime category. The length of incarceration was originally registered with the

use of a large number of categories. For analytical purposes, in order to work with few meaningful groups, the categories have been collapsed into two mutually exclusive levels (up to four years and over four years).

Table 38
Cross-tabulation of Offenders' Gender and Length of Incarceration, controlling for Number of Crimes committed

Number of Crimes	Length Incarceration	Offender's Gender		Total	OR	Fisher's test p-value
		Female	Male			
low	up to 4 yrs	30	172	202	0.349	0.231
	over 4 yrs	2	4	6		
	Total	32	176	208		
high	up to 4 yrs	10	138	148	4.17	0.364
	over 4 yrs	0	27	27		
	Total	10	165	175		
Total	up to 4 yrs	40	310	350	2	0.558
	over 4 yrs	2	31	33		
	Total	42	341	383		

Note. The cross-tabulation shows the relationship between offenders' gender and length of incarceration class across number of crimes committed. For each number of crime class, OR values represent the odds of an offender being female (versus male) among those who received up to 4-year incarceration sentence.

The analysis indicates that the offender's gender and the length of incarceration sentence are independent. There is no marginal dependence (p-value 0.558) and no conditional dependence (the p-value related to both partial tables are larger than 0.05). However, there is a difference when it comes to the length of non-incarceration sentences. This is cross-tabulated in Table 40.

Table 39

Cross-tabulation of Offenders' Gender and Length of Non-Incarceration, controlling for Number of Crimes committed

Number of Crimes	Length Non-Incarceration	Offender's Gender		Total	OR	Fisher's test p-value
		Female	Male			
low	up to 2 yrs	159	395	554	1.48	0.01
	over 2 yrs	92	339	431		
	Total	251	734	985		
high	up to 2 yrs	25	67	92	2.53	0.004
	over 2 yrs	26	176	202		
	Total	51	243	294		
Total	up to 2 yrs	184	462	646	1.74	<0.001
	over 2 yrs	118	515	633		
	Total	302	977	1279		

Note. The cross-tabulation shows the relationship between offenders' gender and length of non-incarceration class across number of crimes committed. For each number of crimes class, OR values represent the odds of an offender being female (versus male) among those who received up to 2-year non-incarceration sentence. Fisher's exact test p-values indicate significant gender differences in non-incarceration sentences.

The table indicates that there is indeed an association in the marginal and in both partial tables. As one can appreciate from the individual odds ratios, controlling for the number of crimes committed, female offenders are generally more likely than males to be sentenced a non-incarceration period of up to 2 years. The Breslow-Day test proves not significant (chi-squared value: 2.347, df: 1; p-value 0.125), indicating that the null hypothesis of homogeneous association can be accepted. Therefore, the association between offender's gender and length of non-incarceration is not affected by the number of crimes committed (i.e., the association is not statistically different across levels of the latter variable). The Mantel-Haenszel estimate of a common odds ratio is equal to 1.627. The analysis indicates that, after controlling for the number

of offences, females are on average 1.63 times more likely than males to be given a comparatively shorter non-incarceration sentence.

The information above leads to questioning the interviewees as to what reasons could there be behind the fact that even when both male and female offenders receive a non-incarceration sentence, females are more likely to receive a shorter sentence than their male counterparts.

The above data indicates that, even though female offenders are found guilty of a number of crimes in one court proceeding, they are more likely than males to receive a non-incarceration sentence for up to 2 years. The analysis of the next section focuses on the length of incarceration and non-incarceration sentences when aggravating factors are present.

4.9 Offender's gender vs. length of (a) incarceration and (b) non-incarceration, controlling for the number of aggravating factors.

Table 41 cross-tabulates the offender's gender against the length of incarceration for each level of the number of aggravating factors variable (low if equal to or smaller than 3, high if larger than 3), whereas in Table 41 gender is tabulated against the length of non-incarceration sentences.

Table 40
Cross-tabulation of Offenders' Gender and Length of Incarceration, controlling for Number of Aggravating Factors

Number of Aggravating Factors	Length Incarceration	Offender's Gender		Total	OR	Fisher's test p-value
		Female	Male			
low	up to 4 yrs	37	191	228	0.827	0.696
	over 4 yrs	2	9	11		
	Total	39	200	239		
high	up to 4 yrs	3	119	122	1.318	1
	over 4 yrs	0	22	22		
	Total	3	141	144		
Total	up to 4 yrs	40	310	350	2	0.558
	over 4 yrs	2	31	33		
	Total	42	341	383		

Note. The cross-tabulation shows the relationship between offenders' gender and length of incarceration class across number of aggravating factors. For each number of aggravating factors, OR values represent the odds of an offender being female (versus male) among those who received up to 4-year incarceration sentence.

Table 41
Cross-tabulation of Offenders' Gender and Length of Non-Incarceration, controlling for Number of Aggravating Factors

Number of Aggravating Factors	Length Non-Incarceration	Offender's Gender		Total	OR	Fisher's test p-value
		Female	Male			
low	up to 2 yrs	174	351	525	1.44	0.012
	over 2 yrs	108	313	421		
	Total	282	664	946		
high	up to 2 yrs	10	111	121	1.82	0.231
	over 2 yrs	10	202	212		
	Total	20	313	333		
Total	up to 2 yrs	184	462	646	1.74	<0.001
	over 2 yrs	118	515	633		
	Total	302	977	1279		

Note. The cross-tabulation shows the relationship between offenders' gender and length of non-incarceration class across number of aggravating factors. For each number of aggravating factors, OR values represent the odds of an offender being female (versus male) among those who received up to 2-year non-incarceration sentence. Fisher's exact test p-values indicate significant gender differences in non-incarceration sentences.

The first of the two tables indicate that there is no significant association between gender and the length of incarceration in neither of the two levels of the aggravating factors. This is not, however, the case when it comes to the length of non-incarceration sentences. While, as already underlined in the previous section, in general female offenders are more likely to receive a comparatively shorter sentence, this association (in the same direction) holds when the number of aggravating factors are low, but not when high. The Breslow-Day test indicates that the null hypothesis of homogenous association holds (chi-squared value: 0.238; df: 1; p-value 0.625). The Mantel-Haenszel estimate of a common odds ratio is equal to 1.466. After controlling for the number of aggravating factors, the analysis indicates that females are on average 1.47 times more likely than males to be given a comparatively shorter non-incarceration sentence.

The information above shows that there is no association between gender and the length of incarceration in neither the low level nor the high level of aggravating factors. However, there is an association between low level of aggravating factors and female offenders receiving a shorter non-incarceration sentence.

4.10: Offender's gender vs. length of (a) incarceration and (b) non-incarceration, controlling for the number of mitigating factors

Table 42 cross-tabulates the offender's gender against the length of incarceration for each level of the number of mitigating factors variable (low if equal to or smaller than 3, high if larger than 3), whereas in table 44 gender is tabulated against the length of non-incarceration sentences.

Table 42
Cross-tabulation of Offender's Gender and Length of Incarceration, controlling for Number of Mitigating Factors

Number of Mitigating Factors	Length Incarceration	Offender's Gender		Total	OR	Fisher's test p-value
		Female	Male			
low	up to 4 yrs	35	297	332	1.83	0.556
	over 4 yrs	2	31	33		
	Total	37	328	365		
high	up to 4 yrs	5	13	18	-	1
	over 4 yrs	0	0	0		
	Total	5	13	18		
Total	up to 4 yrs	40	310	350	2	0.558
	over 4 yrs	2	31	33		
	Total	42	341	383		

Note. The cross-tabulation shows the relationship between offenders' gender and length of incarceration class across number of mitigating factors. For each mitigating factor class, OR values represent the odds of an offender being female (versus male) among those who received up to 4-year incarceration sentence.

Table 43

Cross-tabulation of Offender's Gender and Length of Non-Incarceration, controlling for Number of Mitigating Factors

Number of Mitigating Factors	Length Non-Incarceration	Offender's Gender		Total	OR	Fisher's test p-value
		Female	Male			
low	up to 2 yrs	136	352	488	1.73	0.01
	over 2 yrs	90	402	492		
	Total	226	754	980		
high	up to 2 yrs	48	110	158	1.76	0.046
	over 2 yrs	28	113	141		
	Total	76	223	299		
Total	up to 2 yrs	184	462	646	1.74	<0.001
	over 2 yrs	118	515	633		
	Total	302	977	1279		

Note. The cross-tabulation shows the relationship between offenders' gender and length of non-incarceration class across number of mitigating factors. For each mitigating factor class, OR values represent the odds of an offender being female (versus male) among those who received up to 2-year non-incarceration sentence.

Consistent with what has been seen in the previous section, the first of the two tables indicates that there is no significant association between gender and the length of incarceration in neither of the two level of the mitigating factors. Again, the opposite is true for the length of the non-incarceration sentences. The odds ratios in both partial tables are statistically significant and very close to one another. The association between gender and length of the non-incarceration sentence proves homogenous across the levels of the number of mitigating factors (Breslow-Day chi-squared value: 0.004; df: 1; p-value 0.948). The Mantel-Haenszel estimate of a common odds ratio is equal to 1.734. After controlling for the number of mitigating factors, the analysis indicates that females are on average 1.73 times more likely than males to be given a comparatively shorter non-incarceration sentence.

Considering the above information, it is important to understand better the reasons why this occurs within our criminal justice system. Therefore a pertinent question that needs to be asked to the professionals taking part in the interviews is: What is your opinion about the present discrepancy in sentencing when in court proceedings for male and female offenders both presenting mitigating factors such as early admission of guilt, or having a dependent child to take care of, the sentences meted out favour female offenders, tend to be shorter.

The above analysis shows that, even when in both male and female offenders court proceedings the mitigating factors are taken into consideration, female offenders are likelier than males to be given a shorter sentence. Section 4.7 evidenced that such mitigating factors pertain to Offenders' Characteristics and Traits and Actions amongst which there is the mitigating factor of early admission of guilt and the accused is parent to dependent children amongst others. This information can be linked to the Paternalism/Chivalry theory as Magistrates (both males and females) tend to protect female offenders by giving them a shorter sentence. The next section aims at identifying which non-incarceration sentences are most likely to be given to male and female offenders.

4.11 Gender and non-incarceration sentences

Table 44 cross-tabulates the non-incarceration sentences against the offender's gender, while Table 45 features column proportions indicating how the sentence categories are distributed among each gender. For easiness of read, the rows of the former table are sorted in decreasing order of raw total.

Table 44
Cross-tabulation of Non-incarceration Sentence and Offender's Gender

Non-Incarceration Sentence	Gender		Total
	Female	Male	
Suspended Sentence	103	409	512
Conditional Discharge	144	313	457
Fine/Amenda	96	344	440
Probation	56	256	312
Court Expenses	24	182	206
To Pay Res Furtiva/Damages to Parte Leza	36	126	162
Protection Order/Personal Guarantee/Restraining Order	36	103	139
Rehab Programme	8	88	96
Treatment Order	21	69	90
Suspended Driving/Weapon Licence	15	69	84
Supervision Order	10	60	70
Community Work	5	35	40
Extension Previous Suspended Sentence/Probation Order	4	35	39
Confiscation of Money/Vehicle	7	30	37
Interdiction	8	15	23
Unconditional Discharge	5	3	8
Referral to Drug Offenders' Board	0	8	8
Repatriation	0	4	4
R & A	3	0	3
Total	581	2149	2730

Table 45
Cross-tabulation of Non-incarceration Sentence and Offender's Gender

Non-Incarceration Sentence	Gender		average prop.
	Female	Male	
Suspended Sentence	17.73	19.03	18.75
Conditional Discharge	24.78	14.56	16.74
Fine/Amenda	16.52	16.01	16.12
Probation	9.64	11.91	11.43
Court Expenses	4.13	8.47	7.55
To Pay Res Furtiva/Damages to Parte Leza	6.20	5.86	5.93
Protection Order/Personal Guarantee/Restraining Order	6.20	4.79	5.09
Rehab Programme	1.38	4.09	3.52
Treatment Order	3.61	3.21	3.30
Suspended Driving/Weapon Licence	2.58	3.21	3.08
Supervision Order	1.72	2.79	2.56

Community Work	0.86	1.63	1.47
Extension Previous Suspended Sentence/Probation Order	0.69	1.63	1.43
Confiscation of Money/Vehicle	1.20	1.40	1.36
Interdiction	1.38	0.70	0.84
Unconditional Discharge	0.86	0.14	0.29
Referral to Drug Offenders' Board	0.00	0.37	0.29
Repatriation	0.00	0.19	0.15
R & A	0.52	0.00	0.11
Total	100.00	100.00	100.00

Note. Percentages are calculated column-wise based on the total number of observations for each Gender in Table 45.

From a descriptive standpoint, it is apparent that, among the sentences received by female offenders, Conditional Discharge is the most common (24.78%) that is not more than that for males (14.56%) but considerably larger than the average proportion (16.74%). Male offenders are more likely to have to pay Court Expenses (8.47% against an average of 7.55%) and expected to follow Rehabilitation programmes (4.09% against an average of 3.52%). While, in other cases, the proportions of the different sentences among males are not far from the average, some smaller-than-average proportions documented among the female offenders are worth mentioning. Probation (9.64% against an average of 11.43%), Court expenses (4.13% against an average of 7.55%), Rehabilitation programme (1.38% against an average of 3.52%), Supervision order (1.72% against an average of 2.56%), Community Work (0.86% against an average of 1.47%), and Extension Previous Suspended Sentence/Probation Order (0.69% against an average of 1.43%) are proportionally under-represented among females.

From an inferential standpoint, the chi-square test indicates that there is a significant association between non-incarceration sentences and the offender's gender (chi-square value: 86.58; df: 18; permuted p value <0.01). The association can be deemed as moderate (Cramer's V: 0.178; 95% CI 0.144-0.215). Figure 35 reports the adjusted standardised residuals.

Figure 35

Chi-squared adjusted standardised residuals for Non-incarceration Sentence vs. Offender's Gender

Analysis report		
<i>Adjusted standardized residuals</i>		
	Female	Male
Suspended_Sentence	-0.714	0.714
Conditional_Discharge	5.855	-5.853
Fine_Amenda	0.300	-0.301
Probation	-1.528	1.529
Court_Expenses	-3.513	3.512
To_Pay_Res_Furtiva_Damages_to_Parte_Leza	0.301	-0.302
Protection_Order_Personal_Guarantee_Restraining_Order	1.365	-1.366
Rehab_Programme	-3.156	3.156
Treatment_Order	0.484	-0.483
Suspended_Driving_Weapon_Licence	-0.778	0.779
Supervision_Order	-1.449	1.449
Community_Work	-1.367	1.367
Extension_Previous_Suspended_Sentence_Probation_Order	-1.695	1.694
Confiscation_of_Money_Vehicle	-0.353	0.354
Interdiction	1.588	-1.589
Unconditional_Discharge	2.851	-2.853
Referral_to_Drug_Offenders_Board	-1.472	1.474
Repatriation	-1.039	1.041
RandA	3.335	-3.331

BLUE: significant negative residuals (< -1.96)
RED: significant positive residuals (> 1.96)
Highlighted residuals are significant at least at alpha 0.05

The residuals indicate that there is a significant positive association between females and Conditional Discharge, Unconditional Discharge, and R&A; males are significantly associated to Court expenses and Rehabilitation programmes.

The information above provides an answer to the research question which seeks to understand which types of sentencing from the non-incarceration options are more likely to be given in

criminal cases concerning female offenders in Malta. These are the Conditional Discharge and Unconditional Discharge sentences as well as the Reprimand and Admonition sentence.

The above results are consistent with the Focal Concerns Theory. The simple fact that females are more likely to be given a conditional discharge sentence might indicate that the Magistrates view female offenders as less blameworthy and therefore less criminally liable for their actions. Furthermore, female offenders tend to be considered less dangerous to society (Doerner, 2009; Holland, 2010) On the other hand, their male counterparts are asked by the court to shoulder the court expenses and to attend obligatory rehabilitation programmes, thus making male offenders pay for the crime committed. Data from this research suggests that female offenders are less likely to be sentenced to probation, to pay for court expenses or to be referred to an obligatory rehabilitation programmes or given a suspended sentence. Linking this information to the data provided regarding mitigating factors and sentence type which establishes that females are, on average 1.73 times more likely than males to be given a comparatively shorter non-incarceration sentence it reinforces some of the principles of the Focal Concerns Theory.

The above information provides an answer for an important research question. In fact, the research question asks to identify which type of sentence from the non-incarceration options are female offenders most likely to receive. The answer to this is that female offenders who commit a crime in Malta are given a Conditional Discharge as sentence from the non-incarceration options.

4.12 Key findings from the quantitative analysis

4.12.1 Gender and Crime Type:

- Females are associated with Assault, Financial crimes, Sexual offenses, and Threats.

- Males are more associated with Damage, Drugs, Firearm Acts, and Theft.

4.12.2 Gender, Number of Crimes, and Citizenship Area:

- Females predominantly commit a single crime.
- Males are more associated with committing 2, 3, or 4 crimes.
- EU and Non-EU offenders are mainly associated with the 1-crime category, while Maltese offenders show a higher association with the 2- and 3-crime categories.

4.12.3 Gender, Crime Type, and Citizenship Area:

- Assault is more common among EU and Non-EU females.
- Maltese individuals, regardless of gender, are more associated with Bodily Harm and Damage.
- Drugs-related crimes are prevalent among non-EU males, while Financial crimes are associated with Maltese females.

4.12.4 Offender's Gender vs. Sentence Type, Controlling for the Magistrate's Gender:

- There is a significant association between the gender of the offender and sentence type, both when disregarding and controlling for the magistrate's gender.
- Females are consistently associated with non-incarceration sentences, while males are associated with incarceration sentences.
- The gender of the magistrate does not significantly affect the association between the offender's gender and the type of sentence.

- On average, female offenders are 2.69 times more likely than male offenders to receive a non-incarceration sentence, controlling for the magistrate's gender.

4.12.5 Offender's Gender vs. Sentence Type, Controlling for the Type of Crime:

- The relationship between offender's gender and sentence type remains consistent even when controlling for the type of crime committed. Females are consistently more likely to receive non-incarceration sentences across various crime types, with odds ratios ranging from 1.16 to 10.5. For instance, for financial crimes not accompanied by other offenses, females are about 9 times more likely than males to receive a non-incarceration sentence.

4.12.6 Offender's Gender vs. Sentence Type, Controlling for the Number of Crimes:

- The number of crimes committed by the offender also influences sentencing decisions. The relationship between offender's gender and sentence type remains consistent even when controlling for the number of crimes. For instance, females remain significantly associated with non-incarceration sentences, while males are more likely to receive incarceration sentences, regardless of the number of crimes they've committed.

4.12.7 Offender's Gender vs. Sentence Type, Controlling for Aggravating and Mitigating Factors:

- Females are generally more likely to receive a non-incarceration sentence across various mitigating factors, with a few exceptions.
- When no aggravating factor is present, females are about 3 times more likely than males to receive a non-incarceration sentence.

- When the aggravating factor is related to the offender's characteristics, females are 8.3 times more likely than males to receive an incarceration sentence.

4.12.8 Offender's Gender vs. Sentence Type, Controlling for Sympathetic Life Circumstances

- Sympathetic life circumstances, such as family and caregiving issues, also play a role in sentencing decisions. When such circumstances are present, females are about 6 times more likely than males to receive a non-incarceration sentence. However, in other cases, the association remains, but the odds ratios don't achieve statistical significance.

4.13 Conclusion

This chapter gathered factual data which was collected from the quantitative method of analysis. This research method brought important issues regarding the subject under study to the fore and helped to provide an answer to certain research questions. The results show that in Malta, female offenders are associated with Assault, Financial crimes, Sexual Offences and Threats. When citizenship was taken into account, results show that EU and non-EU offenders are associated with the one crime category, while Maltese offenders are indicted and convicted of more than one crime per court sitting. Results also show that Drug-related crimes are mostly associated with non-EU males, whereas financial crimes are mostly associated with Maltese female offenders. Another important finding is that the gender of the Magistrate does not influence the type of sentence given. Data from the quantitative part of the research proves that females are consistently associated with non-incarceration sentences while males are associated with incarceration sentences. This information answers the main research question which is whether females are treated in a more lenient manner in the sentencing phase than their male counterparts.

An unexpected result is that female offenders whose aggravating factors pertain to the offender's characteristics' category are 8.3 times more likely than males to receive an incarceration sentence. This information is in line with the 'Evil Woman' hypothesis. On the other hand, female offenders who are going through sympathetic life circumstances pertaining to the family and caregiving issues' category are about 6 times more likely than males to receive a non-incarceration sentence.

This quantitative data provided an interesting foundation based on factual results from which the semi-structured interview guide was formulated. The next chapter will focus on the data retrieved through the one-to-one interviews with professionals who either worked or are still working in the criminal justice system.

Chapter 5

Findings - Qualitative Analysis

The data for the qualitative part of the study was acquired through a series of semi-structured interviews (Appendix D) with various professionals from within the criminal justice system. These included retired members of the judiciary, probation officers, lawyers working at the Attorney General's office and police officers holding a prosecutor's role. These professionals all held or still hold distinct roles within the criminal justice system, offering unique insights, and possible biases that contribute to the richness and complexity of the data collected.

The semi-structured nature of the interviews allowed for a degree of flexibility in posing the questions and follow up probes, enabling the collection of in-depth responses and fostering open-ended discussion. The questions posed were informed by the main results of the quantitative study; this was done to gain further insights and to understand better the participants' experiences and perceptions relating to gender discrepancies in criminal court sentencing. Topics explored within the interviews include the female offenders' demeanor in court, the court's view of female offenders based on societal perceptions and gender stereotypes, consistency between male and female magistrates and finally sentencing guidelines as a means to diminish the discrepancy between male and female offenders who are sentenced by the criminal court.

5.1: Demographic data of the participants

The participants in this study came from different walks of life and the common denominator amongst them was that they all used to work or still work in the criminal justice system. The following table includes information about the persons who participated in this research. Each participant was given a participant code so as to ensure confidentiality. Moreover, further demographic details, such as age and years in the profession were not gathered because by retrieving such data, certain participants would have been easily identifiable.

Table 46*Demographic Data of the Participants*

Participant Code	Gender	Occupation
Participant 1 (ML)	Male	Lawyer
Participant 2 (FPI)	Female	Police Inspector
Participant 3 (FPO)	Female	Probation Officer
Participant 4 (MPO)	Male	Probation Officer
Participant 5 (MPI)	Male	Police Inspector
Participant 6 (MJ)	Male	Retired Judiciary Member
Participant 7 (MJ)	Male	Retired Judiciary Member
Participant 8 (FL)	Female	Lawyer
Participant 9 (MJ)	Male	Retired Judiciary Member
Participant 10 (FL)	Female	Lawyer

5.2 Themes that emerged from the qualitative data gathered.

The following are five different themes which emerged from the information gathered in the ten one-to-one interviews. After following the process on doing a Thematic Analysis (Figure 16) or the Methodology Chapter (Figure 16), the following five themes developed as they were the best way of representing and including all the important information and information and ideas shared by the participants.

5.2.1 Theme 1: Female offenders' demeanor in court

Table 48 below shows the responses given by participants in regard to the importance that the female offenders' demeanor has in court so as to get a lenient sentence.

Table 47*The Influence of the Female Offenders' Demeanor in Court*

	Yes	No	Had another opinion
Participant 1 (ML)	✓		
Participant 2 (FPI)	✓		
Participant 3 (FPO)			✓
Participant 4 (MPO)	✓		
Participant 5 (MPI)	✓		
Participant 6 (MJ)	✓		
Participant 7 (MJ)	✓		
Participant 8 (FL)			✓
Participant 9 (MJ)	✓		
Participant 10 (FL)	✓		
Total	8	0	2

This theme emanated from the fact that most of the participants answered that female offenders tend to be more remorseful/regretful than their male counterparts and this leads them to an early admission of guilt. Participant 9 (MJ) emphasized the importance of showing remorse because it can even have an impact on the type of sentence given. The interviewee stated that:

“A show of remorse is certainly likely to influence the presiding Magistrate on the sentence to be imposed, which could be a non-custodial one, such as fine probation, suspended sentence, community service, etc” Participant 9 (MJ).

Bennett (2016) argues about the appropriateness of remorse in the sense that when an offender shows true remorse it is generally accompanied by other actions for example, asking the victim for forgiveness, or paying one's debts. Therefore, according to Bennett (2016), the presence of remorse can be a decisive factor in determining the most appropriate punishment for a particular offender and hence might inform decisions about sentencing.

The participants gave different reasons for the fact that female offenders show more remorse after committing a criminal act. In fact, Participant 2 (FPI) stated that female offenders show more remorse than their male counterparts and this because they are more in tune with their feelings and therefore are more often "guilt stricken". Consequently, according to this participant, it is easier for them to file a guilty plea. Participant 1(ML) pointed out the fact that in general females are found guilty of less serious crimes than males and this makes it easier for them to plead guilty. The fact that female offenders are more likely to file a guilty plea is also shown in the qualitative research method. These results show that 72.7% of female from the sample under study filed a guilty plea, against 66% of male defendants. In fact, Jeffries and Bond (2010) explain that not only females' perpetration of crime is different than that of males but also female tend to commit less serious crimes. Participant 5 (MPI) states that:

"From my experience I can say that most of the cases are drug related cases and therefore females tend to plead guilty so that they can receive the needed help and rehabilitate themselves. I think that females are more open to the possibility of receiving help" Participant 5 (MPI).

This information is important because it supports the study performed by Robinson et al. (2012) which provides evidence that, when an offender pleads guilty and shows his/her willingness to quit the criminal career, the judicial authorities are eager to hear such plight by sentencing the offender in a manner that he/she can receive the help needed. Participant 6 (MJ) and Participant 7 (MJ) both stated that females tend to admit their guilt because they want to get it over with in

the best interest of their family or other people under their care. This is consistent with what Robinson et al. (2012) identified as an Extralegal Punishment Factors (XPF's) and labelled it as "hardship for offenders' family or others" (p.823). According to the authors, judicial authorities take into consideration whether the sentence they are going to give will have a negative outcome on the offenders' family or other individuals under their care.

On the other hand, Participant 3 (FPO) and Participant 4 (MPO) have a different opinion than the other professionals about female offenders' demeanor in court. Participant 3 (FPO) said that female career criminals tend to be hardened in nature and behave more like male offenders. In fact, this participant explained that most often they are indicted with sex offences in circumstances where they often actually act as the pimp. Moreover, Participant 3 (FPO) stated that females also tend to "exploit their sexuality". The interviewee further explains that it is easier for a female to look less blameworthy and less dangerous than a male and stated that:

"Even the way they dress when they appear before court makes a huge difference. Some of them (females) dress in a very smart way and behave in an impeccable manner, hence gaining the magistrate's sympathy" Participant 3 (FPO).

The information shared by this participant, that is, the fact that females do try to look their best before the court and therefore manage to gain the magistrate's sympathy with the consequence of receiving a more lenient sentence is consistent with the studies performed by Umokoro and Egwounu (2013) who stated that judicial authorities are influenced by the affective reaction which determines whether harsh or a kinder treatment is recommended and this after receiving certain stimuli associated with the offender. In fact, authors state that "...when other things are equal, benefit accrues to the physically attractive" (p.8). Beaver et al. (2019) study goes further in the explanation about attractiveness and receiving a more lenient sentence. Beaver et al. (2019) state that:

“Average attractiveness confers a leniency effect when it comes to the odds of being arrested or convicted. What is important to note, however, is that additional analyses revealed that the attractiveness effect was confined to females, such that females who were rated as being more attractive were less likely to be arrested and convicted than females who were rated as less attractive” (p.679).

Participant 4 (MPO) and Participant 10 (FL) explained that female offenders tend to be more cunning than their male counterparts. Both interviewees furthered this argument by stating that there are female offenders who go to great lengths to avoid an incarceration sentence. This can even entail getting pregnant to avoid a prison sentence. Participant 4 (MPO) also explained that females tend to be more emotional in court while male offenders do not disclose any difficult situation they may possibly be going through. The interviewee also emphasized that female offenders are more manipulative than male offenders and know perfectly well how to play the victim. Participant 4 (MPO) also stated that female offenders know how to play with emotions and know perfectly well how to behave in court. While the other participants' opinion seems to support the Paternalistic/Chivalry Theory, the view of Participant 4 (MPO) and Participant 10 (FL) were different, in the sense that these interviewees did not see the female offender as being weak or frail and in need of protection (Saxena, 2012).

The importance of this theme, that is, the female offenders' demeanor in court lies in the fact that it provides further insights in answering this study's research question about the possible reasons for the discrepancies in criminal sentencing between female and male offenders. As seen in the information above the participants gave a lot of importance to the way in which female offenders behave and present themselves in court. According to the interviews as well as to the academic literature referred to in this section, the behaviour demonstrated by female defendants tends to favor a more lenient sentence than the behavior of male defendants.

5.2.2 Theme 2: Societal views and gender stereotypes which influence the Criminal Courts' view of female offenders.

Table 49 aims at gathering the participants' responses regarding societal views and gender stereotypes which might influence the Criminal Courts' view of female offenders.

Table 48

Participants' opinions on societal views and gender stereotypes of female offenders which might influence the Magistrates.

	Non-Threatening	Less Dangerous	Weaker Gender/ Less blameworthy	Motherhood/ caregiver	Respect towards women
Participant 1 (ML)	✓	✓		✓	
Participant 2 (FPI)	✓	✓		✓	
Participant 3 (FPO)			✓	✓	
Participant 4 (MPO)					
Participant 5 (MPI)			✓		
Participant 6 (MJ)	✓	✓		✓	✓
Participant 7 (MJ)	✓	✓			
Participant 8 (FL)				✓	
Participant 9 (MJ)				✓	
Participant 10 (FL)				✓	

This theme gathers the participants' perceptions of the societal views and gender stereotypes that may influence court sentencing decisions, including stereotypes around femininity and motherhood. This theme was highlighted by the interviewees, suggesting a broad agreement on its influence over court decisions.

As Participant 1 (ML) suggested, societal views often tend to perceive women as less threatening and less dangerous. This respondent's insight reflects a widely held societal stereotype that women, particularly those who adhere to traditional female roles, are less likely to pose a significant threat (Lu et al., 2013). This perception, whether consciously acknowledged or not, has the potential to influence the sentencing outcome for female offenders. This opinion was also shared by Participant 2 (FPI) who stated that in her opinion, judicial authorities do not see female offenders as a threat because usually females do not commit violent crimes, especially here in Malta. When confronted with the fact that this research' quantitative data shows that females in Malta have a higher propensity to commit assault and threat, the interviewee explained that based on experience, females are more likely to commit verbal abuse than physical abuse. This is in line with the observation by Schwartz et al. (2009) who, as previously stated, observe that female violence typically involves "less seriousness, less offender culpability, and behaviours in private settings and against intimates" (p.77), precisely the types of incidents that are increasingly captured under expanded definitions of assault. The higher proportion of assault within female offending patterns may therefore reflect both the nature of female's aggression (more often occurring in domestic or intimate context) and the criminal justice system's heightened sensitivity to these forms of violence in recent decades.

Participant 6 (MJ) also shared the same opinion, stating that females are more prone to verbal abuse. The respondent supports the observation claiming that in his experience in disputes between married couples, it was generally the female who was "bossy or she verbally abused her husband". Participant 6 (MJ) stressed the point that according to him, female offenders do not pose any danger to society. Participant 7 (MJ) was also in agreement with the other two interviewees and shared an example from his experience where during his work he used to

encounter cases of females who used to quarrel with their neighbours. Participant 7 (MJ) stated that this generally happened in densely populated areas such as Birkirkara and continued by saying that “*Mara lsienha jatieha u mhux se toqghod lura f’dawn ic-cirkustanzi*”²⁶. Moreover, he sees female offenders as troublesome and not as dangerous. This information tallies the findings by Estrada et al. (2015) and Lauritsen et al. (2009) who attribute the gender gap in crime to the fact that females do not commit violent crimes and explain that male offenders have the propensity to commit violent crimes. It also validates the results of the quantitative analysis in this research which shows that in Malta female offenders are more associated with financial crimes. As the above information indicates, most of the participants were of the opinion that female offenders were less blameworthy and less dangerous to society than their male counterparts. Whilst confirming the first two pillars of the Focal Concerns Theory, that is that female offenders are less dangerous to society and are also less blameworthy, Participant 4 (MPO) observed that having a female offender who has substance addiction represents a challenge to the judicial system. Participant 4 (MPO) explains:

“There can be problems related to logistics in sending a female offender to prison. For example, in drug cases where the magistrate orders a prison sentence and a treatment order, in case of males they can do their rehabilitation programme at Sant’ Anna (while still serving the prison sentence) whereas females cannot avail themselves of such a service. Another example is that of Rise Foundation which caters only for male offenders”.

This information proves that the Focal Concerns Theory can be applied when studying gender discrepancies in criminal court sentencing. In the introduction chapter, Figure 1 to 8 show the workload that magistrates working at the Court of Magistrates – Criminal Judicature had in the years 2005, 2010, 2015 and 2020. The active criminal cases ranged from *circa* ten thousand in 2005 rising to nearly fifteen thousand in 2020. This means that each Magistrate has to deal with

²⁶ Translation to English: A female is very able at being vociferous and she would not shy away in these circumstances.

a high number of cases and therefore he/she could possibly have experienced work-related strain. Moreover, the most of the participants stated that in their opinion they viewed female offenders as less blameworthy and less dangerous than male offenders. But participant 4 sheds light on another important pillar of the Focal Concerns Theory which is that of Practical Constraints. In fact, he referred to Organizational Practical Constraints and Consequences (Franklin & Fearn, 2015; Steffenmeier et al., 1998), explaining that in Malta, female offenders who have a substance abuse addiction cannot receive their treatment order while serving a prison sentence. As explained by the interviewee these female offenders cannot make use of the only halfway house for prisoners there is in Malta as it only caters for male inmates. According to the Focal Concerns Theory this can lead Magistrates to choose a non-incarceration sentence instead of a custodial one.

Participants 1 (ML), 2 (FPI) and 3 (FPO) shared their opinion about female offenders who are also mothers. Participant 1(ML) stated that the court takes into consideration the offender's personal circumstances, and he gave the example of a female offender who has children of her own. The interviewee continued by asking the question *“billi titfaghha l-habs, it-tfal x'se jaghmlu?”*²⁷ According to Participant 2 (FPI), the presence of children and the offender's role as primary caregiver often sway the court's decisions in favour of the female offender. Participant 3 (FPO) stated that a female offender captures the sympathy of the court more easily than a male offender. The interviewee restated that when a female offender who is also a mother of young children is indicted to court, the likelihood is that the female offender will receive a non-incarceration sentence. Participant 3 (FPO) stated that even though as a society we talk about equality, females are still considered to be the weaker gender in Malta. These respondents'

²⁷Translation to English: What will happen to the children if the mother is put in prison?.

observations emphasise the power of gender stereotypes, particularly those associated with motherhood and caregiving, in shaping the court proceedings and their outcome. Participant 7 (MJ) added to this theme by stating that in his view the fact that female offenders are not sent to prison is a matter of “positive discrimination” and explained that the reason behind this is:

“*Għax għadna niddejqu nibaghtu nisa l-habs*²⁸. One should consider that female offenders can have children of their own or else they care for their elderly parents. We all know that our Maltese society tends to put the responsibility of care giving on females” Participant 7 (MJ).

Participant 9 (MJ) furthered this argument by saying that Judges and Magistrates tend to favour as quick a return as possible of the female members of a family (especially of the mother) because these offenders are likely to be the carers of the family. He continued by saying that the quicker that they are restored to the family, the quicker the family is likely to regain its former integrity and well-being.

The information above highlights the importance of having a family or being a caregiver as mitigating factors and sympathetic life circumstances, which can influence the type of sentence given. In fact, Robinson et al. (2012) deemed “hardship for offenders’ family and other” (p.823) as a very important mitigating factor especially if the type of sentence meted out would in some way separate the female offender who is also a mother/caregiver from those under her care. Jacobson and Hough (2007) explain that mitigating factors such as disrupting the offenders’ family life are taken mostly into consideration when the sentence type could be either a custodial or a non-custodial one, but it does not influence the sentence length. All this information dovetails with the findings of the quantitative part of the study, which clearly showed that, when there are circumstances of motherhood or a caregivers’ role, females are about six times more

²⁸Translation to English: Because we still find it difficult to send female offenders to prison.

likely than males to receive a non-incarceration sentence. This information also provides an answer to one of this study research questions which sought to understand whether gender roles that females and males can have within their family settings (breadwinner-caregiver) can influence the magistrates' sentencing outcome.

This information reflects the basic principles of the Paternalistic/Chivalry Theory. Authors Bontrager et al. (2013) state that theorists who advocate the Paternalistic / Chivalry theories of gender and sentencing follow the perception that women are most frequently naive, feeble, less culpable for their actions than their male counterparts and that they need protection from having to do their time in prison and this is the primary reason why they get a more lenient sentence. Participant 6 (MJ) further adds to the Chivalry perspective by stating that:

“Jekk ikollok mara u ragel bl-istess reat, il mara ghandha izjed incolumita²⁹. Like for example, if you have an adult offender and a juvenile offender, most probably one will pity the juvenile more than the adult offender. I think that the juvenile has more potential to reform him/herself than the adult male. Same is with female offenders”.

This information is consonant with the research of Spohn and Beichner (2000) as quoted by Bontrager et al. (2013) in which authors analysed qualitative data from judicial interviews and concluded that “...analysis of judicial decision-making exposes a view of women as less culpable, less likely to recidivate and more amenable to rehabilitation” (p.353).

The interviewee confirmed that female offenders are seen as less dangerous and less blameworthy. This perspective dovetails into the Focal Concerns Theory, more specifically the

²⁹ Translation to English: If a male and a female offender appear before court with the same crime, the female is protected more.

third pillar of the Focal Concerns Theory. In this case the interviewees attributed the fact that female offenders might receive a more lenient sentence to the pillar of Practical Constraints, namely that of Individual Constraints and Consequences (Steffenmeier et al., 1998; Franklin & Fearn, 2015). These authors explain that magistrates also consider any repercussions that prison time might have on family members or dependent others in case the female offender is given a custody sanction. Participant 6 (MJ) adds by stating that in his opinion it is a matter of respect towards the female gender. He stated that:

“I believe that courts do have a soft spot for females, which is something positive in my opinion, I do not criticize it. But one must always keep in mind the severity of the crime committed” Participant 6 (MJ).

This statement fits to a tee the argument brought forward by authors Bontrager et al. (2013) who argue that:

“These perceptions and feelings are often coupled with a paternalistic desire to protect and aid women in times of need. These sentiments, however, are not extended to all female offenders, just those female offenders that fit the mold of a specific construction of femininity” (p.353).

5.2.2.1 Foreign female offenders

This sub-theme focuses on the participants opinions with regards to foreign female offenders who come to Malta to commit a crime and whether in such instances, they should be given an incarceration sentence or not. Table 50 below shows the participants’ opinion in this regard.

80 % of the participants were in favour that female offenders should receive a prison sentence in cases of foreign female offenders who specifically come to Malta and perpetrate organised crime. This also in view that one of the semi-structured interview guides addressed the issue that there are instances where foreign individuals come to Malta on purpose to commit crime such

as shoplifting, mugging, pickpocketing, etc. Most frequently these criminals go back to their native country once they have reached their target of stolen goods. Examples of sentences in which the court declares such behavior as an aggravating factor were also given to the participants.

Participant 2 (FPI) explained that she is convinced of the notion that every offender should get the punishment he/she deserves but states that such organised crime should be sanctioned with incarceration. The interviewee also explained that the reason behind this was that it was not fair that these type of offenders “*Jigu go pajjizi u jitterrorizzaw lil pajjizi*”³⁰. Participant 6 (MJ) and 7 (MJ) stated that they agreed that the court should consider it as an aggravating factor especially if the offenders come over to Malta specifically and with the intention to commit the crime. This information implies that a more severe punishment should be given to foreigners who commit organised crime in Malta. This is in line with the study performed by Miller (2015) which sheds light on how societal views on the impact of crime can influence judicial discretion and consequently the severity of the sentence.

Participant 9 (MJ) furthered his argument by stating that in both the Stoycheva case and the Gyurga case quoted, one should note that what the court considered serious was not the fact that the offender was a foreigner, but the fact that the offence/offences of which the offender was convicted were being committed with deliberation and pre-mediation or with frequency. Therefore, according to this interviewee, the Court was speaking of the need of a sentence which would deter the commission of those offences. He also explained that deterrence is one of the

³⁰ Translation to English: They bring terror to my country.

legitimate purposes of punishment. The need to enforce deterrence to prevent further similar crimes is of utmost importance. This is so because when one considers the data in the quantitative analyses, it emerges that offenders coming from the European Union countries are significantly associated with the perpetration of theft.

The above evidence suggests that societal views and gender stereotypes do influence the criminal courts' view of female offenders.

The information gathered in Theme 2 also confirms the importance of both theories applied in this research, that is, the Focal Concerns Theory and the Paternalism/Chivalry Theory. As previously mentioned most participants stated that female offenders are seen as less dangerous to society and less blameworthy. Moreover, interviewees gave examples of practical constraints such as lack of services targeting female offenders who need to undergo a rehabilitation programme during their time in prison. Motherhood was also identified by participants as being a practical constraint particularly when a female offender is sentenced to prison, her family or dependent others will suffer the consequences. It also emerged that the Paternalism/Chivalry Theory can also be applied in this study. This is because most respondents stated that females are still considered as the weaker gender and need protection which perspective can influence the type of sentence meted out.

5.2.3 Theme 3: Validity of the Evil Woman Hypothesis

Table 50 shows the participants' opinion regarding the fact that the quantitative results indicate that female offenders whose crime involves certain aggravating factors are 8 time more likely

than male offenders to be incarcerated. Participants were asked to give their opinion on these results.

Table 49

Participants' Response on the Validation of the Evil Woman Hypothesis

	Validated the Evil Woman Hypothesis	Did not validate the Evil Woman Hypothesis
Participant 1 (ML)		✓
Participant 2 (FPI)		✓
Participant 3 (FPO)	✓	
Participant 4 (MPO)		✓
Participant 5 (MPI)		✓
Participant 6 (MJ)	✓	
Participant 7 (MJ)	✓	
Participant 8 (FL)	✓	
Participant 9 (MJ)		✓
Participant 10 (FL)	✓	

Data gathered from the quantitative part of this study indicates that female whose aggravating factors do not fit in the perceived social norm of femininity are eight times more likely than males (who exhibit the same aggravating factors) to receive an incarceration sentence. These

aggravating factors include acting without being provoked, the perpetrator having a long criminal record, showing no co-operation with authorities, the offender being a public officer, the offender being a recidivist and showing no remorse before or during court proceedings. When the interviewees were made aware of the results from the quantitative data and asked to comment, there were different reactions. Participant 2 (FPI) stated that she has no experience in this regard. Participant 1 (ML) stated that the aggravating factors themselves will feature in the type of sentence. While participant 5 (MPI) stated that it all depended on the individual case. Participant 3 (FPO)'s response on the other hand confirms the Evil Woman Hypothesis. In fact, the interviewee explained:

“They are challenging their position in society. For example, in prison we find female offenders who have the butch image and most frequently their role in crime was that of a pimp. While in prison these women tend to bully others. So they challenge our view of how a female should be and how she needs to behave”.

This information matches with the definition of the Evil Woman Hypothesis provided by authors Tillyer et al. (2015). They state that:

“An alternative view regarding the treatment of women is summarized in the evil woman hypothesis. In this view females who deviate from expected roles and behaviors will not only fail to be treated chivalrously but will actually be treated more severely than males. In effect, females in this case are viewed as more culpable and blameworthy for their actions” (p. 706).

Participant 6 (MJ) shared his view that “*Jekk tara mara with a long criminal history inti taraha bi kbira*³¹”. This in view that it is not so common in Malta to find females with a long criminal record. The interviewee specified that on the other hand, one can tolerate better the fact that a male has a long criminal history. This information validates the findings in the quantitative part of this study where the issue of offenders' past criminal records was analysed. In fact, the number of female offenders who had a past criminal record was that of 440 and that of males was 1707.

³¹ Translation to English: One would be negatively surprised if one encounters a female offender with a long criminal record.

Even more so, the quantitative data shows that, whenever female offenders are found guilty of a crime, they are generally found guilty of one crime. On the other hand, males are more likely to be found guilty of more than one crime when indicted to court. Tillyer et al. (2015) explains this with the Evil Woman Hypothesis: female offenders, who have lengthy criminal records, are viewed by society at large as deviating from traditional female behaviour expectancies and consequently experience a more severe sentencing outcome.

Participant 8 (FL) shared another reason as to why females who present these aggravating factors are eight times more likely than their male counterparts to receive an incarceration sentence. According to this interviewee, this might be because these female offenders are resistant towards quitting their criminal career, hence explaining their long criminal history and recidivism. The interviewee shared her opinion that in such cases the court would have given the female offender multiple chances to reform but to no avail. Therefore, by breaking the law and breaching stereotypical gender roles established by society, those female offenders are seen as more culpable and more blameworthy and consequently are punished in a harsher manner than males (Bontrager et al., 2013; Hartley et al., 2011; Jeffries & Bond, 2010). Moreover, female offenders who are recidivists and who have a long criminal record are seen by court authorities as less motivated to reform because they breached the boundaries of gender appropriate behaviour (Jeffries & Bond, 2010). This is confirmed by a criminal court sentence which stated that:

“ Despite the fact that the defendant is thirty four (34) years of age, she has already been found guilty of different crimes and in fact she has more than twenty convictions registered under her name, where she has been given all types of sentences, that is, she was sentenced to pay multi, she was given suspended sentences, probations and sentences of incarceration and she still does not seem that she had learned from her past behaviour”.

(Il-Pulizija (Spettur Carlos Cordina & Spettur Trevor Micallef) v. Elaine Muscat, 2015, p. 44)³².

Participant 4 (MPO) on the other hand, explained that females who are serving a prison sentence are “la crème de la crème” of female offenders and continued by saying that most probably they have gone through all the different types of non-incarceration sanctioning before ending up in prison. According to this participant these female offenders are career criminals who did not take the opportunities given to them by the court on previous occasions and did not desist their criminal career. This information shows that females who go against gender-roles attributed to females, like for example that females tend to be soft hearted or non-aggressive as opposed to men (Weare, 2013) tend to receive harsher sanctions than their male counterparts.

The information above highlights the importance of the Evil Woman Hypothesis in understanding gender discrepancies in sentencing. Both the quantitative and the qualitative methods have shown that this hypothesis can be applied to this study. The main reasons are that female offenders who exhibit aggravating factors which go against the stereotypes associated with the female gender are up to eight times more likely than their male counterparts to receive an incarceration sentence. The participants provided the needed in-depth information explaining better the ways and how this can occur within the local context.

5.2.4 Theme 4: Sentencing practice outcomes between male and female magistrates

During the one-to-one interviews, participants were asked whether they agree with the statement that the introduction of more female Magistrates in the Maltese Criminal Court has brought about

³² *Minkejja li l-imputata ghandha biss erbgħa u tletin (34) sena diga nstabt hatja ta' diversi reati u appuntu ghandha aktar minn ghoxrin conviction registrati fejn inghatat kull tip ta' pieni u cioe' giet ikkundannata thallas diversi multi, inghatat sentenzi sospizi, probations u anke del resto sentenzi ta' prigunerija effettiva u donnu ma tghallmitx mill-passat tagħha*

a change in sentencing practice and if so, what type of change can they identify. This was asked because in the quantitative research method it clearly shows that there was no difference between male and female magistrates in the sentencing of male and female offenders. In other words that the gender of the magistrate does not significantly affect the association between the offender's gender and the type of sentence meted out.

All participants agreed that they have experienced no change by the introduction of more female Magistrates in the Maltese Criminal court. All interviewees stated that under no circumstances have they seen any difference in sentencing practice between male and female magistrates. Table 51 shows the opinions given by participants as to why they stated that there is no difference in the sentencing outcomes between male and female Magistrates.

Table 50

Reasons why there is no Difference in Sentencing Outcomes between Male and Female Magistrates

Reasons	<p>Attribute any possible differences to the Magistrate's character and not his/her gender.</p> <p>Court tends to prioritise rehabilitation and restoration rather than incarceration.</p> <p>Magistrates rise to the occasion and perform their duties diligently.</p> <p>The introduction of female Magistrates is an added value.</p> <p>Female offenders are in a better position to assess the impact of a custodial sentence.</p>
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Participant 4 (MPO) stated that any differences there might be are attributed to the Magistrates' character and not to their gender. Participant 5 (MPI) explained that he did not believe there were any differences, but stressed the point that nowadays the criminal justice system is more focused

on how to help the offender rather than how to punish him/her. The same concept was shared by Participant 9 (MJ) who stated that:

“The fact that the court tends to avoid inflicting custodial sentences is a demonstration that in today’s world, rightly or wrongly, the court tends to prioritise rehabilitation and restoration over the other purposes of punishment.”

These statements imply that there seem to be a shift from retributive justice to a restorative model of justice. This information reinforces the results in the quantitative research methods which clearly show that the most common sentence type was a non incarceration sentence. This issue is confirmed by Participant 5 (MPI) and Participant 6 (MJ). Participant 6 (MJ) stated that nowadays if an offender gets a hefty sentence, he/she is entitled to be paroled after a certain amount of years. Participant 5 (MPI) shared his opinion that the emerging trend in the criminal justice field is that an offender should not be left in prison and that when possible, non-incarceration sanctions should be given to offenders of both genders. According to Participant 5 (MPI) this is happening throughout the judicial system.

The understanding that there is no difference between male and female Magistrates as indicated in the quantitative research method was further sustained by the statement of Participant 6 (MJ) as he refers to the importance of ethical conduct and explains that:

“No, I do not think there are any differences and God forbids there will be any because I pretend that once a lawyer is appointed as Magistrate, he/she should rise to the occasion and be a good Magistrate” Participant 6 (MJ).

Participants 7 (MJ) and 8 (FL) stated that whilst they see no difference in the way female and male magistrates perform their duties, they both agreed that with the introduction of female magistrates one can say that female magistrates are an added value to the criminal justice system. Participant 7 (MJ) explained that in his opinion female magistrates bring another perspective to the law, one that is more humane and that according to the interviewee, male magistrates find it more difficult to perceive. Participant 8 (FL) stated that it is in the female’s nature to be more

sensitive and to be more aware of certain emotions. According to her, female magistrates can understand better the situation from an emotional point of view. Participant 9 (MJ) also agreed that there was no substantial change in sentencing practice as a result of a higher proportion of female magistrates. However, the interviewee confirmed the fact that female magistrates are likely to be in a better position to assess the impact of custodial sentence, especially on an offender of the same gender, on family life and therefore they might take this into consideration when reflecting on the sentence. This information validates what Farrell et al. (2010; p. 122) refer to as the “ethic of care to the courtroom”. The authors explain that the presence of female judges in the courtrooms leads to magistrates of both genders to pay attention to the offenders’ characteristics. This information is also in line with what Hunter (2015) refers to as the theory that female magistrates judge “in a different voice” (p.125) rather than in a different way. According to Hunter (2015; p.125) this is so because female magistrates apply a feminine “ethic of care” as opposed to the male counterparts who are more apt to adopt a more masculine approach which is the “ethic of justice”. Hunter (2015) furthers her argument by stating that female judges are more likely to show empathy towards female litigants and witnesses and also in respect of victims of crime. The author states that this approach may provide a better courtroom experience for all parties concerned.

The information given by participants validates the findings in the quantitative data, that is, that there is no differences in sentencing practice between female and male magistrates. The interviewees explained that they have not seen any changes in the sentencing practice between male and female magistrates, but they delved deeper into the reasons as to why the approach taken by the different genders varies.

5.2.5 Theme 5: The introduction of sentencing guidelines

As seen in the quantitative part of this study, female offenders are 2.4 times more likely than males to receive a non-incarceration sentence (see Table 29: (320 x 295) : (981 x 40)). This indicates that female offenders tend to be treated in a more lenient manner when compared to males who perpetrated similar crimes. Hence, this suggests that there is a lack of homogeneousness in criminal sentences. To address this matter, the participants were asked to share their opinion about the introduction of sentencing guidelines in the Maltese criminal court procedure. The participants commented on whether the introduction of sentencing guidelines within the criminal court procedure can, in actual fact, help to decrease the discrepancy in criminal sentencing between female and male offenders. The majority were in favour that some type of sentencing guidelines are to be introduced and implemented to achieve more homogeneousness in criminal sentences. Table 52 shows the participants who were in favour of the introduction of the sentencing guidelines and those who were not in favour.

Table 51

Introduction of Sentencing Guidance

	Agree	Disagree
Participant 1(ML)		✓
Participant 2 (FPI)		✓
Participant 3 (FPO)	✓	
Participant 4 (MPO)	✓	
Participant 5 (MPI)	✓	
Participant 6 (MJ)	✓	
Participant 7 (MJ)		✓
Participant 8 (FL)	✓	
Participant 9 (MJ)	✓	

Participant 10 (FL)

✓

Three interviewees stated that they were against the introduction of the sentencing guidelines as in their opinion each case is unique and therefore, as Participant 7 (MJ) puts it “it is very difficult, almost impossible to implement the sentencing guidelines because each case is different from the other”. Research performed by Pfaff (2006) and Rushin et al. (2019) shows that in actual fact, presumptive sentencing guidelines offer the best method of how to assess a vast variety of different criminal cases whilst decreasing the gender disparities in sentencing. Furthermore the sentencing guideline are formulated in a manner which considers the differences there might be between cases. For example the ones adopted by the United Kingdom have starting points which define the position within a classification range which helps the Magistrates calculate an interim sentence (Sentencing-Overview, General Principles and Mandatory Custodial Sentences, 2023). Once the Magistrate has established the starting point, the court follows further sentencing guidelines instructions by considering the aggravating and mitigating factors, as well as previous criminal record so as to adjust the criminal sentence within a given range.

The other seven participants who were in favour of the introduction of sentencing guidelines stressed that such guidelines must be structured in a way that they leave room for the Magistrates to keep their discretionary powers. These statements imply that these sentencing guidelines should not be mandatory but as explained by Pfaff (2006) they can either be presumptive or voluntary. By establishing either one of the different types of sentencing guidelines one can ensure that the Magistrates’ discretion can be withheld and put to practice. Participant 8 explained the reason why Magistrates’ discretion is important by stating that the introduction of sentencing guidelines within the Maltese criminal court context is a good idea because through its implementation there will be more coherence when it comes to criminal sentencing. She also

explained that, on the other hand, she believed that Magistrates should be allowed to hold some form of discretion because ultimately Magistrates are bound by law and not by the sentencing guidelines. Participant 9 (MJ) also shared the same opinion and furthered her argument by stating that it is important that the presiding Magistrate can still make use of his/her discretion because of certain differences there might be amongst the criminal cases brought before the court. These arguments are in line with the reasons in favour of presumptive sentencing guidelines put forward by Zammit (2017). The author explains that the present court situation gives way to what he describes as “instinctive approach” and which consequently leads to disparities in sentencing.

Participant 3 (FPO) agreed with the introduction of sentencing guidelines but emphasised the point that such guidelines should also cater for the needs of the offender. This statement reinforces the argument that if sentencing guidelines are to be set up, they should be either presumptive or voluntary. This is because mandatory sentencing guidelines set clear limits on judiciary discretion as they do not permit the judges to take into consideration other important personal factors when deciding on the criminal sentence to be given (Gaskin, 2004).

Participant 9 (MJ) was of the opinion that the introduction of sentencing guidelines is a must. He furthered his argument by bringing to the fore the question as to who should develop these guidelines whether it was in the competence of the legislature or that of the Courts. He continued by saying that since sentencing requires a delicate balancing exercise which falls squarely within the Courts’ purview, he was of the opinion that such sentencing guidelines should be laid down by the Courts and this through rules of Court. He continued by stating that after all, the legislature has already laid down its guidelines which are in the nature of punishment laid down in the law and by way of a minimum and maximum punishment. He finished his argument by stating that

these sentencing guidelines should be able to lay down in greater detail the circumstances which determine how the Court should dispose of a particular case. The suggestion put forward by Participant 9 (MJ) is similar to what took place in the United Kingdom in their implementation of sentencing guidelines. In fact, according to the Sentencing- Overview, General Principles and Mandatory Custodial Sentences (2023) the responsibility for the formulation of the sentencing guidelines was of the Sentencing Council. The Sentencing Council's main role was to issue guidelines that the Courts are bound to abide by unless it is counterproductive to do so. In fact, whenever a Magistrate does not follow the sentencing guidelines, he/she must provide the reasons for such decision.

In Summary, most of the interviewees were of the opinion that the introduction of sentencing guidelines would eventually help in decreasing discrepancies in criminal sentencing between genders. Participant 9 (MJ) was the most adamant among the interviewees and even went to great lengths to explain which institution is to formulate the sentencing guidelines. The majority of interviewees believed that the introduction of sentencing guidelines will offer our Courts the possibility of more homogenous criminal sentencing.

5.3 Key findings from the qualitative analysis

5.3.1 Theme 1: Female offenders' demeanour in court:

- Most participants observed that female offenders tend to be more remorseful than their male counterparts, leading to early admissions of guilt.
- The presence of remorse can influence the type of sentence given.

- Some participants noted that females are more in tune with their feelings, leading them to feel more "guilt-stricken" and thus more likely to plead guilty.
- Others observed that females often commit less serious crimes, making it easier for them to plead guilty.
- Some participants, however, felt that female offenders can be manipulative, using their appearance and demeanour to gain sympathy in court.

5.3.2 Theme 2: Societal views and gender stereotypes influencing the Criminal Courts' view of female offenders:

- Many participants felt that societal views perceive women as being less threatening and dangerous.
- The role of a female offender as a mother or primary caregiver can influence court decisions, with the court often showing leniency to avoid disrupting the family unit.
- The findings suggest that the presence of children and the role of caregiver can sway court decisions in favour of female offenders.
- The societal responsibility of caregiving often placed on females was highlighted as a reason for leniency in sentencing.
- The fact that interviewees stated that female offenders are often perceived by society as less blameworthy, naïve and in need of protection validates the Paternalism/Chivalry Theory in explaining gender differences in criminal court sentencing.
- The Focal Concerns Theory can also be applied to understand gender discrepancies in criminal court sentences. Participants stated that society tends to view female offenders as less blameworthy and less dangerous to society at large. Moreover, Magistrates find it difficult to sentence a female offender to a custodial sentence when she has a caregiving

role or when the female offender needs to make use of a service which is available only to male inmates.

5.3.3 Theme 3: Validity of the Evil Woman Hypothesis

- The quantitative part of the study showed that females with certain aggravating factors that do not align with societal norms of femininity are eight times more likely than males with the same factors to receive an incarceration sentence. These factors include acting without provocation, having a long criminal record, showing no cooperation with authorities, being a public officer, being a recidivist, and showing no remorse.
- The "Evil Woman Hypothesis" suggests that women who deviate from expected roles and behaviours might be treated more severely than men. In essence, such females are seen as more culpable and blameworthy for their actions.
- One participant mentioned that it is uncommon in Malta to find females with a long criminal record, and society might be more tolerant of males with such a history. This aligns with the idea that women with lengthy criminal records deviate from traditional female behaviour and might face more severe sentencing outcomes.

5.3.4 Theme 4: Consistency between male and female magistrates

- Participants were asked about the impact of having more female Magistrates in the Maltese Criminal Court on sentencing practices. The quantitative research indicated no significant difference in sentencing between male and female magistrates.

- All participants agreed that they have not observed any change due to the introduction of more female Magistrates. They emphasized that any differences that might exist are due to individual character, not gender.
- Some participants mentioned that female magistrates bring a different, more humane perspective to the law. They might be better positioned to assess the impact of custodial sentences on family life, aligning with the "ethic of care" theory.

5.3.5 Theme 5: The introduction of sentencing guidelines

- Given the observed leniency towards female offenders in the quantitative research, participants were asked about the potential introduction of sentencing guidelines in the Maltese criminal court procedure.
- The majority supported the introduction of such guidelines, emphasising that they should allow magistrates to retain their discretionary powers. These guidelines should be either presumptive or voluntary, ensuring that magistrates' discretion is preserved.
- One participant highlighted the importance of determining who develops these guidelines, suggesting that the courts, rather than the legislature, should establish them. The guidelines should detail the circumstances that influence how a case is disposed of.

5.4 Conclusion

The exploration into the gender dynamics within the Maltese criminal court system began with a central inquiry: Are male and female offenders, when charged with analogous crimes, subjected to similar judicial outcomes? This question, rooted in the heart of the research, was investigated through both quantitative and qualitative data.

Females, as the quantitative data suggests, are consistently associated with non-incarceration sentences. But why is this the case? The qualitative data provide an insight into this phenomenon. Female offenders often manifest more remorse in court, leading to early admissions of guilt. This behaviour, coupled with societal views, contributes to the observed leniency. Some participants even noted that females, being more in tune with their feelings, appeared more "guilt-stricken," making them more inclined to plead guilty. Yet, a few participants also raised the possibility of females using such demeanour manipulatively to gain court sympathy.

Another research question probed the types of crimes females were most likely to be associated with. The numbers revealed that females were predominantly associated with Assault, Financial crimes, and Threats. This was not just a statistical observation but was supported by the qualitative feedback where it is noted that females often commit lesser grave crimes, making it easier for them to plead guilty.

The role of the magistrate, pivotal in the judicial process, was also under scrutiny. The research sought to understand if magistrates' decisions were influenced by their own stereotypes associated with the defendants' characteristics. While the data indicated that the magistrate's gender did not significantly alter sentencing outcomes, the qualitative feedback provided more depth. Participants felt that societal views and gender stereotypes subtly influenced decisions. Interestingly, the introduction of more female Magistrates in the Maltese Criminal Court did not seem to shift sentencing practices, with participants emphasising that individual character, rather than gender, played a more decisive role.

The study revealed the importance of gender roles within family settings. The research questioned if the gender roles that male and female defendants occupy within their family settings influenced the magistrates' sentencing outcomes. The data highlighted the significant influence of female offenders' roles as primary caregivers on court decisions. The interviewees not only confirmed, but expanded on the impact societal responsibilities of caregiving female offenders may have and how these responsibilities are factored in the sentencing process.. This role, especially when juxtaposed against the backdrop of family disruption, often swayed court decisions in favour of female offenders.

The gender gap in sentencing was not uniform but varied with the type of crime. The research sought to understand if the gender gap was wider in certain types of crimes or if it was uniform across all types of criminal court cases. Financial crimes stood out, with females being about nine times more likely than males to receive a non-incarceration sentence when no other offenses accompanied the crime. The qualitative data provided context, suggesting societal views and the nature of crimes typically committed by females played a role.

Mitigating factors undeniably influenced sentencing decisions. The research aimed to understand if mitigating factors such as offenders' cooperativeness, parental responsibility, or mental health problems influenced the severity of criminal sentencing. The "Evil Woman Hypothesis" emerged from the qualitative data, suggesting that females who deviated from societal norms, especially when aggravating factors like a long criminal record or lack of remorse were present, might face sterner sentencing outcomes. Quantitatively, when no aggravating

factor was present, females were about three times more likely than males to receive a non-incarceration sentence.

In weaving together these threads, the research paints a vivid picture of the gendered dynamics within the Maltese criminal court system. Beyond the numbers, it is a narrative of societal expectations, behaviours, and deeply rooted stereotypes shaping judicial outcomes. The next chapter will focus on merging both the quantitative and qualitative methods and provide a detailed discussion of the results provided in a holistic manner.

Chapter 6

Discussion of Findings

This chapter aims at providing a detailed account of the results which emerged from both the quantitative method and the qualitative research method employed in this thesis. In the previous chapters, results from both quantitative and qualitative studies were analysed separately. This chapter will focus on the triangulation of data and its integration (Ivankova et al., 2006; p.11).

In order to offer a good discussion of the results, it is worth mentioning the aims and objectives of this research study as well as its research questions. The primary aim of this study is to develop an understanding of whether there exists a criminal court sentencing discrepancy between male and female offenders who are found guilty of similar offences. In order to attain this aim, the following three core objectives needed to be set. The first objective was to identify and analyse the types of crimes committed by convicted female offenders who were brought before the Court of Magistrates-Criminal Judicature between the period of 2005 to 2020. An additional objective was to compare information from these criminal cases with similar offences perpetrated by male convicted offenders who were brought in front of the same court, namely during 2005, 2010, 2015 and 2020. The last objective was to identify whether there were any particular instances

where female offenders were treated in a different (harsher/more lenient) manner than their male counterparts (gender discrepancies in criminal court sentencing).

This research study centres on a number of research questions. The main research question is whether or not male and female offenders who are brought before the Maltese criminal justice system for the same crime were meted out the same punishments, and if not, what is/are the reason/s for such discrepancies. Another research question seeks to identify the types of crime that female offenders are most likely to be found guilty of by the Maltese criminal court. This research also seeks to address whether magistrates take decisions based on their own perception of stereotypes associated with the defendants' characteristics. The importance of roles is also taken into consideration as this study seeks to understand whether roles that male and female defendants have within their family environment (Breadwinner vs Care-giver) might influence the magistrates' sentencing outcomes. Another research question pursues to investigate the gender gap in sentencing; for example, whether the gender gap wider in certain types of crimes or is it uniform across all types of criminal court cases. A further research question seeks to understand which types of sentencing from the non-incarceration options are more likely to be given in criminal cases concerning female offenders in Malta. Furthermore, this study tries to identify whether mitigating factors such as offenders' cooperation, parental responsibility or mental health problems influence the severity of the sentence meted out and if so, whether these mitigating factors, when present, influence the severity of criminal sentencing to both female and male offenders in equal way. The next section of this research will focus on providing an answer to these research question by discussing both quantitative and qualitative results and by using triangulation and integration of data.

6.1 Triangulation and Integration of data

The discussion chapter in a research study where a mixed method approach is used entails that both quantitative and qualitative results are discussed by means of triangulation and integration. Integration refers to the stage or stages in the research process where the mixing or integration of quantitative and qualitative methods occurs (Ivankova et al., 2006; p.11). To attain this both the quantitative and qualitative results are discussed vis a vis the research questions and compared to academic literature.

6.2 Gender discrepancy in the Maltese criminal court sentencing

One of the research questions in this study sought to understand whether gender discrepancy exists in the Maltese criminal court sentencing. Both quantitative and qualitative showed that it exists. While this study employs bivariate analyses rather than a comprehensive multivariate modelling approach (for the reasons detailed in Section 3.5.2) to explore these discrepancies, and acknowledging that future research could build on the results of the present work to simultaneously control for multiple factors and explore causal relationships, the findings presented here nonetheless provide interesting initial results.

The quantitative results indicate that females are consistently associated with non-incarceration sentences, while males are associated with incarceration sentences. Such discrepancy holds true even when variables such as Offenders' Gender is compared to Sentencing Type and controlling for the Type of Crime. The results indicate that the relationship between offender's gender and sentence type remains consistent even when controlling for the type of crime committed. More specifically findings suggest that female offenders are consistently more likely to receive a non-

incarceration sentence across various types of crime, with odds ratio ranging from 1.16 to 10.5. For example, in the case of financial crimes not accompanied by other offences, females are about nine times more likely than males to receive a non-incarceration sentence. These results are in line with other academic research results that show that females are more advantaged to receive a more lenient sentence for the same crime committed (Etienne, 2010; Gelb, 2010; Jeffries & Bond, 2010; Jeffries, 2017; Sorensen et al., 2012).

Another interesting quantitative result is that when the analysis of Offender's Gender versus Sentence Type and controlling for the Number of Crimes is carried out, it confirms that gender discrepancies in sentencing remain present. For example, females continue to be significantly associated with non-incarceration sentences while males are more likely to receive an incarceration sentence, regardless of the number of crimes committed. Gelb (2010) states that generally female offenders have fewer co-occurring offences than their male counterparts, and this impacts the severity of the sentence meted out. This research' results are consistent with findings by Gelb (2010) as female offenders had fewer co-occurring offences than their male counterparts. This in turn is in line with the Focal Concerns Theory as female offenders are seen as less blameworthy than their male counterparts who perpetrated similar crimes under similar circumstances (Wermink et al., 2015). The fact that female offenders are more likely to receive a non-incarceration sentence also shows that judicial authorities view female offenders as less dangerous than male offenders who committed similar crimes. Furthermore, as suggested by the qualitative results, Magistrates find it hard to sentence female offenders who take care of dependent others. These results validate the third pillar of the Focal Concerns Theory which is that of Practical Constraints because as this theory implies judicial authorities may consider female offenders less able to serve a prison sentence (Wermink et al., 2015).

This research sought not only to understand whether there exist gender discrepancies but also what the reasons for such discrepancies in sentencing between genders are. Both the quantitative and the qualitative results offer an explanation to this research question. The quantitative results show that when the variables Offender's Gender versus Sentence Type is controlled for Sympathetic Life Circumstances, sympathetic life circumstances pertaining to the 'family and caregiving issues' group also play a role in sentencing decisions. In fact, when such circumstances are present, females are six times more likely to receive a non-incarceration sentence. The qualitative method offers more in-depth explanations why such discrepancies exist. For example, in Theme 1: Female Offenders' Demeanour in Court, the participants emphasised that females commit less serious crimes than their male counterparts, making it easier for them to plead guilty and consequently receive a reduced sentence. These results converge with the study performed by Jeffries and Bond (2010) proposing that females generally commit less serious crimes and in fewer instances than males.

The qualitative results converge with the quantitative results in what concerns the presence of sympathetic life circumstances (Starr, 2013). Results from Theme 2 show explicitly that the role of a female offender as a mother or primary caregiver can influence court decisions, with the court often showing leniency to avoid disrupting the family unit. The qualitative findings also suggest that the presence of children and the role of caregiver can sway court decisions in favour of female offenders. Moreover, qualitative results show that societal responsibility of caregiving, which is often placed on females, is highlighted as one major reason for leniency in sentencing (Brett, 2018; Minson, 2017).

As suggested above, quantitative results show that females are more likely to receive non-incarceration sentences while males are more likely to receive incarceration sentences (Wermink et al., 2015). The qualitative results tally with the quantitative result and specify the reasons why this might occur. Results presented in Theme 2 show that interviewees emphasised the fact that female offenders are often perceived as less blameworthy, naïve and in need of protection. This in turn validates the Paternalism/Chivalry Theory (Bontrager et al., 2013). The qualitative results also produced evidence that the Focal Concerns Theory can also be applied in understanding the reasons why such gender discrepancies exist. Interviewees stressed that society tends to view female offenders as less dangerous to society at large and less blameworthy than their male counterparts. In fact, Steffensmeier (1980, as quoted by Roberts, 2016) states that judicial authorities are guided by five major influences. These are practicality, naivete, chivalry, permanence of behaviour and perception of dangerousness. Moreover, there are also practical constraints (Franklin & Fearn, 2015) which come into play when Magistrates are considering which type of sentence should be given. These practical constraints (see Figure 13) come in form of individual constraints which can be attributed to the fact that the female offender is a mother of dependent children and therefore the Magistrate finds it more difficult to sentence her to prison. The other practical constraint which comes into play is Organisational constraint which is considered when a female offender needs to make use of a service which is available only to males, such as the service rendered by Sant' Anna Rehabilitation Programme.

Both the quantitative and the qualitative results show that in general, there exists a gender discrepancy in criminal court sentencing and it is one which tends to favour female offenders. However, both methods of research show that in certain circumstances, female offenders do get harsher penalties than their male counterparts. An important quantitative result shows that when

the Offender's Gender is analysed versus Sentence Type and controlled for Aggravating and Mitigating Factors, it suggests that when the aggravating factor is related to the offenders' characteristics (see Table 34), females are 8.3 times more likely than males to receive an incarceration sentence.

This result is confirmed by the results which emerged from the qualitative approach. In effect, the qualitative approach produced in-depth information which was gathered in a whole Theme regarding the Evil Woman Hypothesis. In fact, results in Theme 3 which validates the Evil Woman Hypothesis, suggest that females who go against gender attributed stereotypes and behaviours receive harsher penalties than their male counterparts. Results further show that it is uncommon in Malta to find females with a long criminal history and that society might be more tolerant of males with such a history. This aligns with the idea that women with lengthy criminal records deviate from traditional female behaviour, hence becoming unladylike, and consequently face more severe sentencing outcomes. This information adheres in part with the studies by Gelb (2010), Jeffries and Bond (2010) and Hartley et al. (2011) in which the authors state that females are treated in a harsher manner when they commit a violent crime because the Magistrate's decision to incarcerate are exacerbated by stereotypical ideas associated with the female gender. The results of this research study show that females get harsher penalties when their case involves the following aggravating factors: when they act without being provoked; in cases where they have a long criminal history; when they show no cooperation with authorities, when the offender is a public officer; when the offender is a recidivist and when the offender shows no remorse.

The above-mentioned information focuses on providing a detailed answer to a major research question. Both the quantitative and qualitative results point to gender discrepancies in the criminal court sentencing. In fact, quantitative results indicate that females keep receiving non-incarceration sentences across various types of crime and despite having been found guilty of more than one offence within the same court proceedings. The reason is that females who are going through Sympathetic Life Circumstances pertaining to the 'Family and Care Giving Issues' are more likely to receive a non-incarceration sentence. The fact that female offenders who are going through hardships related to their family or caregiving issues receive a more lenient sentence is confirmed even by the qualitative results. Examples of Magistrates who find it difficult to send a female offender who is also a mother of dependent children to prison, is also identified as a reason by the participants. Other reasons put forward by the qualitative results confirm that both the Paternalism/Chivalry Theory and the Focal Concerns Theory can be applied to this research study. Interestingly, both methods of research suggest that there are times when female offenders get harsher penalties than their male counterparts. The quantitative findings show that this is related to the fact that female offenders who commit crimes in which the aggravating factors pertain to the 'Offenders' Characteristics', are 8.3 times more likely to get an incarceration sentence. The qualitative results validate the Evil Woman Hypothesis which stresses that females who break gender attributed stereotypes and behaviours are given harsher penalties than their male counterparts.

6.3 Crimes that female offenders are mostly found guilty of in Malta

Another research question regarded which types of crimes female offenders are found guilty of in Malta. The Mixed Methods approach was the best research method to answer this question as it needed both factual data via the quantitative approach as well as in-depth information via the

qualitative approach. Results from the quantitative method show that female offenders are associated with Assault, Financial crimes, Sexual offences and Threats. It is interesting to note that the type of crimes committed in Malta differs from females to males. In fact, quantitative results indicate that males are more associated with Damage, Drugs, Firearm Acts and Theft. The results that females are associated with Pink Collar crime is congruent to the results of the study performed by Pope (2013) who state that this type of crime is increasing among female offenders, whereas Marquet (2014) suggests that the reason behind this increase is that pink collar crime is most likely to occur because female perpetrators want to lead a lavish lifestyle rather than because a financial problematic situation. As seen above, the results show that males and females commit different types of crimes. This echoes the results of the study performed by Heiskanen and Leitonon (2016) who state that their research shows that crime is not gender neutral and that males and females perpetrate different types of crimes. The results also coincide with the type of crime which females are mostly found guilty of in Malta. Heiskanen and Leitonon (2016) state the European countries have experienced the highest share of females who were involved in fraud and money laundering.

The qualitative results show that while participants acknowledged the fact that female offenders are found guilty of Assault and Threats, they did not perceive these as violent crimes and gave various interpretations of their opinion regarding this matter. In fact, this issue was discussed at length in Theme 2 where the participants' opinions were gathered. For example, participants shared their experiences that when it comes to Assault, females tend to be more verbally than physically abusive. One participant stated that female offenders tend to be troublesome and not dangerous. In a nutshell, these results can be indicative of how society at large perceives female offenders, that is, that they are not dangerous to society (Lu et al., 2013; Jeffries, 2017; Koons-

Witt 2002). The fact that despite committing crimes like Assault and Threats, participants attributed these crimes to non-violent ones converges with the Paternalism/Chivalry theory in a way that participants deemed female offenders as being naïve and that due to their gender they were unable to commit violent crimes (Lu et al., 2013).

The above information provides a detailed answer to one of this study's research questions. It shows that females are more likely to commit Assault, Financial crimes, Sexual Offences and Threat. The quantitative results show that female offenders are not perceived as dangerous to society but as troublesome with participants explaining that whenever assault and threats are concerned, their experiences show that this often resulted in verbal abuse or bickering between neighbours.

6.4 Stereotypes/roles associated with the offender which might influence the Magistrate in the sentencing phase.

Another research question focused on whether or not Magistrates take decisions based on their own views of stereotypes associated with the defendant's characteristics. This research question also aimed to enquire whether certain roles that defendants might have within their family settings can influence the Magistrates' sentencing outcomes. The results from the quantitative approach show that in cases where no aggravating factors are present, females are about three times more likely than males to receive a non-incarceration sentence. Furthermore, the presence of certain sympathetic life circumstances, augment the likelihood to sixfold that females are given non-incarceration sentences when compared to their male counterparts. These sympathetic life circumstances are being an asylum seeker, experiencing problems related to

domestic violence, going through family problems, being the main carer of a disabled relative, having a child who is in need of medical intervention or is a child with special needs and having an unknown father.

Moreover, quantitative results indicate that when it comes to the Offenders' Gender versus Sentencing Type controlling for Magistrates' Gender, is clear the gender of the Magistrate does not significantly affect the association between the offenders' gender and the sentence type. Meaning that female offenders keep receiving non-incarceration sentences while male offenders keep being sent to prison. The results show that on average, female offenders are 2.69 times more likely than male offenders to receive a non-incarceration sentence when controlling for the Magistrates' gender. When analysing these results, one cannot but notice that both male and female Magistrates reserved a lenient treatment to female offenders. One can argue that the introduction of new female Magistrates in the Maltese Criminal Court context has led to the proliferation of the 'Feminization of the legal process' (Menkel-Meadow, 1986). This means that firstly this profession can be deemed feminised because of the new growing participation of females in this profession and secondly because females can bring about change in the profession via qualities such as nurturance and empathy associated with females. These results show that the gender of the magistrate did not have any effect on the severity of sentences meted out. Thus it can be said that the judicial authorities as a whole show a Paternalistic/Chivalrous attitude towards female offenders (Jeffries, 2017; Koons-Witt, 2002; Lu et al., 2013).

The qualitative results suggest that society in general holds the stereotypical view that female offenders are more naïve and less dangerous than their male counterparts and such views are

also shared by Judicial authorities. In fact, results show how the majority of participants observed that a Magistrate will find it hard to give an incarceration sentence to a female offender who is also a mother. All three retired Judiciary members showed that they used to feel uncomfortable sentencing a female offender who is also a mother to prison. As seen in Theme 2, one participant who was also a retired judiciary member stated that according to him, the fact that Magistrates show leniency towards female defendants is a matter of ‘positive discrimination’.

Both quantitative and qualitative results in this research study show that Magistrates do base their decisions on their own views of stereotypes and consideration of the role that the offender holds when deciding on which type of sentence to mete out. This contrasts findings by Gill et al. (2015). The results from their research show that the introduction of new female Magistrates in the court system produced a symmetrical leniency on men. Gill et al. (2015) state that this might be due to the fact that female Magistrates do not hold the same stereotypical views of female offenders in the sense that they do not see or consider them as damsels in distress, like most male Magistrates do and hence subject females to harsher penalties.

In summary, both quantitative and qualitative results show that there are certain stereotypes and roles associated with the offender which influence the Magistrates during the sentencing phase. The stereotypes that females are naïve and in need of protection is seen via the quantitative results produced as female offenders are generally met with more lenient sentences than males who have committed a similar crime. Furthermore, the qualitative results show that roles such as that of motherhood or other care-giving roles render it very hard for judicial authorities to sentence female offenders to prison.

6.5 Gender gap in sentencing

The gender gap exists in certain types of crimes, as females are more associated with Assault, Financial crimes, Sexual offences and Threats while males are more associated with Damage, Drugs, Firearm Acts and Theft. Moreover, the quantitative results bring to the fore a gender gap in different aspects which are considered important in the sentencing process. For example, quantitative results indicate that overall females are significantly associated with the lowest 'number of crimes' category, while males are significantly associated with two, three, and four crime categories. In other words, female offenders tend to be found guilty of one offence whereas male offenders tend to be found guilty of two or more offences in the same court hearing. Another important gender gap is seen when the Offenders' Age is controlled for. Results show that female offenders are more likely to receive a non-incarceration sentence virtually across all the levels of the age class. In almost all cases, females are more than two times more likely to be given a non-incarceration sentence, and the odds ratios prove statistically significant in relation to Young Adult and Adult.

A major gender gap in sentencing which resulted from the quantitative method of research was that after cross tabulating Offenders' Gender versus Length of Non-incarceration controlling for the number of offences, results indicate that females are on average 1.63 times more likely than males to be given a comparatively shorter non-incarceration sentence. In other words, even when both male and females are given a non-incarceration sentence, females are more likely to receive a shorter non-incarceration sentence than their male counterparts. These results may be seen to be congruent with the study by Embry and Lyons (2012) who found that even in cases where the crime entails an incarceration sentence, female offenders received a shorter length of prison sentence than their male counterparts.

While quantitative results indicate how the gender gap in sentencing exists, the qualitative results, being more informative by nature, describe the reasons why there is such gender gap. In fact, qualitative results give different explanations why such gender gap in sentencing exists. Most participants attribute this to the fact that females catch the court's sympathy with more ease than males do. For example, results show that the fact that females show more remorse than their male counterparts can influence the type of sentence meted out. Information presented in Theme 1 shows that females are more likely to feel more guilt-stricken and thus more likely to plead guilty hence influencing the type of sentence they receive. Results also show that females can be more manipulative than males as they use their appearance and demeanour to gain the court's sympathy. Although the Paternalism/Chivalry Theory was proven to be applicable to this research study, the result that female offenders are manipulative in their actions to secure the court's sympathy proves that at times female offenders are not as naïve, weak and powerless as envisaged in the Paternalism/Chivalry Theory (Lu et al., 2013).

The above discussion shows that different types of gender gaps exist in relation to criminal sentencing. Results show that there is a gender gap in the type of crimes committed by males and females. A gender gap is also seen in the number of co-occurring crimes that males and females are found guilty of during the same court proceeding. Furthermore, females are on average 1.63 times more likely than males to be given a comparatively shorter incarceration sentence. Qualitative results on the other hand attribute the gender gap in sentencing to the fact that females are more able than males to gain the court's sympathy. Generally, females are more willing to plead guilty than their male counterparts and this can influence the type of sentence meted out. Results in Theme 1 also show that females can be more manipulative than males as they use their appearance and demeanour to gain the court's sympathy. The qualitative results

also offered a way how such gender gap in sentencing can be decreased, by the introduction of sentencing guidelines.

6.6 Sentencing Guidelines

The qualitative results also offered a way in which the gender gap in sentencing may possibly be decreased. In fact, Theme 5 was solely dedicated to information related with the introduction of sentencing guidelines. Results show that given the observed leniency towards female offenders in the quantitative research, participants were asked about the potential introduction of sentencing guidelines in the Maltese Criminal Court System. The majority of participants supported the introduction of such guidelines, emphasising that such guidelines would still need to allow magistrates retain their discretionary powers. These guidelines should either be presumptive or voluntary, ensuring that Magistrates' discretion is preserved. The importance of who is to develop such sentencing guidelines was also highlighted, suggesting that the courts, rather than the legislature should establish them. It was suggested that the guidelines should detail the circumstances that influence how a case is disposed of.

The qualitative results show that it would be ideal if either presumptive or voluntary guidelines are set up to ensure that a certain degree of judicial discretionary powers stay in place (Pfaff, 2006). This result is in line with the study performed by Schlesinger (2008) who stated that mandatory sentencing guidelines will put a disproportionate burden on female offenders. Even though the introduction of these mandatory sentencing policies was to help the courts to address sentencing disparities and achieve a more homogenous sentencing outcome, removing the Judiciary's discretion would have an adverse effect as, in truth, women offenders are not

similarly situated as their male counterparts. Schlesinger (2008) explains that females who enter the criminal justice system are on average less culpable offenders, they generally find it more difficult to find adequate legal representation and moreover, due to imprisonment, female offenders are more likely to lose their children.

Lill and Ahluwalia (2018) stress the importance that sentencing guidelines should take into consideration the negative impacts that incarceration can have on female offenders. In fact, they recommend that in the formulation of new sentencing guidelines, the Sentencing Guidelines Council in the United Kingdom is to provide a specific guideline in relation to female offenders. The authors argue in favour of the introduction of sentencing guidelines that take into account the gender of the offender because of the vulnerability that female prisoners might experience. In view of such studies, and also in view of the possibility that sentencing guidelines may be introduced in Malta, policy makers still have to formulate these guidelines in such a way that they do not discriminate against female offenders while respecting the dogma of just deserts.

In summary, the majority of participants were in favour of the introduction of sentencing guidelines in the Maltese context. They shared their opinion that such guidelines should be either presumptive or voluntary (Pfaff, 2006) to maintain a certain degree of Magistrate discretion.

6.7 Female offenders and non-incarceration options

One of the research questions sought to identify which type from the non-incarceration options is more likely to be given to female offenders in Malta. Quantitative results show that among the

sentences received by female offenders, Conditional Discharge is the most common (24.78%) that is not only larger than the proportion of the same category among males (14.56%) but considerably larger than the average proportion (16.74%). In this order, the court discharges the offender with the condition not to commit other offences during the operative period of this sentence. The conditional discharge can last up to 3 years (Scicluna, 2021). The second most used type of non-incarceration sentence given to female offenders in Malta is the Unconditional Discharge followed by Reprimand and Admonition.

The qualitative result shows that participants held a common opinion that by sentencing female offenders to a non-incarceration sentence, the court ensures a quick return as possible of the female members of the family (especially of a mother) because these offenders are likely to be the carers of the family. This in turn proves to be consonant with the Focal Concerns theory because by sentencing female offenders to conditional discharge instead of a sentence which needs supervision, the judicial authorities show that they deem female offenders as less blameworthy and less dangerous to the community. The information above also evidences that judicial authorities favour a quick return of female offenders to their families therefore highlighting the individual practical concern that magistrates take into consideration when deciding on the sentence to be meted out (Franklin & Fearne, 2015; Steffemeier et al., 1998).

6.8 Mitigating factors' impact on the severity of sentencing

The quantitative results indicate that whenever certain mitigating factors are present, female offenders are about four times more likely than males to be non-incarcerated. These mitigating factors pertain to the 'Character traits and actions' category (see Table 36). Amongst these

mitigating factors there are that the offender has a clean criminal record, the offender is a parent of dependent children and that the offender has co-operated with authorities. More results show that after controlling for the mitigating factors, the analysis indicates that females are on average 1.73 times more likely than males to be given a comparatively shorter non-incarceration sentence. Therefore, these results show that mitigating factors do influence the severity of criminal sentencing, and female offenders are more likely to benefit from a less severe sentence. The qualitative results show that participants referred to mitigating factors such as having a dependent child and showing remorse for the criminal act committed as those mitigating factors which can influence the type of sentence meted out. These results confirm studies by Minson (2017) and Brett (2018) in which authors conclude that the state cannot interfere with the right of respecting family life of both parent and child. It is only when there is a persistent social need that the state is duty bound to interfere. In fact Minson (2017) argues that Magistrates presiding a criminal court should put the children's interest at the forefront and do what is best for them. Interestingly, the qualitative results show that such mitigating factors should alleviate the severity of the sentence meted out but only to female offenders who are also mothers of dependent children. Brett (2018) goes beyond this concept and states that the best interest of the children is an international legal obligation by which the children of offenders have the right to maintain contact with both parents and therefore there should be an alternative sentence to imprisonment even for male offenders who are fathers of dependent children.

The result that 'show of remorse' is considered by judicial authorities as a mitigating factor reflects conclusions by Robinson et al. (2012) who identify a list of mitigating and aggravating factors. Amongst the most important mitigating factors, Robinson et al. (2012) list is that when the offender shows remorse for the act committed. In fact, the authors state that the higher the

degree of remorse, regret and honest apologies the offender expresses, the more the judiciary is prone to use discretionary powers to the offender's advantage.

In summary, the information above provides a detailed answer to the research question being put forward, that is, whether mitigating factors might influence the severity of the criminal sentence given. In fact, quantitative results show that when mitigating factors are present, female offenders are 4 times more likely than males to receive a non-incarceration sentence. Moreover, when mitigating factors are present females are 1.73 times more likely than males to be given a shorter non-incarceration sentence. Results also show that mitigating factors pertaining to the category 'Character Traits and Actions' are the mitigating factors which are most likely to influence the severity of the sentence. On the other hand, qualitative results show that mitigating factors such as having a dependent child and feeling remorse for the crime committed influence the severity of the sentence meted out.

This shows that the Focal Concerns Theory can be applied even in cases where mitigating factors are foregrounded in order to achieve a more lenient sentence. Magistrates can be influenced by practical constraints when it comes to giving a prison sentence to female offenders who have dependent children (Van Wingerden et al., 2016). Female offenders are also seen as less dangerous and blameworthy because even when a non-incarceration sentence is meted out, females tend to get a shorter non-incarceration sentence than their male counterparts.

6.9 Conclusion

The above-mentioned information focuses on providing detailed answers to this study's research questions. Both the quantitative and qualitative results pointed to the existence of gender discrepancies in criminal court sentencing. In fact, quantitative results show that females keep receiving non-incarceration sentences across various types of crime and despite having been found guilty of more than one offence within the same court proceedings. The reason is that females who are going through Sympathetic Life Circumstances pertaining to the 'Family and Care Giving Issues' are more likely to receive a non-incarceration sentence. The fact that female offenders who are going through hardships related to their family or caregiving issues receive a more lenient sentence is confirmed even by the qualitative results. Examples of Magistrates who find it difficult to send a female offender who is also a mother of dependent children, to prison is also identified as a reason by the participants. Other reasons put forward by the interviewees confirm that both the Paternalism/Chivalry Theory and the Focal Concerns Theory can be applied to this research study. Interestingly, both methods of research suggested that there are times when female offenders get harsher penalties than their male counterparts. This is because female offenders commit crimes in which the aggravating factors pertain to the 'Offenders' Characteristics', they are more (8.3 times) likely to get an incarceration sentence. The qualitative results validate the Evil Woman Hypothesis which stresses that females who break gender attributed stereotypes and behaviours are given harsher penalties than their male counterparts.

Another question in this research sought to identify the types of crimes that female offenders are most likely to be found guilty of. Quantitative results show that females are more likely to commit Assault, Financial crimes, Sexual Offences and Threat. The qualitative results show that female offenders are not perceived as dangerous to society but rather as troublesome having

participants explain that whenever assault and threats are concerned, their experiences show that this is often a result of verbal abuse or bickering between neighbours.

Both quantitative and qualitative results show that there are certain stereotypes and roles associated with the female gender which influence the Magistrates during the sentencing phase. The stereotypes that females are naïve and in need of protection is seen via the quantitative results produced as female offenders are generally met with more lenient sentences than males who have committed a similar crime. Furthermore, the qualitative results show that roles such as that of motherhood or other care-giving roles render it very hard for judicial authorities to sentence female offenders to prison.

The findings also show that there exist different types of gender gaps in relation to criminal sentencing. Results demonstrate that there is a gender gap in the type of crimes committed by males and females. A gender gap is also seen in the number of co-occurring crimes that males and females are found guilty of during the same court proceeding. Results also show that female offenders are more likely to receive a non-incarceration sentence virtually across all the levels of the age class. Furthermore, females are on average 1.63 times more likely than males to be given a comparatively shorter incarceration sentence. Qualitative results on the other hand attribute the gender gap in sentencing to the fact that females are more able than males to gain the court's sympathy. Generally, females are more willing to plead guilty than their male counterparts and this can influence the type of sentence meted out. Results in Theme 1 also show that females can be more manipulative than males as they use their appearance and demeanour

to gain the court's sympathy. The qualitative results also offered a way of how such gender gap in sentencing can be decreased, namely, by the introduction of sentencing guidelines.

Another research question sought to identify which type of sentence from the non-incarceration options are females who committed their crime in Malta most likely to receive. Quantitative results show that the most common type of sentence meted out is the Conditional Discharge.

Quantitative results show that when mitigating factors are present, female offenders are four times more likely than males to receive a non-incarceration sentence. Moreover, when mitigating factors are present females are 1.73 times more likely than males to be given a shorter non-incarceration sentence. Results also show that mitigating factors pertaining to the category 'Character Traits and Actions' are the mitigating factors which are most likely to influence the severity of the sentence. On the other hand, qualitative results show that mitigating factors such as having a dependent child and feeling remorse for the crime committed influence the severity of the sentence meted out. The next chapter which is the Conclusions chapter focuses on providing an outline of the main concepts and the findings brought forward in this thesis.

Chapter 7

Conclusions

This final chapter aims to provide an overview of the main concepts and findings discussed in this thesis. This study was set to navigate through the intricate landscape of gender disparity within the Maltese criminal court sentencing. Since gender disparities in criminal court sentencing are a multifaceted subject, it was imperative to adopt a research method that ensures a comprehensive exploration of both empirical data and human experiences, thereby providing a holistic view of the research problem.

7.1 Study's main aim and research method used

The principal aim of this study is to understand gender differences (if any) in the Maltese criminal court sentencing. There are several research questions emanating from the main aim of this study. The primary research question is whether or not female offenders who are brought in front of the Maltese criminal court for similar crimes as their male counterparts are meted out similar punishments, and if not, what reasons lie behind such discrepancies.

To provide scientific answers to the research questions, a mixed method approach was used. The reason behind opting for a Mixed Methods approach for data collection was because it provided the most appropriate and comprehensive way to apply both quantitative and qualitative research methods. The Mixed Methods approach contributed to this research study because it provided

the needed framework to ensure triangulation and facilitated the convergence and corroboration of data by using different methods. Furthermore, this approach provided complementarity to the research as well as intuition because contradictory findings could have been easily identified (Maruna, 2010). Both the quantitative and the qualitative methods facilitated the research expansion as both methods ensured that a wider spectrum of data was gathered.

The Mixed Methods approach followed the Sequential Explanatory design. It consisted of two main parts: the first part concerned the quantitative method (coding and analysis of online criminal court sentences covering a period of sixteen years) and the second part, the qualitative, was based on a number of interview questions grounded in the quantitative findings. The sampling used in this method is a multi-level one (Christensen, 2014) because it involved the use of quantitative and qualitative samples obtained from different levels of the population under study. The main strength of the Mixed Methods approach is that it facilitates triangulation. This method also increased specificity and generalisability of the results (Brent and Kraska, 2010). Furthermore, the use of both quantitative and qualitative techniques enhanced validity and reliability of the research

All data gathered from the Manifest Content Analysis was put through different analytic tools as the quantitative results created the basis for the formulation of an interview guide. Ten professionals who worked or are still working in the criminal justice system were interviewed on a one-to-one basis. Particular attention was given to ensure participants' informed consent and to comply with ethical standards. The interview guide was a semi-structured one enabling both participants and interviewer to engage in a conversation/ discussion about the issues under study. One-to-one in-depth interviews permit the elicitation of rich and informative data (Hofisi, et al, 2014). The data gathered during the qualitative phase of this research study was analysed

by using the thematic analysis method. To ensure that thematic analysis was done in an efficient way and that the themes reflected the interviewees' views and opinions, the semantic method was used, and a systematic process (Figure 16) was adhered to.

7.2 Overall findings in relation to research aims and research questions (Quantitative analysis)

The quantitative findings, detailed in Chapter 4, created a robust baseline of data, revealing patterns and disparities in sentencing between genders, thereby providing a structured and empirical foundation to the research. For instance, results clearly show that in general female offenders are indicted with one crime whereas males tend to be indicted with more crimes per court sitting. It is interesting to note that when citizenship is taken into account, Maltese female and male offenders have a higher propensity of being indicted with the 2nd and 3rd crime. This means that local offenders are more likely to be found guilty of multiple crimes (because they are indicted with more offences in one court sitting) than EU and Non-EU offenders.

The research question which sought to understand the types of crimes that female offenders are mostly associated with was answered through the cross tabulation of Crime Category against Offender's Gender where a total of 4,508 crimes were recorded. Results from both descriptive and inferential statistics show that female offenders are mostly associated with Assault, Financial Crimes, Sexual Offences and Threats, whereas male offenders are associated with Damage, Drugs, Firearm Acts and Theft. To provide a clearer picture, variables such as gender, type of crime and offenders' citizenship area were analysed. Results show that offenders of different nationalities commit different types of crime. In actual fact, results show the substantial association between EU female offenders and health and safety as well as theft crimes, while non-EU offenders are more associated with sexual crimes. On the other hand, financial crimes are more correlated with Maltese, Eastern European and Asian female offenders. This is also

interesting from a sociological perspective as females of different nationalities choose to commit different types of crime in Malta. The question that comes to mind concerns the possible reasons why non-EU female offenders commit sexual crimes while EU female offenders are more associated with theft crimes. The association of non-EU female offenders with sexual crimes, for example, may reflect deeper systemic issues, such as human trafficking, sexual exploitation, or coercion, rather than simply individual criminal intent. These women may not be acting independently, but could be caught in exploitative transnational criminal networks, especially when coming from economically disadvantaged or politically unstable countries (Farrell & Pfeffer, 2014). Hence, these crimes should not only be interpreted through a legal lens but also through a socio-economic and humanitarian one.

A scientific answer whether or not the Magistrate's gender played a role in the criminal sentencing of female and male offenders was also provided. This information was also important to test the Paternalism/Chivalry Hypothesis. Results show that the Magistrate's gender plays no significant part in gender discrepancies in criminal sentencing. In fact, female offenders keep being associated with non-incarceration sentences, while male offenders keep being significantly associated to incarceration sentences irrespective of the Magistrate's gender. This also seems to have a sociological reflection as in Malta there appears to be a situation in which the court as an institution tends to deliver a gendered sentencing process as results suggest that the magistrates' gender does not influence the severity/leniency of the sentence meted out. An interesting factor from a sociological standpoint is that as seen in this research study, even among female magistrates, there is a tendency for them to be more lenient towards female offenders possibly due to the paternalistic approach. Female magistrates may also hold subconscious biases about females, leading them to believe that females are less dangerous and less blameworthy compared to their male counterparts.

The hypothesis that the criminal court sentencing process is a gendered process is strengthened by the results which show that, despite the number of crimes that female/male offenders were indicted with (within one court sitting), female offenders kept receiving non-incarceration sentences. When the offenders' age group was analysed, the same results were obtained except for the fact that male offenders who belong to the 'late adulthood' age group, were about four times more likely than their female counterparts to receive a non-incarceration sentence.

Information gathered from past research studies (Jacobson & Hough, 2007; Robinson et al., 2012; Cheng, 2017) clearly showed the importance of including and analysing confounding variables such as aggravating and mitigating factors and sympathetic life circumstances when studying gender discrepancies in criminal sentencing. The results identified aggravating factors pertaining to 'offender's characteristics' as the type of aggravating factors that can influence the sentencing outcome. These include instances when the offenders acted without being provoked, had a long criminal record, or when they showed no co-operation with authorities, or when they were public officers, when they were a recidivist and or when they showed no remorse for their actions. Moreover, results showed that female offenders are eight times more likely than males to receive an incarceration sentence when aggravating factors related to Offenders' Characteristics are present. This highlights the fact that the Maltese society still attributes specific gender roles to females and it is society itself by means of the court that punishes females who do not conform to such gender attributed norms. This reflects broader sociological concepts related to gender roles. These roles assign females to passive and dependent positions and males to active and dominant ones. As seen in this research study, such roles have been ingrained in both societal expectations and legal frameworks (Gender Equality Index 2022).

This research also identified Character Traits and Actions as those mitigating factors that lead to a more lenient sentence for female offenders. In fact, female offenders presenting such mitigating factors are 4 times more likely than male offenders to receive a non-incarceration sentence.

These mitigating factors consist of instances when:

- the offender has completed a rehabilitation programme successfully;
- the offender is a parent of dependent children;
- the offender has paid back his/her dues;
- the accused is willing to quit criminal career;
- the offender has a clean criminal record;
- the offender co-operated with authorities;
- the court is giving the accused the last opportunity to reform;
- the offender made an early admission of guilt;
- the offender is leading a stable life,
- the offender has paid for the damages caused;
- there is a positive pre-sentencing report;
- the res furtiva is returned to the injured party;
- the offender shows true remorse for his/her actions;
- the victim is no longer seeking legal action and
- when the victim has pardoned the accused.

These results also offer an answer to two different research questions. One question is whether mitigating factors such as offenders' cooperativeness, parental responsibility or mental health problems influence the severity of criminal sentencing, and if so, whether these mitigating factors, when present, influence the severity of criminal sentencing of both male and female offenders. The second research question which is answered by this data is whether the gender roles that male and female defendants have within their family influence the magistrates' sentencing outcomes.

The analysis of offenders' gender and sentence type versus Sympathetic Life Circumstances showed that female offenders are six times more likely than males to receive a non-incarceration sentence when they are going through family and caregiving issues. These Sympathetic Life Circumstances are, when the offender is an asylum seeker; in cases where the offender is a victim of domestic violence; when the offender is encountering family problems; when the accused is the main carer of a disabled relative; in instances where an offspring is in need of medical intervention or is a person with special needs, and when the offenders' father is unknown. When considering the above information, one can argue that this situation might pose a challenge to maintaining the rule of law in Malta. This is because female and male offenders who commit similar crimes and are going through similar difficult situations in their lives, do not receive a similar type of sentence. The rule of law is a foundational principle in democratic societies, predicated on the idea that all individuals are subject to the law equally, regardless of gender, status, or personal circumstances. In the context of the Maltese justice system, the observed disparity in sentencing outcomes between male and female offenders, particularly when sympathetic life circumstances are present, raises critical concerns about the consistent application of justice and adherence to the rule of law.

According to the principle of the rule of law, the legal system should function with impartiality and fairness, ensuring that like cases are treated alike (Tamanaha, 2012). When sentencing decisions vary significantly based on gender, even when offenders are facing comparable life hardships and have committed similar offences, this introduces an element of arbitrariness. Such disparities risk undermining public confidence in the justice system and call into question the objectivity of judicial decisions.

In Malta the fact that female offenders are reportedly six times more likely than male offenders to receive non-custodial sentences due to family or caregiving responsibilities, suggests a gendered application of justice. While it is ethically commendable to consider individual circumstances in sentencing, especially in cases involving caregiving or victimization, doing so unevenly across genders can erode the principle of legal equality (Tamanaha, 2012).

This gendered leniency, although potentially rooted in societal expectations of females as primary caregivers, poses a challenge to the uniformity that the rule of law demands. It implicitly reinforces gender stereotypes and may disadvantage male offenders who are also caregivers or victims of domestic abuse but whose circumstances are not given the same weight in sentencing.

To uphold the rule of law, Malta's legal system must ensure that sentencing practices are consistent, transparent, and free from discriminatory biases. Sentencing guidelines should be applied uniformly, and judicial discretion must be exercised in a way that does not inadvertently perpetuate inequality. Implementing training for judicial officers on unconscious bias and

reviewing sentencing data for patterns of disparity could be practical steps towards reinforcing the rule of law in Malta.

This highlights that the Maltese community still gives due importance to the role of societal expectations and family roles. Their society including the Maltese Criminal Justice System still views females as primary caregivers and as seen in this research, they are given a more lenient sentence for similar crimes committed by male perpetrators. This occurs because courts are often more reluctant to separate children from their mother resulting in the imposition of alternative sentences, such as probation or conditional discharge, instead of prison time.

Quantitative analysis was also undertaken to assess whether the number of crimes committed can impinge on the length of the sentence meted out to both male and female offenders. Data shows that, even though female offenders are found guilty of a number of crimes in one court proceeding, females are more likely than males to receive a non-incarceration sentence for up to two years. Male offenders are more likely to be given a longer sentence. This information reconfirms the fact that female offenders are given more lenient sentences than their male counterparts even when females are found guilty of a series of crimes within one criminal court procedure.

This research shows that, when the number of aggravating factors is low, female offenders are more likely to be given a shorter non-incarceration sentence. When no aggravating factor is present, females are about three times more likely than males to receive a non-incarceration sentence. It has also emerged that these results change when the number of aggravating factors is high. As already explained, results indicate that females do get harsher sentences. In fact, they

are 8.3 times more likely than their male counterparts to receive an incarceration sentence when the aggravating factors pertain to Offender Characteristics. From a sociological standpoint the gendered nature of sentencing has significant consequences for families and communities. Females who are incarcerated often face unique challenges, particularly because they are more likely to be primary caregivers for dependent children. Sentences that are not tailored to the realities of female lives can have devastating consequences for families, leading to economic hardship (Wildeman & Western, 2010), emotional distress (Thulstrup & Karlsson, 2017), and social disruption (Cunha et al. 2023).

Moreover, results show that even when for both male and female offenders court proceedings the mitigating factors are taken into consideration, female offenders are more likely than males to be given a shorter sentence. Section 4.7 evidenced that such mitigating factors pertain to Offenders' Characteristics and Traits and Actions amongst which there is the mitigating factor of early admission of guilt and the accused is parent to dependent children amongst others. This information can be linked to the Paternalism/Chivalry Theory as Magistrates (both males and females Magistrates) tend to protect female offenders by giving them a shorter sentence.

Another research question sought to understand which types of sentencing from the non-incarceration options are more likely to be given in criminal cases concerning female offenders in Malta. Results show that the sentences received by female offenders are the Conditional Discharge and Unconditional Discharge sentences as well as the Reprimand and Admonition sentence. The above results are consistent with the Focal Concerns Theory, as this theory states that female offenders receive more lenient sentences than their male counterparts as they are seen as less blameworthy and less of a threat to society. Moreover, these non-incarcerative

sentences serve as manifestations of a paternalistic legal approach that views women as less culpable and more amenable to informal correction (Daly, 1987). In contrast, male offenders are more likely than females to be sentenced by the criminal court to shoulder the court expenses and to attend obligatory rehabilitation programmes, thus making male offenders pay for the crime committed. In contrast to female offenders, male offenders being more frequently sentenced to pay court expenses or to attend obligatory rehabilitation programmes represents a form of symbolic restitution, a practice where male offenders are expected to “pay their debt” to society. These outcomes suggest a more punitive approach, reinforcing the idea that male offenders are not only more blameworthy but also more capable of enduring formal punishment (Steffensmeier & Demuth, 2006). These findings also reflect differing assumptions about the reformability and risk associated with male and female offenders. Female offenders receiving lighter non-custodial sentences may indicate a judicial belief that women pose less of a continued threat to society and that their criminality is more circumstantial, emotionally driven, or linked to personal hardship (Kruttschnitt, 2013)

7.3 Overall findings in relation to research aims and research questions (Qualitative analysis)

The qualitative research was used to gather rich and informative data through a semi-structured interview guide which was used during one-to-one interviews with ten professionals. From the information gathered from those professionals who used to work or are still working in the criminal justice field, five different themes emerged which continued to provide more detail to the answers of this research study.

The first theme, entitled the Females’ demeanor in court explored the professionals’ opinions as to whether that female offenders behave differently from their male counterparts. Female offenders show more remorse and regret about their actions than males. Female offenders tend

to be more guilt stricken and this in turn makes it easier for them to file a guilty plea. There are other reasons why female offenders opt to file a guilty plea, such as in drug cases where the female offender pleads guilty so that she can receive the needed help and treatment. Other female offenders plead guilty because they just want it to be over with, so that they can return to the normality of everyday life and this in the best interest of their family.

Other females tend to exploit their femininity and appear before the court in a very smart attire so as to gain the sympathy of the court, hence facilitating the possibility of receiving a more lenient sentence. Another issue which was highlighted was that female offenders tend to be more manipulative than their male counterparts and they go to great lengths to avoid an incarceration sentence. The importance of this theme lies in the fact that it provided further insights in answering this study's research question about the possible reasons for the discrepancies in criminal court sentencing between male and female offenders. A key sociological reflection here is that the courtroom becomes a space where gender is performed and judged. When females dress in a certain way or behave deferentially, they are participating in a form of gender performance aimed at eliciting judicial sympathy. This reinforces the idea that women must conform to stereotypes of femininity, including being apologetic, demure, or maternal, to be seen as "worthy" of compassion. In contrast, men are not expected to perform in this way, and may not receive leniency if they do, since expressions of vulnerability may contradict masculine norms (Steffensmeier & Allan, 1996).

Another theme which emerged from the interviews was that Societal Views and Gender Stereotypes influence the Criminal Courts' view of Female Offenders. Results from the qualitative method show that female offenders who adhere to traditional female roles are seen as less dangerous to society and less blameworthy and therefore receive more lenient sentences

than males. Moreover, since female offenders are less likely to commit violent crimes, judicial authorities do not see them as a threat. It was specified that even in instances of assault, female offenders are more prone to commit verbal abuse than physical abuse. This reinforces societal views that females can be troublesome but not dangerous. The information gathered also showed that there could be logistical problems in sending female offenders to prison. This is particularly true in cases where the offender needs to undergo a rehabilitation programme as according to the interviewees, the service rendered by Sant' Anna rehabilitation programme is only available to male offenders. This information validates the Focal Concerns Theory since by abiding to traditional stereotypical norms, female offenders are seen as less blameworthy and less dangerous to society. This information highlights the importance of having a residential rehabilitation program for female offenders as the current situation can be a means of discrimination amongst male and female offenders who need to undergo a rehabilitation programme. This can lead to some sociological reflections about the implications of Women's Rights and gender equality given that gender disparities in sentencing can also undermine the progress made in gender equality. By treating females as inherently less criminally culpable, the legal system perpetrates a paternalistic view of females, which can limit their autonomy and agency. It also contributes to the marginalisation of females who commit crimes, as they may not receive the same support or resources that males receive for rehabilitation.

According to the participants in the study, there are also practical constraints specifically those of a logistic nature when sending a female offender to prison. Hence Magistrates are facilitated in giving a more lenient sentence to female offenders as compared to their male counterparts. Motherhood and caregiving roles held by female were also identified as mitigating factors that gain the sympathy of the court more easily than in instances when male offenders are experiencing fatherhood. Results show that these types of female offenders are more likely to

receive a non-incarceration sentence. This is done to favour as quick a return as possible of the female offender to her roles as mother and caregiver. It can be argued, that even where criminal sentencing is concerned, stereotypical roles, such as the care giving role, are still being attributed to females who commit a crime in Malta, whereas this is not the case where a male offender has dependent others to take care of. The unequal treatment of males and females in sentencing also reinforces broader social inequalities, where males continue to dominate positions of power in society, while females are more likely to be seen as victims or exceptions to the rule of criminal behaviour (Gender Equality Index 2022).

This information is congruent with academic studies as well as with the quantitative method results which showed that in such circumstances females are about six times more likely to receive a non-incarceration sentence. This provides an answer to another research question which asked whether mitigating factors such as offenders' cooperativeness with authorities, parental responsibility or mental health problems influence the severity of criminal sentencing. The Paternalism/Chivalry Theory can be applied to the information above because women are seen as more in need of protection than males and therefore, they are meted out more lenient sentences. This trend also reflects a broader societal issue: the perception of females as inherently weaker or more deserving of protection than males, which can inadvertently undermine gender equality by reinforcing paternalistic attitudes towards females. In a modern legal system, such biases can lead to inconsistencies and inequities in sentencing, particularly when offenders of both genders commit similar crimes but receive different punishments based on gendered expectations.

Results also show that females tend to get a prison sentence in those instances where foreign female offenders come over to Malta with the sole intention of committing a crime. The reasons

given are that the court is duty bound to deter and prevent such crimes by being severe in meting out sentences. This also emerges from the results of the quantitative research which show that offenders coming from the European Union countries are significantly associated with the perpetration of theft. The results suggest that when foreign offenders, particularly females, engage in criminal activities such as theft, they are not only punished for their crimes but also treated as representations of broader fears or stereotypes about foreignness and criminality. This process of othering can lead to possible discriminatory practices within the legal system, where foreign offenders are disproportionately targeted and subjected to harsher penalties, possibly due to a perception that they are less socially integrated into the national community (Fassin, 2011).

The validity of the Evil Woman Hypothesis was another theme which emerged from the data gathered confirmed by both the quantitative method and qualitative research. In fact, the quantitative method showed that female offenders whose aggravating factors do not conform to stereotypical norms associated with the female gender are eight times more likely than males to receive an incarceration sentence. Different possible reasons why this occurs emerged from the qualitative study. Reasons varied from the fact that these women present a challenge to society by deviating from established social norms to the fact that these female offenders are resistant towards quitting their criminal career. Other explanations include that these female offenders are generally career criminals and this explains the aggravating factor of recidivism. This information shows that females who go against stereotypical behavior associated with females such as soft-heartedness and non-aggressive behavior tend to receive harsher sanctions than their male counterparts (Weare, 2013). The sociological reflections that can be deduced from the results concerning the Evil Woman Hypothesis highlight the intersection of gender, deviance, and punishment in the criminal justice system. The data indicating that female offenders who

deviate from traditional gender norms receive disproportionately harsher sentences, eight times more likely to be incarcerated than males, reinforces the idea that the justice system not only punishes criminal acts but also enforces conformity to societal expectations of gender-appropriate behaviour (Chesney-Lind & Pasko, 2013). From a sociological standpoint, the harsher sentencing of women who do not conform to traditional female stereotypes (e.g., being passive, nurturing, or remorseful) suggests that the justice system acts as an agent of gender norm enforcement. Women who commit crimes, particularly those who do so repeatedly or aggressively, challenge the normative expectations of femininity. As a result, their punishment serves a dual function: correcting their legal transgressions and symbolically reinforcing gender roles (Kruttschnitt, 2013). The criminal justice system, in this light, not only disciplines behaviour but also polices social identities, punishing those who step outside of accepted gender norms (Steffensmeier & Allan, 1996).

The fourth theme focused on the consistency between male and female Magistrates in sentencing outcomes. Results from both quantitative and qualitative methods showed that there are no differences between the two genders in their sentencing decisions. However, the qualitative method provided more insightful information. In fact, the reasons brought forward to explain this were that nowadays, Magistrates are more focused on how to help the offender than on how to punish him/her. Another reason behind this consistency are that Magistrates follow an ethical conduct. The understanding is that the introduction of more female Magistrates was an added value to the criminal justice system, since female Magistrates have a more humane perspective of the law as they are believed to be in a better position to assess the impact that a custodial sentence can have (Farrell et al., 2010; Hunter, 2015) and this affected the bench as a whole.

The importance of the introduction of sentencing guidelines was the last theme of the thematic analysis carried out in the qualitative research method. The introduction of sentencing guidelines was perceived as one possible option towards a more homogenous sentencing outcome in view of the fact that the quantitative research showed that female offenders are 2.4 times more likely than males to receive a non-incarceration sentence. Information about which institution in Malta should develop the sentencing guidelines suggested that it is within the Courts remit to develop such guidelines and this through the rules of the Court. Emphasis was made on the fact that these sentencing guidelines must be structured in a way to leave room for Magistrates to keep their discretionary powers, hence implying that these sentencing guidelines should not be mandatory but presumptive or voluntary (Pfaff, 2006). The preservation of discretionary power is important because of specific and relevant differences that exist between criminal cases. The conclusion in this research study is that the participants were in favour of the introduction of presumptive sentencing guidelines. This is in agreement with Zammit (2017), who suggested that presumptive sentencing guidelines should be introduced in the Maltese Criminal Justice. Moreover, it is important that these sentencing guidelines are structured in a way so that the needs of the offenders are taken into consideration.

The sociological reflections that can be drawn from the introduction of sentencing guidelines in the context of gendered sentencing practices are multifaceted, highlighting issues related to fairness, social inequality, and the role of discretion within the criminal justice system. The idea of implementing sentencing guidelines to standardise and homogenise sentencing outcomes is grounded in the broader sociological concern about the potential for discrimination and bias in judicial processes, particularly as gender disparities in sentencing have been observed.

From a sociological perspective, the gendered nature of sentencing, as revealed in this research, suggests that female offenders are more likely to receive lenient sentences compared to their male counterparts, despite committing similar crimes. This raises concerns about how societal gender norms shape legal decision-making, with female offenders often benefiting from stereotypical perceptions of women as caregivers and less dangerous. The suggestion that sentencing guidelines should allow for discretionary power reflects a recognition of the complexity of individual cases, yet it also brings attention to the potential for such discretion to perpetuate gender biases if not carefully managed (Zammit, 2017). Discretionary power, while essential for considering the nuances of each case, could also reinforce existing gender stereotypes, with Magistrates potentially unconsciously applying leniency to female offenders based on traditional gender roles (Pfaff, 2006).

7.4 Research main contributions

This research's main contribution is that it presents the local current situation *vis a vis* gender disparity in criminal court sentences. Being carried out in a small island community, this research validates different other research studies undertaken elsewhere and explicitly shows that in general female offenders get a more lenient sentence than their male counterparts. Another contribution to knowledge is that this research study confirms the theories used in the theoretical framework.

The Focal Concerns Theory was confirmed because the exhaustive workload that each Magistrate has was presented in the introduction chapter and both the quantitative and qualitative parts of the study indicated that female offenders are seen as less blameworthy and less dangerous to society. Moreover, both organisational and individual practical constraints were

identified as, on one hand, there are logistical problems related to the provision of rehabilitation programmes and on the other hand, Magistrates do take into consideration the repercussions that prison time might have on family members or dependent others.

The Paternalism/Chivalry Theory was also confirmed in this research study. The quantitative method showed that female offenders who are mothers or have a care-giving role are dealt with in a paternalistic/chivalrous way as they are six times more likely than their male counterparts to receive a non-incarceration sentence. In the qualitative study the professionals interviewed stated that the court authorities do act in a paternalistic/chivalrous way. In fact, in referring to such behaviour on behalf of the court one ex-judiciary member called it “positive discrimination”. The ‘Evil Woman’ hypothesis was also confirmed as this research study showed that female offenders who have certain types of aggravating factors are eight times more likely to receive an incarceration sentence and hence a harsher sentence than their male counterparts. Confirmation of the ‘Evil Woman’ hypothesis was also confirmed by the qualitative approach as participants gave different reasons why these females get harsher sentences. The information about this hypothesis was deemed so important that it was analysed in one of the themes in this study.

Another contribution to knowledge that emerges from this study is the need for the introduction of sentencing guidelines in the criminal court system. This study, through its Mixed Methods approach, provides evidence that female offenders are treated more leniently than their male counterparts. At this point in time the homogeneity of sentences meted out to female and male offenders who are indicted with similar offences can be questioned. The introduction of presumptive sentencing guidelines can create an environment where such discrepancies are less pronounced.

7.5 Limitations of this study

One limitation of this study concerns the data collection method. While the quantitative data was procured from a widely accessible online portal, it does not represent a comprehensive listing of all final sentences. This means that there might be some noteworthy cases that did not make it into the study due to their absence on the online platform.

In terms of qualitative data, the original intention was to gain insights from serving Magistrates of the Court of Magistrates – Criminal Judicature. However, due to unforeseen policy changes, interviews with these magistrates are not possible. It is essential to recognise that while the qualitative data which has been amassed offers deep and unique insights, it stems from a select group of professionals. This may not provide a full spectrum of the views held by all professionals in the criminal justice sector. Thus, this study acknowledges the limitations inherent in the small sample size utilised in the qualitative interviews. While the intent was not to generalise findings to the broader population, the qualitative component was focused on eliciting in-depth insights from individuals directly engaged in the criminal justice system. Despite the limited sample size, these findings provide critical, context specific insights that add depth to the understanding generated from the quantitative analysis. Additionally, the use of small sample size is a common feature of qualitative research, particularly when exploring complex social phenomena that require detailed, content-rich data. This study uses qualitative data to provide a more granular understanding of the judicial decision-making processes, which may not be fully captured through the quantitative part of the research. The findings from the interviews are thus seen as illustrative of broader trends rather than definitive proof of systemic issues.

While considering that quantitative analysis was done with statistical tools which were appropriate for the type of analysis needed, a multivariate statistical analysis was not performed and this could have yielded interesting results as it would have involved the simultaneous observation of different outcome variables. Lastly, it is worth acknowledging that the study was conducted within a specific geographical and temporal framework. While this provides a detailed snapshot of the region and period under study, it also means that the findings, though enlightening, might not be universally applicable. Nonetheless, this localised focus is instrumental, as it may offer a novel baseline and comparison point for both local and broader-scale studies in the future.

7.6 Recommendations for future research.

This research paves the way for future studies to delve deeper into understanding the interplay of societal norms, judicial biases and sentencing outcomes. Future research can focus on a comparative analysis of different jurisdictions and their sentencing outcomes on one particular crime type, for example drug abuse cases. Another future research could focus on how sentencing guidelines could be developed and implemented in Malta while allowing the Magistrates to still avail of their discretionary powers. Future research can delve deeper into gathering an understanding on whether or not race can be a determining factor in gender discrepancy in criminal court sentencing in Malta. An interesting research could be one which investigates whether such gender discrepancies exist in the Juvenile Court. Another possible focus could be whether the gender of prosecuting authorities can influence the sentencing outcomes. A quantitative study on the subject of gender disparity in criminal court sentencing could be performed by using a multivariate statistical analysis method. It would be interesting if the two studies are compared and analysed.

7.7 Recommendations for future policy.

This research highlights the importance of putting forward certain recommendations for future policy and this with the sole aim of decreasing the gender discrepancies in criminal court sentencing.

7.7.1 The introduction of sentencing guidelines

As seen in this research it is essential that some types of sentencing guidelines are introduced in the Maltese Criminal Court system. Findings in this research show that sentencing guidelines can be either presumptive or voluntary and this to maintain a certain degree of Magistrate discretion. Local sentencing guidelines may possibly be based on a system introduced in the United Kingdom in the 1980's. The Sentencing - Overview, General Principles and Mandatory Custodial Sentences (2023) suggests that a Sentencing Council should be set up and be responsible for the formulation of sentencing guidelines. This Sentencing Council could also have a role in issuing updated guidelines that the Courts are bound to abide by unless it is counterproductive to do so.

7.7.2 Training to be provided to the Judiciary

The Judiciary can be offered training in relation to the stereotypical attitudes. As seen in this research study, certain stereotypical beliefs held by the Judiciary might influence the severity of the sentence meted out to male and female offenders. Therefore, training sessions could be provided in an effort to decrease gender disparities. The Judicial Studies Committee should be responsible for the organisation of the training of the Judiciary in Malta. Furthermore, the topic should become an integral part of all professional training and development sessions.

7.7.3 Uploading of all sentences into the Court's official website

This is important so to ensure that all sentences are converted to easily readable formats. Malta has a diverse population, including residents, tourists, and migrant workers. Translating court sentences ensures non-Maltese-speaking defendants or parties can fully understand the outcome and reasoning behind their sentence. Furthermore, translations make criminal justice processes more open and accessible to the general public, journalists, NGOs, and international observers. English translations facilitate comparative legal research, allowing scholars and policy-makers to study Maltese jurisprudence and sentencing trends. Legal scholars, journalists, and civil society organisations often monitor and report on court rulings. English translations allow broader scrutiny and analysis, especially by foreign observers or organisations assessing rule of law in Malta.

7.7.4 Interviews of Magistrates

Magistrates and Judges are to be allowed to be interviewed by PhD candidates as this will be beneficial for research purposes. The present situation, that Magistrates and Judges are forbidden to disclose information via interviews, limits PhD candidates whose research requires to hold interviews with presiding Magistrates and Judges.

7.7.5 Magistrates to use Community service as a sanction for female offenders

This study revealed that the most common non-incarceration sentences meted out to female offenders are Conditional Discharge and Unconditional Discharge. By receiving a community service sanction, female offenders are enabled to contribute towards society as this will be a means for restoration purposes.

7.8 Conclusion

This research has provided a strong analysis of gender disparities in criminal court sentencing through a multi-faceted lens and has also laid a solid foundation upon which future research can build. The journey through the practical and experiential realms of sentencing disparities has provided a nuanced, multi-dimensional perspective that has enriched the academic discourse and provided a pathway towards practical application and policy development. The integration of the quantitative and qualitative findings provides a comprehensive understanding of the complexities of gender disparities in criminal court sentencing, thus paving the way for future research and policy implications in the field.

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Appendix A- Introductory Letter

Dear Hon. Chief Justice,

My name is Miriam Farrugia and I am currently a Ph.D. candidate at the Faculty of Social Well Being, University of Malta. In order to fulfil the requirements of this course, I am carrying out a research study entitled ‘Sentencing in Maltese Courts: A gender based analysis’. The Principal Supervisor of this dissertation is Professor Saviour Formosa Ph.D., and the Co-Supervisor is Dr. Marceline Naudi Ph.D. The main aim of this proposed study is to develop an understanding of whether or not there exists a criminal court sentencing discrepancy between male and female offenders who are found guilty of offences which fall under the same category.

The methodology used in this research study is that of a Mixed Approach. This means that both Quantitative data as well as Qualitative information will be needed so as to gather a comprehensive understanding of the topic under study. In order to achieve this aim, a quantitative approach will be applied and it will consist of identifying and analysing the types of crimes committed by convicted female offenders who are brought before the Maltese Court of Magistrates: Criminal Judicature between the period 2005 to 2020 and this by using the data available on the website <http://justiceservices.gov.mt/courtservices/Judgements/default.aspx>. Consequently, these cases are compared with similar cases in which the offenders’ gender is male for crimes committed in the year 2005, 2010, 2015 and 2020. Whereas the Qualitative method will consist of gathering information through one to one interviews on voluntary basis, with ten Magistrates who preside the Courts of Magistrates – Criminal Judicature.

In conclusion, I would be grateful if Your Honour, grants me permission to contact the Magistrates presiding the Criminal Court and this via email to inform them about my research study. I will also be explaining my research in more detail through the information sheet which I am attaching below and which I intend to send to the Honourable Magistrates.

Sincerely yours,

Appendix B – Informative Email

Dear Sir / Madam,

My name is Miriam Farrugia and I am currently a Ph.D. candidate at the Faculty of Social Wellbeing, University of Malta. In order to fulfill the requirements of this course, I am carrying out a research study entitled ‘Sentencing in Maltese Courts: A gender based analysis’. The Principal Supervisor of this dissertation is Professor Saviour Formosa Ph.D., and the Co-Supervisor is Professor Marceline Naudi Ph.D. The main aim of this study is to develop an understanding of whether there exists a criminal court sentencing difference between male and female offenders who are found guilty of offences which fall under the same category.

The methodology used in this research is that of a Mixed Approach, which means that both Quantitative and Qualitative information are needed so as to gather a comprehensive understanding of the topic under study. In order to achieve this aim a quantitative approach is applied. The Quantitative method was used to identify and analyse the types of crimes committed by female offenders who are brought before the Maltese Court of Magistrates: Criminal Judicature between the period 2005 to 2020 and this by using data available on the website <http://justiceservices.gov.mt/courtservices/Judgements/default.aspx> . The decision behind this research strategy was that a period of sixteen years would give a clearer indication of the most common types of crimes that female offenders perpetrate in the Maltese Islands. On the other hand, the data gathering of male convicts who perpetrated similar crimes as the ones most frequently committed by females were gathered at an interval of 5 years, that is, 2005, 2010, 2015 and 2020. The next step is comprised of the Qualitative method which will consist of gathering information through ten one-to-one interviews on voluntary basis with participants coming from different fields within the criminal justice system. Participants include ex judiciary members, lawyers from the Attorney General’s office, police inspectors who have a prosecuting role and probation officers.

In conclusion, I would be grateful if the administration could share the information sheet which I am attaching below as it explains in more detail this research study and therefore whoever is interested in participating can contact me.

Sincerely yours,

Appendix C – Information Sheet

Information Sheet

Ph.D. Dissertation Title: Sentencing in Maltese Courts: A gender based analysis.

About the Research:

My name is Miriam Farrugia (I.D. 0000M) and I am currently a Ph.D. candidate at the Faculty of Social Wellbeing, University of Malta. In fulfilment of the Doctoral degree, I am performing a research study which aims to develop an understanding of whether or not there exists a discrepancy in the criminal court sentencing between male and female offenders who are found guilty of offences which fall under the same category.

The methodology applied to understand the topic under study is that of a Mixed Approach. The quantitative method consists of performing quantitative content analyses of data from Maltese criminal courts cases final sentences which are published online, covering the period between 2005 to 2020. Online criminal sentences in which female offenders received a guilty criminal sentence are gathered and analyzed. Consequently, these cases are compared with similar cases in which the offenders' gender is male.

The data gathered in the quantitative method is used as foundation for the formulation of the qualitative one which will consist of an in depth semi structured interview guide to be used as guidelines in the one-to-one interviews. The one to one in depth interviews will be held with ten professionals coming from different fields within the criminal justice system. The one-to-one interviews shall not exceed one hour per interview.

Important information about participating in the research:

The University of Malta holds strict rules and requisites with regards to performing studies and this to make certain that its ethical standards are maintained and adhered to. Participation to one-to-one interviews is on voluntary basis. Before each interview, the participants will be asked to sign the consent form in which the issues of confidentiality and anonymity are explained and the information gathered after each interview will be kept safely by the researcher, the interviewees' rights to withdraw their participation, or opt out from participating at any time during this research, will also be explained.

Should you wish to participate or receive additional information about this Ph.D. study, please do not hesitate to contact me on 998XXXXX, or email [REDACTED]

Appendix D - Semi-Structured Interview Guide

Semi-structured interview guide

1. In your opinion what is/are the reason/s for the discrepancy between genders in filing a guilty plea (73% females versus 66% males). Could it be that defense lawyers advise them to do so, or does it reflect more on the fact that female offenders tend to be more remorseful?

2. Fig.1: Offenders' past criminal record

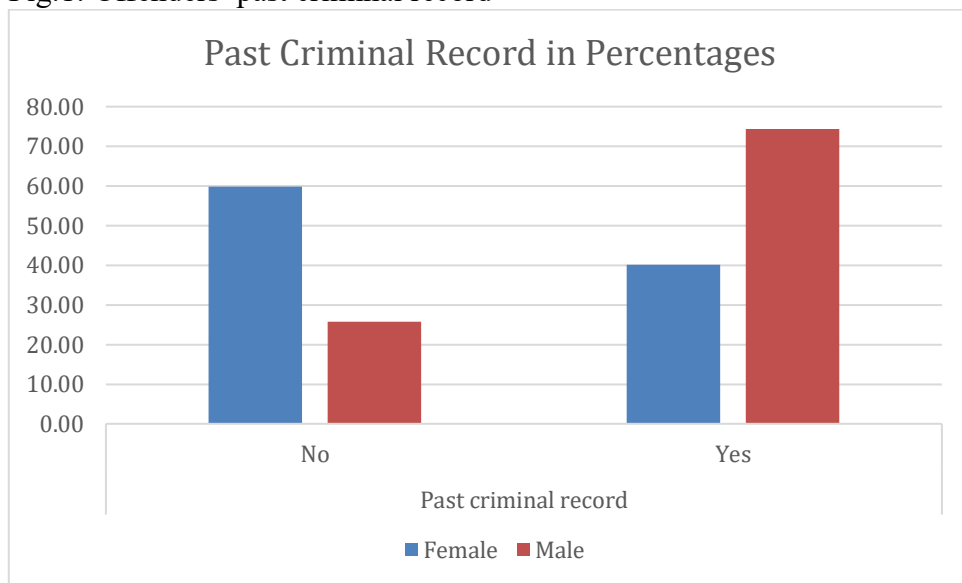


Fig.2: Offenders' past criminal record according to seriousness of crime record

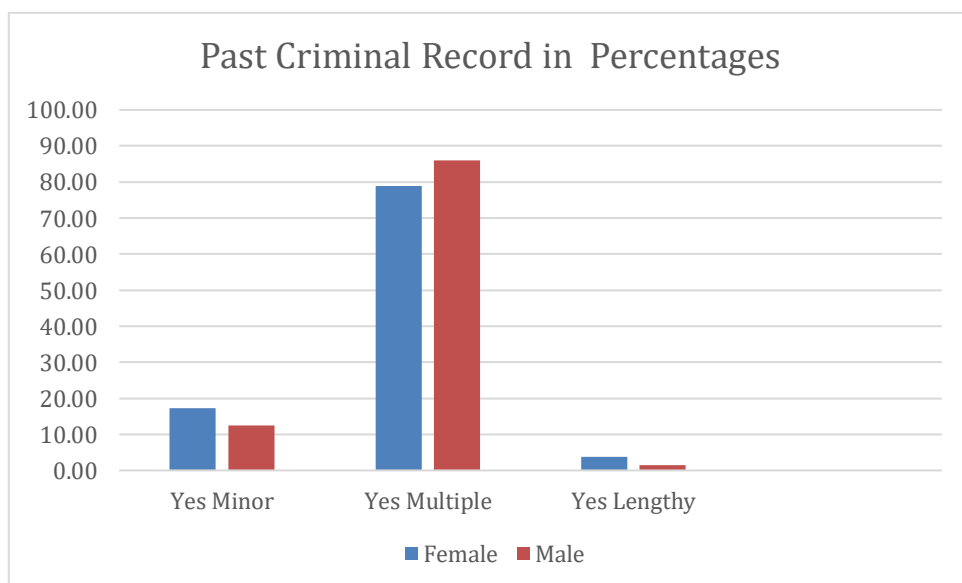


Fig. 3: Number of offenders and their past criminal record

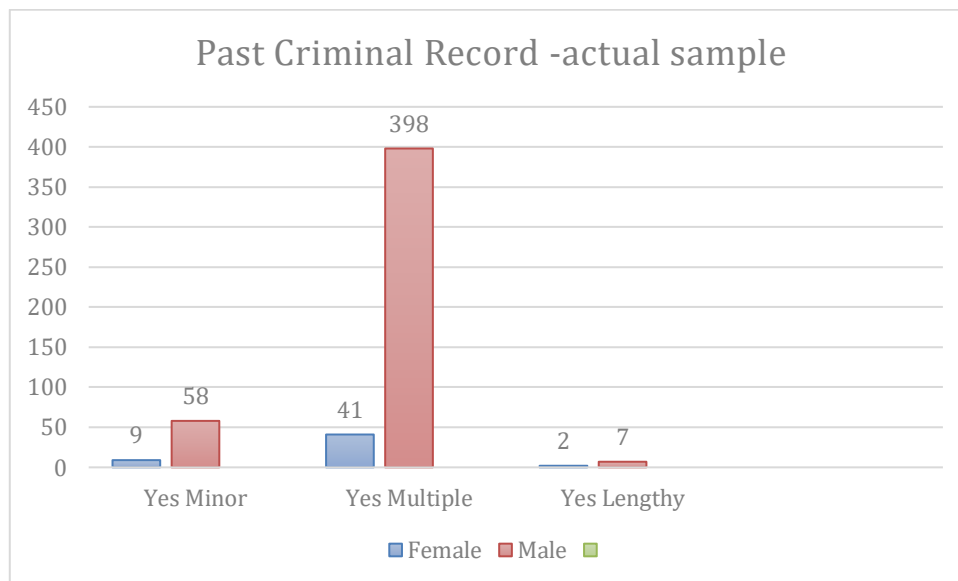
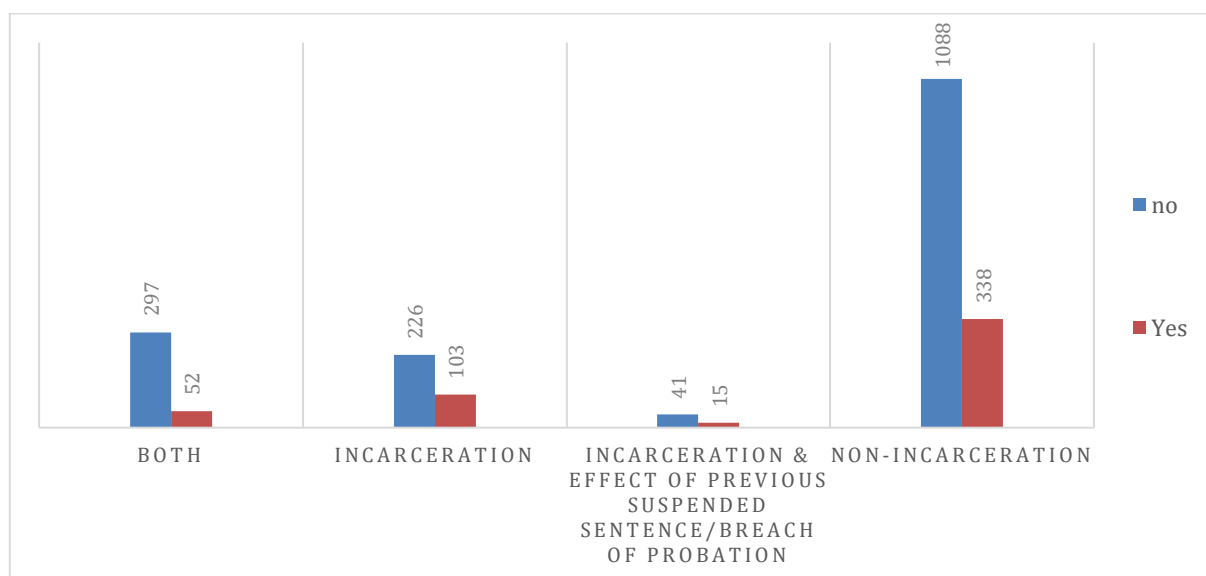


Fig. 4: Types of sentences meted out to accomplices and non-accomplices. In the graph 'no' and 'yes' refer to 'non-accomplices' and 'accomplices' respectively.



With reference to the above-mentioned information and also considering the information in Figure 4 which clearly shows that Magistrates chose the non-incarceration option as part of their sentence, how can professionals working in the field of criminal justice explain the fact that there seem to be offenders who despite having a significant criminal record are not given a prison sentence?

3. Assault and threats- data shows that females in Malta have a higher proportionality to commit these types of crime. Therefore, the question which arises from this finding is – how can one of the pillars of Focal Concerns Theory, that is, that women are less dangerous to society – be explained? To what do you attribute this change in criminal activity by females?
4. The findings from my quantitative study show that females are highly associated with financial crimes. Do you agree with this finding? If yes/no why?
5. What is your opinion on offenders of different nationality who chose to commit a crime in Malta? Is this deemed as an aggravating factor and therefore it might influence the type of sentence meted out? If not, should the court as an important institution convey the message that criminal acts on behalf of foreigners who come to Malta and commit a crime are to be condemned and punished accordingly? This is asked in view of the fact that the Court of Magistrates has expressed its views on this matter on different occasions. Hereunder are two examples of foreign offenders who appeared in front of the court and on whom the court has explicitly shared its views. In the case of *The Police vs Elena Stoycheva & Yana Nikolova*, Case number 797/2009, the Magistrate stated that:

"Il-Qorti jidhrilha li anki fil-kas ta Elena Stoycheva għandha tigi imposta piena karċerarja effettiva u dan bħala deterrent għal min jidhirlu jiġi hawn Malta bl-intenzjoni speċifika li jikkommetti serq fit-toroq (pick pocketing) u fil-ħwienet (shoplifting)".³³
 Another case on which the court has expressed its concern is that of *The Police vs Mihova Gyurga*, Case number 851/2010, where the Magistrate stated that:
"Il-Qorti pero hija tal fehma li għandha l-obbligu li tibgħat messagg ċar dwar is-serjeta tar-reati in ezami tenut kont tal-mewġa ta' każijiet simili".³⁴
6. Does the interviewee agree with the statement that the introduction of a higher-level number of female Magistrates in the Maltese Criminal Court has brought about change in sentencing practice and if so, what type of change can be identified by the interviewees?

³³ English translation: The Court believes that an effective imprisonment sentence needs to be given to Elena Stoycheva and this as a deterrent for those individuals who come to Malta with the specific intention to commit crimes like pickpocketing and shoplifting.

³⁴ English translation: The Court is of the opinion that it is dutybound to send a clear message in regard to the seriousness of the crimes being examined even when one considers the fact similar crimes are becoming widespread.

7. This research data is showing that irrespective of whether females committed a high crime level or a low level one, they are still given a non-incarceration sentence. This information adheres to two of the concepts of the Focal Concerns Theory which specifically states that females are seen as less dangerous and less blameworthy than males. Discuss.
8. This research results show that irrespective of the offenders' age and number of crimes committed, females keep receiving non-incarceration sentences while males receive incarceration sentences. What is your opinion on the introduction or implementation of sentencing guidelines in the Maltese criminal court?
9. This research is showing that female offenders whose criminal case incorporates aggravating factors pertaining to the offenders' characteristics section as detailed below in table 1, are 8 times more likely than males to receive an incarceration sentence. One cannot but question whether or not these female offenders are given a harsher sentence because of the fact that they go against typical gender stereotypes?

Table 1 – Aggravating factors

Aggravating Factors
Mode of theft or criminal activity
Aggravated drugs_possession
Aggravated drugs_proximity of youth centre
Aggravated theft_mode
Driving under the influence
Mastermind of crime
Series of fraud schemes
Series of theft
Offender characteristics
Acted without being provoked
Long criminal record
No co-operation with authorities
Offender was a public officer
Recidivism
Showed no remorse
Victim characteristics
Consequences suffered by victim
Elderly victims
Victim was a police officer
Victim was a relative/or in an intimate relationship
Other
Different chances given by court

10. Data is showing us that in cases where female offenders are going through sympathetic life circumstances pertaining to the provision of care for their family members, or else are victims of domestic violence, or are seeking asylum, they are about 6 times more likely than their male counterparts (who are also going through the same sympathetic life circumstances) to be non-incarcerated. What are your views on this matter?

11. After controlling for the number of aggravating factors (this was done by analysing the Offenders' gender versus Length of non-incarceration controlling for the Number of Aggravating factors), the analysis indicates that females are on average 1.47 times more likely than males to be given a comparatively shorter non-incarceration sentence. The information above leads one to question as to what reasons could there be behind the fact that even when both male and female offenders receive a non-incarceration sentence, females are more likely to receive a shorter sentence than their male counterparts?
12. What is your opinion about the presenting discrepancy in sentencing when in court proceedings where both male and female offenders present mitigating factors (such as early admission of guilt, or that they have a dependent child to take care of) the sentences meted out favour female offenders, that is, they get shorter sentences.
13. Would you like to add further comments?

Appendix E - Consent Form

Research Title: Sentencing in the Maltese Courts: A gender based analysis

Researcher: Miriam Farrugia M.A.

I have been given an information sheet about the Ph.D. research project entitled ‘Sentencing in the Maltese Courts: A gender based analysis’ and I have discussed the research project with Ms. Miriam Farrugia who is conducting this research as part of the Doctoral Degree supervised by Prof. Saviour Formosa Ph.D. and co-supervised by Dr. Marceline Naudi Ph.D. at the University of Malta.

I understand that my participation in this study is voluntary and that I am free to refuse to participate or withdraw from this research at any time and this without having to give any reasons and without there being any negative consequences. If any information is gathered before withdrawing from the interview, such information will be deleted accordingly. As an interviewee I understand that there is a period of fifteen days were I can withdraw my participation from the interview even after the interview has taken place and the information provided by me to the researcher will not be used in this Ph.D. study. I am also aware that my responses will be kept strictly confidential and that my name will not be identified or made identifiable during all the process of the putting together of this research study.

I agree that my anonymised data will be kept for a year after the completion of this Ph.D. study before being disposed of according to guidelines issued by the University of Malta.

I agree to take part in this one-to-one interview.

Name of Participant

Date

Signature

Name of Researcher

Date

Signature