

GENDERED LENS ON DEATH PENALTY

Author: Sakshi Harish. Sharma, LL.M (Criminal and Security Law) from Institute of Law, Nirma University.

INTRODUCTION

Capital Punishment involves the killing of a person who has committed a crime which is prohibited by law this process is approved as it is a legal killing. Capital Punishment or death penalty is an order by the state which owes to a commission of a crime. The executable is a debatable topic in the society. The proponents of this punishment use deterrence as an argument and believes in an eye-to-eye approach. Though the judiciary is a firm on the decision that the death penalty should be exercised in the 'rarest of rare case.' When a person is convicted for a heinous crime which is of such a nature that the appropriate court deems fit that such convict is required to be given punishment of death penalty then it is for promoting and maintaining public order and peace. It is rightly pointed by Thorsten Sellin that "Death penalty is the rarest of all punishments. Attitudes toward it is rooted deep in the sentiments of people and arouse powerful emotions whenever its justification is questioned. So long as the status quo is undisturbed nothing happens, but the moment it is attacked either by abolitionists or by retentionists, the debate begins". It cannot be presumed that the gravity of punishment can be correlated to deterrence encompassing to the lengths that justifies its restriction on the fundamental rights like human rights and the right to life through the execution of death penalty. Many feminist criminologists have emphasized that the judiciary specifically have given bias decision while pronouncing death penalty between men and women.

CLASSICAL TO MODERN SCHOOLS OF CRIMINOLOGY: THEORIES ON FEMALE COMMITTING A CRIME

As stated above that crime is considered as a male oriented field in our society and the females are not a part of that society. Thus, a school of thought emerged in order change this mind-set. If we look at the schools of Criminology, we find that the schools supported some or the other ideology, they had difference of opinion in that sense, but what is essential to notice is that all the schools professed their ideology representing to a section of a society. These schools did not even for once chose to consider the other sects of the society, their ideology always focused on male, the examples put forth involved man. As it is rightly

highlighted that“ The deviance of women is one of the areas of human behaviour most notably ignored in sociological literature”¹

Even some criminologists have attempted to put forth some understanding of why women commit crime. Earlier, the theories were based upon the ideas were placed upon the psychological and biological factors and ignoring the economic and social aspects. An Italian Criminologist, Cesare Lombroso², stated in his theory anthropological and phrenological features and distinguished between two heads namely, “normal woman” and “criminal woman” through which he pronounced that criminal women are less feminine and impassive. According to a Psychologists, Sigmund Freud, women in crime faces a dilemma which he calls “Penis Envy” that they behave in such manner because of their lack and lust for manhood. These were the classical theories which were rejected by the feminist school of criminology because they all objectified women’s nature and behavioural patterns.

With development in criminology mainly in the area of female offenders, attempts were made to differentiate between male and female criminology. According to Robert Agnew’s findings with regards to “General Strain Theory”, both the male and female offenders experience distinctive pressures, it can be social, economic, emotional to which they respond correspondingly. He suggested that, men are found committing crimes which involves violent and corporate offences whereas the woman are often seen committing self-harm.³

A set of feminist hypotheses and a breakthrough from earlier theories were suggested by, Kathleen Daly where she provided with a distinct study of female criminology. This revealed that how theoretical issues are associated when assumptions are formed amongst different genders.⁴

The aim for criminology is to find the cause of commission of crime and to introduces various preventive measures. It analyses the behaviour of an individual who commits crime which in return impacts the society, it is nowhere mentioned that the commission is done only

¹ Marie-Andree Bertrand, Frances Mary Heidensohn, “The Deviance of Women: A Critique and an Enquiry” (1968)

² La donna delinquente(1893).

³ Running Head: Agnew’s General Strain Theory(1997).

⁴ Kathleen Daly, Women's pathways to felony court: Feminist theories of lawbreaking and problems of representation, (1992).

by male. Thus, to highlight this lacking in the classical or pre-modern schools a new school emerged called the Feminist School of Criminology.

IS JUDICIARY A GENDER NEUTRAL WHILE PRONOUNCING DEATH SENTENCE?

Over the centuries, crime is envisaged to be male dominant matter in the world. Female are considered to be of a humble, composed, spiritual character and are foundations of a family. The Justice administration time and again states that females are society-centric. As they have lots of obligation and barriers within the family. However, within the time being the world has evolved and so do the women. As the matter of fact, in today's world men and women are given equal opportunities with respect to every societal aspect which increase the development and crime rate. It is well said that betterment towards society brings more possibility toward the commitment of crime, severity of the offence and death sentencing imposed for commission of wrongdoing. When punishing the convict, the judge relies on the circumstances of both the victim and the offender, gravity of the case, substantial proof, etc., but the same should not be applied while pronouncing the judgment with reference to the gender.

It is frequently seen in the Indian Judiciary that while delivering judgment in the same offence committed by men and women the punishments offered seemed to vary. It is often observed that women are given lesser punishment than men which violates the Art, 14 and 21 of Indian Constitution. To support the argument there are few pronouncement-

- **EdigaAnnamma v. State of Andhra Pradesh**⁵ was the case where the Supreme Court reduced the capital punishment to life imprisonment which emphasized the enrooted feelings of protection and paternalism that results in excusing women of death penalty. Furthermore, it highlighted the Court system showcasing the pity while dealing with female convicts.
- In the case of **S. Nalini vs. State of Tamil Nadu**⁶, there was a major fallback on the part of the justice system as previously Nalini was condemned to death but which was later revoked on the grounds that she was a "member of weaker sex" and a "mother" and the child would become an orphan as his father was already been sentenced to death, and some other consideration which ruled out Nalini from classifying her the rare of rare case.

⁵AIR 1974 SC 799

⁶ AIR 1995 SCC 253

In the sentencing of Nalini, it highlighted that she was an aged and educated women – noting the facts it can be said that she was well aware of her action though the court mitigating factor over aggravating circumstance which were not applied in while deciding for the other members who were male.

CONCLUSION

Protesters, Opponents and biological explanation ignores and eradicates the gender issue and criminal association as a fundamental social matter. It is difficult to compromise between crime and criminal due to the social impacts on criminal agenda and implementation which goes altogether. There is a need to discontinue from looking at crimes as something “special” and begin to realise that it is element of everyday life which includes gender as an integral component.

Overlooking female offenders contends that men are the only one who are the offenders. It has become like a custom that women are sentimental and thus cannot commit any crimes. Women are regarded as unruly when she defies with the patriarchal role structure and are deemed worthy of punishment. But with regards to the treatment of females in the criminal justice system is involved, they are provided with lenient sentences as compared to the male. It is such that even when both are engaged in the similar offence the sentencing is lenient, just because she is a female.

Feminist criminology questions why are the women interpreted as victim all the times and why is it they are assumed to have committed lesser offences than male on the grounds of their gender. It thus evaluates various viewpoint and constitute in connecting to various concepts and concludes with better explanations while resolving the issues.