

Women Offenders And The Criminal Justice System

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Abstract: *The present paper deals with the women offenders and the justice delivery system. As the historical neglect of the female offender as a meaningful research subject, little empirical data address the processing of women offenders from the initial point of arrest through conviction. While talking of punishment a simple question always arises in mind: Do women appear to be more favorably treated by the courts for the commission of the same offenses as men? Generations of criminologists and sociologists have believed that the female offender if punished meets on the whole with greater leniency on the part of the courts than the male and are probably believed to be so by many people. Thus the basic aim of this paper is to understand whether modern criminal justice system is based on chivalry or not.*

Keywords: *Chivalry, Crime, Criminal Justice System, Prisons and Women offenders.*

I. Introduction

It is seen from the earlier studies that women offenders are themselves responsible for becoming victims of crime or deviant or aberrant behavior. This can be better understood with the help of an example of a woman who is criminally assaulted by her brother-in-law, frequently beaten by her husband, denied the legitimate share in her husband's/father's land and property by her kin, or forced by circumstances to help her husband in illegal economic pursuits. What happens when such a woman endeavors to free herself from the stultifying life her family imposes upon her? More often than not, the freedom and redressal are sought, may be unintentionally through behavior which ultimately is labeled as 'crime'.

As the society demands changes in the way of maintaining social order, the techniques of social control are also adjusted to changed situations as no system of social control works perfectly. With the change over time, the functions of prison have also changed from custodial to coercive and to corrective. In early days, jails functioned on the principle of custodial care but modern jails function on the principles of rehabilitation and reformation.

II. Modern Justice System And Chivalry

Many people believed that female offender if punished are dealt with greater leniency than male offender because they are considered more gender sensitive and other reason is modern punitive philosophy is based on Chivalry. Chivalry means treating others, especially women with courtesy, sympathy and respect. The chivalry theory states that women are treated more leniently than men by the criminal justice system. Police are less likely to charge women and the courts will tend to give women a lighter sentence, even when they have committed the same offences as men. Thus chivalry represents the idea that the criminal justice system puts women on a 'pedestal' and treats them like a 'protector'.

In the modern justice system women appear to be more favorably treated by the courts for the commission of the same offenses as men. Several writers have tested the 'chivalry' hypothesis by comparing differential sentences on women and men and also examining the language and behavior of participants in court proceedings. Chivalry is one of the main strands of Eaton's (1986) works and she reviews many other studies in this field including the work of Nagel (1980) and Moulds (1980) in the USA. This work appears to show women receiving less severe sentences than men, yet seriousness of crimes and length of record were not controlled.

There is always a sharp debate among the scholars regarding the treatment of the women offenders in the criminal justice system. As far as the treatment meted out to the offenders in the prisons is concerned, some scholars have argued that women offenders should be treated differently from male inmates because they are more gender sensitive than their male counterpart. Other group of scholars argued that crime is an abnormal activity; the punishment should therefore be the same for the inmate whether the person is a male or a female so that there is no space for leniency for anyone and both male and female inmates are treated equally in the criminal justice system. It is an infringement of an established social order that calls for a stringent action irrespective of who the doer is. Many women offenders are likely to be incarcerated now than at any previous time in history and the criminal justice system appears to be more willing to imprison women. So there is a continuing debate whether equality under the law is necessary for both men and women.

Double jeopardy occurs when women who are often subject to additional informal system of social control and social justice also face the formal legal apparatus of the courts. It is clear that women already

experience sanctions other than those of official agencies (Heidensohn 1985:103). Three major themes stand out as illustrating and these are:

- Chivalry, courts and police
- Prison and penal policies
- Philosophy and justice.

Since almost all female offenders are first offenders and criminal behavior is not part of their life organizations, their imprisonment and banishment from society fail to bring about the required change in attitudes and values towards society. The sentence has to be adjusted to the character and the treatment needs of the offenders and should taken into account the causal factors in their crimes. Thus, chivalry in short appears to be a concept which should be practiced by the courts and in modern times many courts are practicing it. The notion of chivalry can be best explained through the different case-laws related to women that are discussed below:

Case Laws

- **State Of Tamil Nadu Through Superintendent Of Police, CBI/SIT Vs Nalini And 25 Others**

On the night of 21 May 1991 a diabolical crime was committed. Rajiv Gandhi, former Prime Minister of India, was assassinated by a human bomb in Tamil Nadu. With him 15 persons including 9 policemen perished and 43 suffered grievous or simple injuries. Assasin Dhanu, an LTTE (Liberation Tigers of Tamil Elam) activist, who detonated the belt bomb concealed under her waist and Haribabu, a photographer (and also a conspirator) engaged to take photographs of the horrific sight, also died in the blast. A camera was found intact on his body at the scene of crime. The film in the camera when developed led to unfolding of the dastardly attacks committed by the accused and others. A charge of conspiracy for offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987; Indian Penal Code, 1860; Explosive substances Act 1908; Arms Act 1959; Passport Act 1967; Foreigners Act 1946; Indian wireless Telegraphy Act 1933; was laid against 41 persons, 12 of whom were already dead and 3 absconded. All were awarded death sentence on the charge of conspiracy to murder under S120B read with S302 IPC and various other minor offences.

Nalini along with the deceased accused Sivarasan, Dhanu and Shubha met Haribabu, met at a bus stand and proceeded to the venue of the public meeting on 21st May 1991. Nalini provided cover to Dhanu and Shubha and when Rajiv Gandhi arrived, Dhanu gained access near him and while in close proximity to him, she detonated the explosive device kept concealed in her waist belt, resulting in the blast. The apex court by a unanimous verdict confirmed death sentence against Santhan, Murugan and Arivu. As regards the extreme penalty of death to Nalini was concerned it was confirmed by majority of 2:1 (JJ Wadhwa and Quadri concurred). Judge commuted sentence of death to life imprisonment.

- **Regina v. Kiranjit Ahluwalia**

In September, 1992 Kiranjit Ahluwalia made news after she was released after serving three and a half years of a mandatory life sentence for murdering her husband, Deepak, whom she had drenched in petrol while he was sleeping and set alight. Her retaliation followed 10 years of systematic abuse, but what caused her to flip on that fateful evening was that he had pressed a hot iron against her, the scars of which she still bears. Kiranjit was released by Appeal Court judges on ground of “diminished responsibility”.

- **Priya Payel v. State of M.P & Anr**

The present case holds its importance for being the only celebrated case in which the question whether a lady may be prosecuted for gang rape has been taken up. The facts of the present matter were that the prosecutrix was returning by train after attending a sports meet. When she reached her destination, accused Bhanu Pratap Patel (husband of the accused appellant) met her at the railway station and told her that her father has asked him to pick her up from the railway station. The prosecutrix accompanied accused Bhanu Pratap Patel to his house. He committed rape on her. When commission of rape was going on, his wife, the present appellant reached there. The prosecutrix requested the appellant to save her. Instead of saving her, the appellant slapped her, closed the door of the house and left place of incident. On the basis of the complaint lodged, investigation was undertaken and charge-sheet was filed. While accused Bhanu Pratap Patel was charged for rape under IPC, the appellant was charged for commission of offences punishable under Sections 323 (punishment for causing hurt) and 376(2)(g) (punishment for committing gang rape) of IPC. The revision filed before the High Court questioned legality of the charge framed so far as the appellant is concerned, relating to Section 376(2) (g) IPC. It was contended that a woman may not be charged for commission of offence of rape. The High Court was of the view that though a woman may not commit rape, but if a woman facilitates the act of rape, Explanation-I to Section 376(2) comes into operation and she may be prosecuted for gang rape.

The Supreme Court, apparently, had a different view. The apex court held that, after a reading of Section 375 of the IPC, rape may be committed only by man. A contention was raised by the counsel of the state

that the woman may be held liable for Abetment as under section 108 of the IPC. The court on this said that such contention should have been raised in the trial court or in High Court, but it may not be done in the Supreme Court.

It is to be noted that while deciding cases, court should look at the reasons and compelling factors which led a women to commit that particular crime. As observed in most of the above cases, our unbiased social system is one of the main reasons why women resort to crime as retaliation to her suppression. That's why the court imported the concepts such as "diminishing responsibility" (as in the case of Kiranjit Ahaluwalia), battered women's syndrome etc. Attention should be paid on providing her with proper medical aid and even rehabilitation. In case a female offender suffers mental disturbance and she comes out of prison after serving her term, probability to her committing crimes goes higher. Many of the feminists writers who were critical of conventional criminology, it's treatment of female offenders and of gender and crime have moved on to focus on gender and the criminal justice system and they have been joined by others whose research in this area has been within a broadly feminist framework.

Thus the present system of justice delivery and punishment needs to be replaced by a system based on social investigation and consideration of personality make-up and the circumstances in which the crime was committed. Sentences wholly unrelated to the feelings, attitudes and values of the offenders and the compelling situations and circumstances in which these develop are less likely to succeed in their retributive, deterrent and reformative aims.

End Notes

- [1]. Bedi, Kiran. (1998). *It's Always Possible: Transforming One of the Largest Prisons of the World*. Sterling Publishers: New Delhi, p.341.
- [2]. Manheim, Hermann. (1940). *Social Aspects of Crime in England between the Wars*. Allen and Unwin: London, p.343.
- [3]. Eaton, M. (1986). *Justice for Women*. Open University Press: Milton Keynes.
- [4]. Nagel, Ilene. (1980). 'Sex Differences in the Processing of Criminal Defendants', in D. Kelly Weisberg (ed.): *Women and the Law: The Social Historical Perspective*. Schenkman: New York.
- [5]. Moulds, E. (1980). 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', in Datesman, S. and Scarpitti, F. (eds.): *Women, Crime and Justice*. Oxford University Press: New York.
- [6]. Heidensohn, Frances. (1985). *Women and Crime*. University Press: London, Macmillan and New York, p.103.
- [7]. Annual Report of National Human Rights Commission (2004-2005). Available at <http://www.nhrc.nic.in>.
- [8]. Pollak, Otto. (1950). *The Criminality of Women*. University of Pennsylvania Press: Philadelphia.
- [9]. Human Rights Watch. (1996). *All Too Familiar: Sexual Abuse of Women in US State Prisons*. Available at <http://www.aclu.org/hrc/PrisonsStates.pdf>.
- [10]. Heidensohn, Frances. (1989). *Crime and Society*. Palgrave Press: New York.
- [11]. The Director General of Police/Director, Fire and Rescue Services. (2009). "Rehabilitation of Women Prisoners", Tamil Nadu. Available at <http://www.thehindu.com/>.
- [12]. Daily Excelsior. (2013). "Torture of Indian Prisoners". August 5, 2013, p.8.