A Critical Study on Capital Punishment and Women

M. Saranyadevi and M. Kannappan

Saveetha School of Law,
Saveetha Institute of Medical and Technical Sciences,
Saveetha University,
Chennai.
saranyaaquarius31@gmail.com

Saveetha School of Law,
Saveetha Institute of Medical and Technical Sciences,
Saveetha University,
Chennai.
kannappanm.ssl@saveetha.com

Abstract

This Article brings the analysis through 2005, beginning with a reprise of the conversations about gender bias and disparity in the death penalty system. It appears that female offenders have always been treated differently from male offenders in the death penalty system, sometimes for reasons that are easily justifiable but too often simply because of sex bias. The next section of this Article explores aggravating and migrating circumstances in the death penalty statutes, identifying those women who have been sentenced to death, those whose death sentences were reversed, those who were actually executed, and those still remaining on death row.

Key Words: Death penalty, women, gender bias, disparity, morality.
1. Introduction

Picture in your mind a condemned murderer being sentenced to death, eating a last meal, or trudging ever-so-reluctantly into the execution chamber. In your mind’s eye, do you see this wretched creature as a woman? Most of us do not, given that over ninety-nine percent of the people executed in the United States are men. Female offenders, both girls and women, are so seldom found on our death rows that once condemned, they may be ignored and forgotten. In closing, specific means are identified by which death penalty jurisdictions can reconsider policies that result in sex-based disparities and can reduce those instances of sex bias in their death penalty systems.

The implication of capital punishment for women, and attempts to explain why women are executed at a disproportionately low rate (Brashear, Jenna 2009). Examines the data related to women on death row since 1973, with particular attention to similar problem that have been documented for men, while highlighting racial difference were found (Harry greenlee, Shelia 2008). Through an analysis of capital punishment laws in 125 countries, this study finds that women’s legislative representation is significantly correlated with the abolition of capital punishment (Amy moreland, David watson 2016). The analysis current through 2005, beginning with a reprise of the conversation about gender bias and disparity in the death penalty system (Victor L. Streib, 2005). The unique lens for examining the death penalty that is provided by a sex bias analysis (Victor L. Streib 2002). It also focuses on the gender of the murder victim, in particular, how gender influences death seeking and death penalty sentencing decision (Royer, Caisa Elizabeth 2014). The study was undertaken to determine whether these same difference present in Japan, a nation that imposes death penalty. In supporting death penalty U.S. women were less punitive than U.S. men (Eric G. Lambert, Shanhe Jiang 2016). Violation of the equal protection on the basis of the sex when imposing death penalty. In 1800s and early 1900s abolished death penalty statutes together (Andrea Shapira “Unequal before law). The analysis of the state capital statutes, there is a gender bias inimical to the interest of women in capital punishment and law. Only one women has been among 143 person executed since execution resumed in 1977 (Elizabeth Rapaport “The death penalty and gender discrimination). The article reviews evidence supporting a “Female victim effect”. It analyses cases exploring how cases with male and female victim differs (Royer, Amelia 2014). Level of death penalty support among college students from both India and the U.S. students expressed greater support for capital punishment. The findings support the contention that gender and culture plays a role in the capital punishment (Eric G. Lambert 2015). Rarest of rare case death penalty can be imposed on the convicted person. According to Article 21 of Indian constitution no person shall be deprived of his life or personal liberty except to procedure established by law. In 21st century 140 countries abolished capital punishment Dr. Vimal R. Parmar (2015).
The research deals with whether gender bias plays an important role in death penalty.

**Objective**
- To analyse the reason for capital punishment.
- To study the relationship between gender and capital punishment.
- To find whether gender plays an important role in capital punishment.

**Hypothesis**

H0: Death penalty does not have a gender bias.

Ha: Death penalty has a gender bias.

**Gender Bias and Disparity**

Among the many deficiencies of the American death penalty system is a system-wide bias based upon the sex of the offender. The impacts of this sex bias, indeed its very existence, the discrepancy between men and women in our execution statistics has been recognized, at least in passing, even by the United States Supreme Court. A leading scholar on gender issues has concluded, “Capital jurisprudence—the law for deciding whether to kill—is also a hidden battleground of gender. This gendering of capital jurisprudence appears to have infected all who come into contact with the entire death penalty system and to have pushed aside concerns about justice and reduction of violent crime. The following sections separate these sources of gender bias into the selection of death penalty crimes and the shaping of these crimes through aggravating and mitigating circumstances.

**Aggravating and Mitigating Circumstances in Death Penalty Statutes**

Although modern death penalty statutes typically list a variety of express factors to be considered in aggravation or mitigation, no such express consideration of the offender’s sex appears in any death penalty statute in the United States. An apparently increasing number of other countries (primarily former Soviet Bloc nations) do include express provisions in their death penalty statutes either excluding female offenders or giving them special mitigation (such as pregnancy and the responsibilities of motherhood) in imposing death sentences.

Consider some typical aggravating circumstances found in death penalty statutes. A common aggravator is having committed a murder for hire, either as the hired killer or as the person who hired the killer to commit the homicide. American death penalty statutes provide no such sweeping provisions (except for pregnancy), but our schemes of aggravating and mitigating circumstances can and apparently do have a disparate gender impact. The Ohio statute, for example, is broad and straightforward: “The offense was committed for hire. Women convicted of murder are generally more likely than men to have hired a killer to commit their homicide. However, the killers that women hire are almost always men, as are the killers hired by men. Assuming that the hired killers sentenced to death are almost always men regardless of the sex of the
person who hired them, the impact of this aggravating factor may militate somewhat against men. Nonetheless, the use of this aggravating factor against the person hiring the killer probably results in a higher percentage of death sentences for women than of death sentences for men.

Another very common aggravating circumstance is the offender’s having a previous record of violent crimes. If the defendant convicted of the present murder also has a previous criminal record of violent crimes, this makes it more likely that the defendant will receive the death penalty instead of a prison sentence. Again, we know that women convicted of murder are generally less likely than men to have prior convictions for murder, attempted murder, or other violent crimes. Therefore, this aggravating circumstance will be available in a smaller percentage of women’s cases than of men’s cases. However justifiable this aggravating circumstance may appear to some, it nonetheless strongly favours female capital defendants over male capital defendants.

Mitigating circumstances make the death penalty less likely to be imposed. As with aggravating circumstances, they also speak both to the seriousness of the crime and to the characteristics of the defendant. A very common mitigating circumstance is that the offender acted under the influence of duress or emotional disturbance at the time of the homicide. California lists as a mitigator “Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.” The Ohio statute also is a typical example of the duress mitigator. It considers “Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.” This factor would appear to be evidence of it usually is quite difficult. We do know that judges and juries generally are more likely to find duress or emotional disturbance for female offenders than for male offenders in homicide cases. Even a casual observance of male and female criminal defendants reveals the greater ability of almost all women to manifest their emotional side as compared to men, providing the defense attorney with a more effective means of demonstrating this mitigating circumstance.

**Death Penalty for Women Nationally**

Before turning to the Ohio cases of women executed and sentenced to death, first examine the national context of this practice. We know that women are much less likely than men to commit murder, essentially the only crime currently that might result in a death sentence. In fact, women account for about ten percent of murder arrests nationally. At least some of these murder arrests occur, however, in jurisdictions that don’t have the death penalty. In addition, certainly not all of the murders upon which these arrests are based are capital murders. Coming out the other end of this long, dark tunnel of the early stages of the death penalty process, we do know that women account for only two percent of death sentences imposed at the trial level. Executions of Female
Offenders. This appears to be significant, in that ten percent of murder arrests were of women but only two percent of death sentences for murder are of women. The gender differential gets even worse. Women account for only 1.5 percent persons presently on death row and for only 1.1 percent of persons actually executed.

**Executions of Female Offenders**

The actual execution of female offenders is quite rare, with only 568 instances in the 374 years from 1632 through 2005. These are documented cases of lawful executions of females and exclude lynching and similar deaths imposed upon females. Beginning with the earliest American colonial period, these 568 female executions constitute about 2.8 percent of all American executions. Documenting the older executions of female offenders is quite challenging, but we do have fairly complete documentation of these executions since 1900. From 1900 through 2005, only 0.6 percent (50/8339) of all executions were of women.

During the past 106 years, nineteen states and the federal government have executed female offenders. This was approximately half of the United States jurisdictions that had the death penalty during that time period. They ranged in age from seventeen-year-old Virginia Christian in Virginia to fifty-eight-year-old Louise Peete in California. In contrast, the entire northwest quarter of the United States has not seen any executions of female offenders since 1900. This northwest quarter consists of all states west of the Mississippi and north of the southern-most western states. These fifteen contiguous north western states are Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Twelve of these fifteen north western states (excluding only Minnesota, Missouri, and Nevada) have never executed any female offenders in their entire histories.

**Sex Bias within the Death Penalty System**

It seems clear that female capital offenders are under-represented in capital trials, on death rows, and in execution chambers. As the previous section documented, major death penalty states such as Florida, Oklahoma, and Texas went a century or more without executing female offenders, and the entire northwest quadrant of the United States has never executed a female offender in all of its history. These stark facts raise at least a strong presumption of sex bias in the death penalty system. In addition, the sex bias in the death penalty system also seems much more subtle and unspoken, often even denied by those engaged in it.

**Death Penalty System through the lens of Sex Bias**

Raising the specter of sex bias in the death penalty system tends to generate confusion and friction among those who work within and around the death penalty system. Many political activists working to abolish the death penalty for all offenders are uneasy about research reports raising the possible interpretation
that “not enough” female offenders are being executed, at least if we are to level the death penalty’s playing field for male and female offenders. The political agendas of others are focused upon revealing the many ways in which women are subjected to unrestrained violence and even death in our society. They appear nervous that revelations about “too few” lawful executions of female offenders might detract from their valid and laudable concern about far, far too many unlawful beatings, rapes, and murders of females.

On the other end of the political spectrum are those resisting efforts to expand women’s rights and opportunities, fearing such an expansion may come at the expense of men’s prerogatives and advantages. This group may welcome research revealing sex bias against men in any societal arena, using it as a springboard to claim similar bias in other arenas. Their arguments may even go to characterizations of any protected status of women within the death penalty system as yet more evidence of the many comforts women enjoy by remaining in a protected status, even if that status may be a second-class status. One also suspects a sense among this group that women should be screened away from the death penalty, or at least “real women” should. Such a group, of course, would exclude lesbians, demonstrably violent women, and others exhibiting unlady-like behaviour. They might argue that women such as their mothers, wives, and daughters should be out of harms way, they might argue. The exception, of course, is the wife who poisons or hires someone to kill her husband. That scenario is a little too close to home, they might think, and they may see a need to “send a message” to the wives of America that such behaviour is too threatening to be treated less harshly.

**Statistics on Women and Capital Punishment**

Ten percentage women are arrested for murder but two percentage only has receive the death penalty. Less than 0.1% approximately 50,000 women in prison in U.S. No women were executed in 2003, while 65 men were executed.

**Two Essential Human Rights**

Death penalty breaches two essential human rights. Right to life and Right to live free from torture. Both rights were protected under Universal Declaration of Human Rights adopted by UN in 1948.

### 2. Conclusion and Recommendation

The death penalty has been imposed on female offenders during at least the past century and in some cases for several centuries. The most obvious empirical conclusion to be drawn from these data is that this practice has been rare and inconsistent, with little suggestion of it being grounded in a rational process. Perhaps the most striking example comes from Oklahoma. That state has executed only four women in its history. One in 1903 and three in 2001.68 Nothing about the murder rate by women or the general use of the death penalty in Oklahoma explains why no such executions occurred prior to 1903 or in the near-century between 1903 and 2001. Texas, the clear leader in current
executions, has executed well over 1,000 people in its history. Only six of these executions have been of women, however. Two women were executed in the 1850s and one in 1863, but the next Texas execution of a woman was in 1998, leaving a gap of 135 years between executions of women.

The first recommendation would require no more than a state-specific examination of death penalty statutes by a legislative committee and/or a special investigator. Such an examination could identify statutory provisions that might fall with different weight upon male and female offenders. The process could then move on to seek means to amend those statutory provisions to make them more gender-neutral.

The second recommendation may do more to make us feel good than to implement any actual progress toward gender-neutrality, but at least it puts the issue on the table. A jury hearing a death penalty case in federal court is instructed by the trial court judge at the close of the sentencing that “it shall not consider the sex of the defendant and the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the sex of the defendant may be.” And, if a death verdict is returned, each juror must sign a certificate that the sex of the offender was not considered in reaching that death verdict. Such provisions at least assure that capital jurors focus on the gender issue, even if we have no guarantee that they take the issue seriously.

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