

Female Criminality in the Arab World Inspected from a Human Rights Perspective

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I- History & Theoretical Background

Female prisoner from Kamis Moshit,¹ a married woman in her 20's, murdered a young man in her house; subsequently she was sentenced for seven years of jail with hard labor.

Western human rights organizations² heavily criticized the ruling of seven years, perceiving the sentence as arbitrary since it lacks accurate consideration and study of the motives and context involved in the crime. The harassment she endured and her right to self-defense, dignity and well-being³ were underestimated. Furthermore, Western organizations questioned the impartiality and transparency of the judicial system that lacks a written detailed penal code and criminal law that have specifications for punishment in the different categories of crimes. In addition, these organizations raised a concern about the level of respect to human rights and the preservation of the dignity of the people, labeling this case as a breach of human rights according to international norms.⁴

This case is one of many that are taking place in the Arab World where the rate of female criminality has been sharply increasing in the last three decades⁵ and where the efforts to prevent or study these issues are negligible.

Minimal research in this field is being conducted in the world, particularly in the Arab region; the cause can be traced back to three major issues. First, the Arab World is mainly constituted of third-world countries where the state is, or should be, primarily preoccupied in providing its people their basic rights (food, shelter, clothing, health, etc.). This fact prevents the state from allocating enough time and resources to solve issues such as female criminality. Second, the fact that the rate and gravity of male criminality are usually higher than female criminality; therefore, time and effort allocated to research male criminality issues are given priority. The third reason is the underestimation of the competence and proficiency of women in the Arab World. This misled presumption also inversely assumes that since women are not as physically capable as men then their capacity to commit crimes is therefore lower. This misperception is further reinforced especially considering the higher level of affection most women possess. Traditional perceptions of women as the image of devote motherhood, constantly preoccupied with and providing care for their children, is still the norm.⁶

Crimes committed by women are generally different from and less violent than the ones committed by men, as well as different in type. These crimes can be classified into five

main categories: theft, prostitution, drug use & trafficking, manslaughter & forgery. Amongst these categories, prostitution is the most rampant and is labeled as "the symbol of female criminality."⁷ Prostitution, a very appealing topic to the media, not only affects the offenders concerned, but females in general.

II- Causes of Female Criminality in the Arab World

Linking the causes of female criminality with the lack of human rights concerning women reveals diverse reasons that would provoke crimes and can assist in establishing ways to avoid them. One proactive crime prevention measure can be accomplished by guaranteeing the rights and the freedoms of every human being. The last century witnessed various atrocities; as a result, principles of human rights earned value because of the excessive need for "the recognition of the inherent dignity and the equal and inalienable rights of all the members of the human family in the foundation of freedom, justice, and peace in the world."⁸ The aim of human rights for everybody is to improve the condition of humanity by providing equal rights to the people in the hope of minimizing the probability of acts of violence against society and its members. Thus, the main causes that drive an Arab female to commit a crime would be: poverty, gender-based violence, education, patriarchal society, discriminatory laws, political conflict, abnormal family bonds and the economic situation of the society. Subsequently, each factor (considered as a direct or an indirect reason for female criminality) is discussed in parallel with the consecutive rights mentioned in various human rights documents.

Poverty

The concept of "feminization of poverty" draws a link between criminal women on one side and poverty on the other.⁹ This concept assumes that women are pushed to commit criminal acts as a result of their economic situation, which in return jeopardizes the normal flow of their life and the lives of their children. Economic losses, unemployment and poverty increase the risk of women's involvement in criminal activities especially in the case where women are single or widowed and lack moral and economic support; hence, they mainly resort to theft and prostitution.

Many women, who commit crimes because of poverty, are victims of triple jeopardy: class, race and gender oppression. Many of the female offenders have been victims themselves and the problem is that our society is not willing to address these different layers of victimization. As a result, females are labeled as offenders in opposition to what they really are: victims.¹⁰ The state has the duty to remedy this grievance and insure adequate conditions of living, which are mainly food, shelter, clothes, and health

(Article 25 of Universal Declaration of Human Rights, UDHR and Article 11 of International Covenant on Economic, Social and Cultural Rights, (ICESCR)), social security (Article 22 in UDHR and Article 9 in ICESCR) and decreasing the level of prostitution (Article 6 in Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW).

Gender-Based Violence

The most predominant factor behind female criminality in the West and in the Arab World is considered to be psychological distress. The main cause for this distress is gender-based violence (GBV) perpetrated by men that comes as a result of the historical submission of women to men. In some cases, the reaction to GBV is translated into acts of crime that can be justified when regarding women's right to self-defense. "If we look at the reasons behind men killing their wives we find that most of them are silly reasons. On the other hand, we find that in the case of wives killing their husbands, the motives are usually self-defense or defending their children. Such women are usually living under abusive conditions, either mental or physical, and in most cases they are both."¹¹ This abuse is internationally remedied by attempts to eliminate torture, cruel, inhuman or degrading treatment according to Article 5 of the UDHR 5 and Article 7 of the ICCPR.

Education

Females with low educational levels are more prone to commit crimes than educated ones; therefore, there is a necessity to ensure respect for the right for women to a free and obligatory education in the elementary level at school as explained in Article 26 of the UDHR, Article 10 of the CEDAW and Articles 10 and 13 of ICESCR. The marriage of women at an early age jeopardizes their level of education and consequently affects their knowledge of responsibilities in marriage and maternity.¹²

Patriarchal Society

In ancient times, women have taken the position of the obedient homemaker who seeks the wellbeing of the children.¹³ Whereas, the father is the strong figure of society who insures the income of the family, who takes tough responsibilities requiring physical strength, and participates in wars. As years went by, women decided to acquire their equal status with men. The struggle for equality took many shapes and dimensions in the patriarchal societies of the Arab World whether talking about equal rights or about compliance in duties with men. Again, one of the roles that women took was the participation in combat during the wars of the 20th century, which lead to involvement in violent and aggressive acts resulting in crime.

Crime was always found under the list of masculine traits, tending to link powerful images of men with crime; how-

ever, the equality of women can always be aspired through feminist theories and from Articles 1 and 2 of UDHR, Article 3 of ICCPR and Articles 3 and 5 of CEDAW.

Discriminatory Laws

The fight for equality and the attempt to eliminate discrimination requires the amendment of Arab laws that are unjust especially when it comes to family law, which entails divorce, marriage, custody and inheritance. Family law in the Arab World presents an egregious example of discrimination that denies women many rights that are protected under international human rights law, where the legal standing of women is undermined both in private and public realms.¹⁴ The right to recognition as a person before the law is set in Article 7, 16 and 26 of the UDHR.

Political Conflict

As mentioned before, the large number of wars and conflicts during the last century in the Arab world required women to endure and to participate in combat, which exposed them to a higher level of violence and made them more prone to commit crimes in society. Similarly, the exposure of youth to the atrocities of the wars and to violent situations can be a factor behind the increasing rate of crime in society. Hence, the long years of civil wars, world wars or historical wars in the Arab region let women witness continuous horrible atrocities and unjust acts where the value of the human being deteriorated. Those acts against humanity did influence women to take revenge and ensure their self-defense through crimes; especially in order to protect their children. The adverse situation of women in the Palestinian territories is an example of women under conflict and sometimes armed-conflict.

Psychological stress and trauma, resulting from political conflict or instability, drives women to be more vulnerable and at risk to commit crimes. Psychological stress and trauma can be aggravated by many factors, namely: the loss of home, poverty, loss of family members, witnessing violent acts, abuse, need to struggle for food, loss of control, loss of personal choice, loss of social networks and community.

Abnormal Family Bonds

"Low parental support and affection predicted persistent hitting and predatory violence in females."¹⁵ Again, the control theory of the 1980's illustrates that girls are more attached to their parents;¹⁶ therefore a dysfunctional home would increase the rate of female criminality because ineffective family interaction and child-parent relations are keys to antisocial behavior. The CRC¹⁷ and the CEDAW¹⁸ (Article 5) fight abnormal family bounds by calling for a "family education including a proper understanding of maternity," and the right for a "healthy environment at home."

Economic Situation of the Society

The emancipation of women and increased economic opportunities for women allowed women to be as crime-prone as men.¹⁹ Sociological factors and environmental influences appear to have greater credibility in explaining criminal behavior.²⁰ Therefore, the deteriorating economic situation of societies, especially in countries with political conflicts like Lebanon, Palestine, Egypt and Iraq, women had to contribute to the income of the family by joining the workforce. Two deficiencies accompanied this necessity, first that women with low levels of education had to resort to illegal practices, such as prostitution. Secondly, females had to deal with a larger unit than their family, which increased the level of interaction and subsequently the crime rate. Crimes that women commit are considered to be final outward manifestations of an inner medical imbalance or social instability. Their punishment appears to be aimed principally at treatment and "re-socialization."²¹ The right to work and to adequate and equal conditions of employment is set in Article 23 of the UDHR, Article 11 of CEDAW and Articles 6 and 7 of ICE-SCR. To sum up, as women attain social positions similar to men their pattern of criminality will also become similar. However, the rise in crime is predominately among younger offenders.²²

III- Judicial System / Right to a Fair Trial

When talking about crimes, we can never disregard criminal proceedings and the judiciary system that affects negatively or positively the percentage of crime throughout history. A system that works on developing and guaranteeing the rule of law would limit the effects and consequences of crimes. On the contrary, a bias judiciary system would pave the way for an increasing crime rate where the offender, not sentenced or not punished fairly, has the liberty to commit more crimes. Usually, bias judiciary systems in the Arab World rely on religious courts (especially Muslim) that undermine the rights of the females suspected of committing a crime and often discriminating against women in the judgment while disregarding the specifics and context of the act. In brief, women are a minority in the judicial system where the punishment of female offenders perpetuates gender stereotypes.²³

In any case, international standards of human rights stress that everyone charged with criminal offense should be entitled to a fair and public hearing within reasonable time by an independent and impartial tribunal established by law and granted the following five measures:

- be informed about the nature and cause of the accusation against him/her;
- have adequate time and facilities for his/her defense;
- defend him/herself or get free legal assistance if required;
- examine and have examined witnesses against him/her and have free translation assistance in the court if required.

These measures and conditions are set in Articles 8, 9, 14 of ICCPR and Articles 8 and 10 of the UDHR.

However, Arab female offenders are subject to discrimination in their right to the presumption of innocence in courts that are usually presided over by male judges (Article 15 of ICCPR). Arab justice systems exaggerate the crimes of women²⁴ because, as already stated, females are usually presumed guilty until proven innocent.

IV- Effective Remedies and Precautions

Decreasing the rate of female criminality in the Arab World, or preventing an increase in the percentage, can be ensured through the implementation of many remedies and measures that should be taken by the state, the private sector and the civil society.

The recommendations below that should be made to the state and the private sector are: Firstly, emphasizing rehabilitation of offenders in prison to prevent further criminal recurrences once released is one of the main prevention measures, in addition, receiving adequate social and community programming during imprisonment as stated in Article 10 of ICCPR. These programs could help prevent women from continuing to commit crimes. Secondly, developing policies to decrease the poverty rate to alleviate the unfortunate economical situation in the country, with an aim towards a social welfare system. Thirdly, minimizing the involvement of women in political crimes, especially in times of conflict and wars, is also an important point to stress. Fourthly, attempting to decrease the availability of illegal substances in society²⁵. Primarily, promoting change in cultural attitudes and customary practices in the population to lessen the impact of the patriarchal structure in Arab society by ensuring gender equality on all levels. Again, more research should be conducted in this field in order to analyze the real causes behind each type of crime and work separately on its prevention. Finally, the state should enforce the application of obligatory and free education in school that would raise awareness of the youth on the consequences of the crimes. Again, education would act on decreasing the rate of prostitution by qualifying youth with knowledge that would help them have more skills and expertise to get decent jobs.

Civil society and NGOs should intensify their efforts to spread more programs about gender mainstreaming, aiming for public awareness and for women empowerment; with the additional aim of overcoming social constraints for non-violent behavior. Then, spread the principles of human rights in society in order to develop humanitarian feelings in people and prevent them to act in the violent language of crimes. Again, empowerment of women accords certain advantages such as employment or educational preferences in areas where women have historically lacked access or dif-

ferential rights such as paid maternity leaves, or the state and criminal justice system's cooperation in enforcing laws that protect women.²⁶ It is the responsibility of society not to further fear and alienate women who act violently, but to be aware of the factors that lead to violent behavior. In addition, social policy developers must identify these risk factors and develop programs to prevent and intervene before violence occurs; especially, outreach programs to identify individuals who are at a high risk for violent behavior in order to prevent criminal acts. Finally, grant women equal conditions of employment and work.

The recommendations that can be addressed to the judiciary system are: to work on the enforcement of the rule of law for the insurance of a sound and independent judiciary with competent courts that act impartially to gender, and that develop a detailed body of criminal law linking a specific penalty to each type of crime committed in diverse circumstances in order to avoid arbitrary judgments, especially to vulnerable people. Again, make sure that the proceedings of the case take place in a competent court. Guarantee impartiality in the courts, which will eliminate the current misperception that women are seen as guilty until proven innocent, not the opposite. This can also rely on the fact that women charged with offences is more dramatic today because the justice system has been more lenient on female offenders in the past.

V- Conclusion:

The question that can always be asked is: Why do human beings commit crimes? Is it part of the "survival of the fittest theory"? Do humans act to satisfy survival instincts when committing crimes? Is it a state of psychological disorder or is it simply that the criminal is victim to numerous pressures from harsh conditions of living and from other people who could push him/her to act violently?

Since it is a fact that crimes have huge consequences on society and individuals, it is crucial to pay attention to crimes committed by women in the Arab World and try to figure out the causes; however, studies and analysis mainly victimize women. There is a certain trend of normalization of violence from both sexes whereby very few rebel against gender-based violence. Analyzing the increase of female criminality in the last decades from a human rights perspective, many questions should be constantly asked and acted on: Do criminal women have fewer rights than criminal men? Do Arab states abide by the UDHR standards during trial? Hence, "if the state fails to act reasonably through the processes of the criminal law to protect women against violence, to punish the violators and to deter further violations than the relevant state is violating International Human Rights." In summary, "the lack of insurance of economic, social, cultural, civil and political rights forces many individuals in society to commit crimes."

Endnotes

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