



Research Article

Punishment at the Margins: Gender, Sexuality, and Legal Failure in the Execution of Wanda Jean Allen

Pinak Sarkar^{1,*} , Sadia Islam Vontee²

¹Department of Law, International Standard University, Dhaka, Bangladesh

²School of Law, Independent University Bangladesh, Dhaka, Bangladesh

Abstract

In American history of criminal justice, gender has always been racialized and race has been gendered. The traditional criminological studies have always focused on men ignoring the concept of gender-fluidity in whole. In fact, there was no evidence of female representation until the 1960's within the American Society of Criminology. Under such social construction, at a time when feminist criminology was itself struggling to receive recognition, the emergence of queer criminology was nearly impossible for establishment. Hence, lack of research, policies, and legal constructions, also systematic ignorance have led to many queer criminal cases which were never truly resolved ensuring the legitimate essence of justice. One such case is the infamous case of Wanda Jean Allen. This article highlights the sociological-legal inadequacies from a criminological perspective and continues to argue that the case of Wanda Jean Allen was not just failure in due process but convincing proof of Frances Heidensohn's theory of 'double deviants' in American society. The case study of Allen is significant as it throws light on the conservative, under-developed South-Asian nations which are yet to modify an inclusive law system for the people resisting to confess their gender in a binary way. This paper also emphasizes that the paradigmatic pattern of exclusion is replicable in many countries with South-Asian societies.

Keywords

Capital Punishment, Queer Criminology, Intellectual Disability, Crime of Passion, Mens Rea Analysis, Eighth Amendment, Intersectionality, Wanda Jean Allen

1. Introduction

The execution of Wanda Jean Allen is a prime illustration of how the legal system of the United States of America used to confront individuals that were placed amongst the intersection of race, sexuality, poverty, and cognitive disability. Evidently, American criminal legal systems have been more inconsiderate while punishing Black and native people. [1] In regard to Wanda Jean Allen, further negative attributes were

added against her for being a lesbian and financially challenged woman. This Article explores how the intersectionality of these elements have blended against a black, marginalized, homosexual woman under the American socio-legal purview during the late 20th century. The legal system was equally repressive for people like Allen who also went through issues like cognitive disability. Unaddressed, untreated and in lack

*Correspondence: Pinak Sarkar (pinaksarkar.academics@gmail.com)

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of proper investigation, Wanda Jean Allen was executed as the first woman to receive capital punishment in Oklahoma state. This Article also identifies the illiberal legal system that annihilated the scope of ensuring true justice in her case. To understand the 'mens rea' behind Allen's criminal conduct, it was important to emphasize and dive into her childhood traumas, struggles and constant battle against the then orthodox American society. The infamous case of Wanda Jean Allen is still a potential case study to explore the intersectionality of law, crime and society.

2. Factual Background, Procedural History and Wanda's Personal Life

Wanda Jean Allen was an African-American homosexual woman who was executed to the death in the year 1988 for the killing of her roommate Gloria. Gloria and Wanda were in a live-in relationship for years. The execution of Wanda for killing Gloria give rise to many criticisms regarding whether the death penalty was appropriate for her as she had limited intellectual capacity and was a borderline mentally retarded person [2].

Wanda was arrested 4 days after killing Gloria and was accused of 1st degree murder which is considered to be the most serious and premeditated homicide. Unfortunately, her trial lawyer was inexperienced and did not have many resources to hire investigators to find out about Wanda's family background, education, and past life to ensure whether Wanda lied about her education qualifications or not [3] and thus her first clemency went in disfavor of her.

Wanda requested for another clemency but the Oklahoma Board of Pardons and Parole denied it. On 10 January 2001, Wanda requested a stay of execution and for another clemency hearing. But, one of the federal judges denied her request. Her attorneys planned to appeal to the United States Supreme Court. Frank Keating, who was the then governor, rejected her request as well. [3] On January 11, at 9 pm, Wanda was executed by lethal injection.

Wanda Jean Allen was born in Oklahoma, USA. Her parents got separated when her father left them when she was very young. They started to live in extremely poor conditions. Besides, Mary, Wanda's mother, was an alcoholic. As the second oldest child, Wanda had to take care of her siblings. She used to earn a very little amount which did not meet the needs of the family. As a result, she started stealing and shoplifting foods and other items. She was sent to juvenile detention many times [4].

At the age of 12, she was hit by a truck and injured her head. Again at 14, she was stabbed in the temple of her head. When she was 15, psychologist Dr Martin Krimsky examined her and said that her left hemisphere was dysfunctional and it caused her difficulties to understand the "cause and effect" of any situation. The doctor also said that she was the type of person who would lose control under stress and anxiety and

recommended keeping her in protective custody [4].

3. Criminological Explanations of Criminal Behavior

One of the objectives of criminology is that it studies the causes of crime. [5] To understand the cause of crime, after years of research, both Quetelet and Lombroso realized that in order to understand the causes of crime, it is very important to examine and understand the biological, psychological and social aspects. Therefore, to assess whether the execution of Wanda was fair or not, it is extremely important to understand these theories and analyze them in accordance with Wanda's case [5].

3.1. Biological and Neurological Impairment

In biological theory, some of the factors have been conceptualized as physiognomy, phrenology, atavism, body type theory, brain activity etc as the causes of crime.

Phrenology is a theory which intends to assess the characteristics, criminality and personality traits of a person on the basis of the shape of his/her brain. This theory was later developed by German physician Franz Joseph Gall.

Another very unique concept is the theory of Atavism. This theory was developed by Cesare Lombroso. Atavism theory deals with those people (called as atavists) who were not fully evolved and have both mental and physical anomalies which originate from stigmata. Lombroso also classified the types of criminals into 4 categories [5] and defined "Insane Criminal" as offenders who commit crime because of a defect in their brain for which they fail to differentiate between what is right and what is wrong.

In the case of Wanda, we observe that she was hit in the head twice. As per Dr. Martin Krimsky's report, her left hemisphere was dysfunctional which made her incompetent to comprehend the right and wrong. Moreover, she had a very disturbed childhood, she lived in extreme poverty and had no one to guide her during her adolescence. The childhood stigma and trauma compelled her to be an atavist. She could not evolve functionally.

3.2. Psychological Vulnerability

H H Goddard, in his book "*Feeble-mindedness: Its Causes and Consequences*", argued that people with below normal intelligence tends mostly towards criminality. Goddard did a mental testing in jails and prisons where he found that 70% of the criminals had below average intelligence. If we look into Wanda's case, she had an IQ of 69 which is a below average score.

Furthermore, according to social learning theory, there is a connection between mental disorders and criminality. As mentioned earlier, Wanda was a mentally retard woman. While Wanda was growing up, it is understandable from the

facts that her development as a person was obstructed by factors such as poverty, lack of moral guidance, bad influence of her surroundings etc.

3.3. Sociological Marginalization

Edwin H. Sutherland gave a theory called “Differential Association Theory” which says that criminal behavior is learned from social interaction with others. If we look into the association of Wanda, she was never accompanied by a good association. She also mentioned that, in 9th grade, the only reason she did not fail in that one subject was because of the teacher who helped her to study and was kind to her. It is clear that, if she had received a good companion, she could have guided herself right. In fact, Gloria, who was her lover and companion, was also a manslaughterer.

In Anomie theory, proposed by Emile Durkheim, it is defined that, “anomie” is a condition when people are confused and unclear about the social and moral norms. From the observance on the behavior of Wanda, it is clear that she was unclear of what norms and values she should be absorbing. Furthermore, Social Control theory states that people's relationships, commitments, values, norms and beliefs encourage them to always obey the law and never break it. When moral control is internalized in an individual, He/She learns the self control technique and guides their own behavior. In the case of Wanda, we see she did not have any stability on the above-mentioned factors for which she did not learn to control herself from committing offenses.

4. Criminalizing Gender Nonconformity and Pathologization of Same-sex Violence

Frances Heidensohn's ‘Double Deviance’ theory suggests that, when a woman commits crime, she is seen as committing crime twice, first by committing the criminal act itself and second by violating the dominant social mandates designed for them. In Allen's case, she was a homosexual woman, which added another degree of deviance against her. This leads to the examination of the intersectionality of gender, sexuality and queer criminology which will be discussed in this section.

In comparison to white women, black women are considered and perceived as having a more masculine personality. Radically, white women are seen as ‘ladies’, more gentle, aristocratic and with all feminine characteristics. As gender has always been racialized, there was no exception in the case of Allen. She was perceived as a masculine personality. In fact, she was more comfortable internalizing herself as a ‘man’ than a ‘woman’. Her family revealed that she was often seen walking around her home shirtless, something ‘the society’ would accept only from males. [6] Furthermore, when Allen signed cards to her girlfriend, she used to sign her name as “Gene”, the more muscular part of her name. [7] During the

time of trial, extensive testimony revealed that Allen considered herself as the “man” of the relationship and was dominant towards Gloria. [7] Her sexual identification was one of the underlying causes why her actions were taken as ‘inherently dangerous’ rather than ‘out of character’ behavior. [8] The justice system is often lenient towards women if their crime aligns with victimology and dependency. [8] However, in Allen's case, she was seen as someone not worthy of any leniency and an inherited criminal who deserved harsher punishment which was considered completely justified. Her gender nonconformity became one of the attributes that lead toward her execution.

In addition to that, Allen was held accountable for the murder of her partner, Gloria, inciting same-sex violence and stigmatizing queer relationships. Same-sex intimate partner violence was seen as more of a moral degradation than a radical dysfunctional relationship problem. This explains a lot why her execution lacked proper investigation and understanding. During her prosecution, her sexual identity played an aggravating factor adding further criminal liability against her. [9].

5. Allen in the Shadow of Legal Pitfall

In order to make a critical legal analysis on the execution of Wanda, I would like to focus on three key points to explain whether the execution of Wanda was justified or not.

5.1. Absence of Mens Rea

In order to commit any criminal offense, two of the most important elements should be present: “Mens Rea” and “Actus Reus”. Mens rea means the guilty mind or the intention to commit a crime. Whereas Actus reus is the action caused by the guilty mind or mens rea. In Wanda's case, it is a matter of fact whether she had any mens rea in the first place or not. Moreover, according to s. 1111 of the United States Codes, the definition of “Murder” as unlawful killing of a person with malice “aforethought”. [10] The term “aforethought” indicates the presence of mens rea, intention and a pre-planned murder.

However, in Wanda's case, during the clemency, Dr. Martin Krinsky stated that, due to her dysfunctional brain, she is incompetent to understand the cause and effect of any action and incapable of controlling her impulse. During the clemency, one of the assistant attorneys claimed that she graduated from high school and thus was not a mentally retard. This claim was a misfactual and a misrepresentation of her without any solid evidence. The truth, she was a 9th grade dropout. According to the s. 1038 of the United States Codes, whoever intends to convey any false or misleading information and which is reasonable to believe that such incident has actually taken place is punishable under the law. [11] It is very clear that the investigation of Wanda's case was not done adequately at all. In this regard, the proper investigation regarding the facts and issues regarding her mental retardation should have been done

with maximum priority. However, reluctance in excavating the real facts and issues of Wanda's case is totally present in this regard.

5.2. Accusation of Premeditated 1st Degree Murder

To defend her incompetence in understanding "cause and effect" of any action, the prosecutors referred to the one letter and another card that she gave to Gloria. In the letter, she wrote "..... I'm the type of person who will hunt someone I love and kill them. Do I make myself clear Gloria?" and in another card, it was mentioned, "Patience my ass..... I'm gonna kill something". However, she was medically proven to be incompetent to comprehend any reasoning long back when this incident took place. Therefore, a mere statement on a gift card or letter does not prove that she was a cold blooded murderer.

The two homicides that she committed, both of the victims were her lovers. From this understanding, it can be said that she committed a crime of passion not a "murder". In criminal law, crime of passion is defined as a crime committed in the "heat of passion" and not premeditated. [12] Moreover, according to s. 210.3 of the Model Penal Code of USA, when a homicide is committed out of extreme emotional disturbance and impulse, it downgrades the intensity of the offense. [13] It is evident that, when Gloria broke up with Wanda, she was under the influence of extreme emotional disturbance and impulsiveness. There are similarities in both the homicide that she committed and it is quite understandable that it was not cold blooded murder, rather a crime of passion. Therefore, the execution of Wanda was unjustified as the homicide was already downgraded and not a premeditated murder at all.

5.3. Constitutional Breach

The execution of Wanda was in fact unconstitutional. According to the 8th amendment of the Constitution of the United States of America, prohibits the federal government from imposing cruel and unusual punishment. [14] The death penalty of Wanda was not only cruel but also violated the 8th amendment of the Constitution of the USA given the fact that she was medically proven as a borderline mentally retard person. Moreover, her psychologist also suggested keeping her in protective custody. [15] which never happened. Referring to the case of *Atkins vs. Virginia* (2002), [16] it was held by the court that, the execution of mentally retarded offenders falls under "cruelty and unusual punishments". [16].

Moreover, in *Penry vs. Lynaugh* (1989) Penry was medically proven to be a mentally retard and suffered from organic brain damage. Penry confessed that he had killed a woman and was charged with capital punishment. [17] Even though there

was much debate and dilemma concerning whether it was justified or not to convict Penry being a mentally retard with death sentence, the supreme court of the USA held that the court was affirmed in part and reversed in part and thus the case was remanded. [17] It is to be noted that the court did not execute Penry.

Both the cases which have been referred were in equal time frame with Wanda's case. However, in the other referred cases, their prosecution is not reluctant and enough investigation has been done while reaching a decision. On the other hand, Wanda's execution may be referred to as a malicious legal process which lacked a proper investigation and research on Wanda's overall condition and background.

6. Conclusion

From both the criminological and legal assessment of Wanda's case, it is evident that she was not a cold blooded murderer. Even though Wanda's action was not justified, executing her was not proportional to what she did under being a brain damaged and retarded person. In fact, if the same incident took place in 2026, she would not have been executed. In South Asian countries, we still find cases similar to Allen's. However, the South Asian legal system is more conservative than America of the late 90's. India being an exception, the remaining South Asian countries, mostly the Islamic states consider homosexuality a criminal offence. However, there is a good number of queer communities already residing in those states who are under severe vulnerabilities from the society and legal system. It will certainly be a great legal challenge, if a case similar to Allen takes place in such countries. Her case was a significant study to understand where and how the legal system fails if it is not inclusive for everyone. There is still a long way to understand criminality and legality while bridging the gap between justice and marginality.

Abbreviations

ACLU	American Civil Liberties Union
D. R. E.	The Story of Wanda Jean Allen (Documentary Series)
HBO	Home Box Office
H. H.	Henry Herbert (as in H. H. Goddard)
IQ	Intelligent Quotient
MPC	Model Penal Code
U. S	United States
U. S. C	United States Codes

Conflicts of Interest

The authors declare no conflicts of interest.

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