



## SEXUAL HARASSMENT OF WOMEN IN INDIAN PRISONS: A STUDY

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**ABSTRACT-** The Constitution of India ensures women's freedom, and numerous laws have been adopted to protect and empower women. Articles 21 and 22 of the Indian constitution preserve and safeguard the rights of convicts, under trial, and criminals. The present paper aims to explore various forms of protections provided to inmates, with a special focus on safeguards for female offenders and also to critically analyse the various case studies related to the sexual harassment of women in prisons. Women be it anywhere are prone to the sexual harassment and it is no strange that women in prison, being in a small number is an easy prey for the personals in authority to harass them mentally as well as physically. Custodial Rape and sexual violence inside the prison is the most ignored and unfortunately the most under-rated topic that is rarely been discussed. But we become ignorant when such cases are reported by the prisoners. Prisoners are often subjected to rape and other sexual assaults and these acts are generally justified by, not only the custodial staff but also by the other inmates, on the ground that the criminal had been made to suffer the same way as he had made the victim suffer because after all they are considered to be the demons and hence they should be subjected to ill-treatments and no sympathy should be shown towards them. Due to the apathetic attitude of the police and other justice machineries, the prison rape cases and the sexual assault cases fail to come into the limelight. The following research paper intends to study about the cases of sexual harassment in prison and includes various recommendations proposed by the author.

**KEYWORDS - Sexual harassment, women prisoner, custodial rape, grievance redressal**

### I. INTRODUCTION

*"It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but how it's lowest ones"*

- Nelson Mandela

Women have been regarded as a symbol of spirituality in the Indian society. But on the other hand, in terms of sexual harassment inside the prison, it certainly happens often and consistently. That is why women inside the prison, though often demand all female guards. Prison has become a harsh atmosphere. Sexual victimization is one form of abuse that is often associated with prisons. Sexual victimization involves a wide variety of activities, from sexually aggressive acts to non-consensual sexual attacks, and has a number of significant public health implications. Sexual harassment takes several forms, ranging from a guard checking in on a woman undressing to sexual assaults by guards and employees. If the women prisoner wasn't afraid of repercussions, any prisoner would say there is sexual assault inside the prison. Sexual harassment can cause frustration, which can lead to potential aggression both inside and outside of prison, as well as depression and self-harming behaviours like substance use or suicide attempts and movements. Women although constitute a small proportion of the general prisoner population, however their number is continuously increasing. Studies have shown that the number of criminal offences committed by female prisoners is increasing at a rate faster than the male prisoners. The Indian Constitution makes it a legal duty for the government to protect women's rights and to comply with international protocols on women's rights. Moreover, it is the sole responsibility of the prison authorities to provide utmost safety and protection to the women inmates. In reality, women prisons are not being maintained properly, even their basic human needs have not been taken care of. This failure of imprisonment leads to offensive behaviour of women, which thereby increases the rate of re-offending among women. Many National and International treaties have laid down the guidelines to ensure a safe environment for women in prison but in reality none of these guidelines have been implemented. The prisons are still overcrowded, with no adequate measures to provide safety to the women inmates on various aspects including health care services and lack basic facilities for sanitation and hygiene. Prisons are supposed to be a place meant for reformatory purpose, however the purpose fails when the prisoners are denied the basic rights which are fundamental to their wellbeing.

In this paper we will look into the problem of rape and sexual assault in prison and various legal challenges faced by the inmates and discuss the various case studies about the same. Also in the end we shall also be discussing the reforms which can be made to cope up with such problems to some extent. Sexual assault and abuse is any type of sexual activity that you do not agree to, "including:

- inappropriate touching
- vaginal, anal, or oral penetration
- sexual intercourse that you say no to
- rape
- attempted rape
- child molestation"

Sexual assault can be verbal, visual, or anything that forces a person to join in unwanted sexual contact or attention. Examples of this are voyeurism (when someone watches private sexual acts), exhibitionism (when someone exposes him/herself in public), incest (sexual contact between family members), and sexual harassment. Rape is a common form of sexual assault.<sup>ii</sup>

In prisons sexual harassment or rape by another prisoner or prison officer is a common instance. But the main problem is regarding reporting the incident. Most women prisoners who face such a problem do not report the offence to the authorities because of the fear that remains with the victim. Sexual assault includes all the acts like commenting, inappropriate touching, physical attack or even rape. This chapter will deal with this issue, i.e. Sexual Assault against women prisoners.

#### **CASES OF SEXUAL ASSAULT IN INDIAN PRISONS**

According to Section 354A<sup>iii</sup> of the Indian Penal Code, Sexual harassment means and includes:

- "Unwelcome touching or other physical contact
- Asking or demanding sex or any other sexual activity
- Making remarks which are of a sexual nature
- Showing pornographic material which may include videos, magazines, books etc."

After 3 February 2013, the definition was revised through the Criminal Law (Amendment) Act 2013.

As per Section 375 of the Indian Penal Code, a man is said to commit "rape" if he:--

- a) "penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person"; or
- b) "inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person"; or
- c) "manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person"; or
- d) "applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions":

**Firstly** -- "Against her will."

**Secondly** -- "Without her consent."

**Thirdly** -- "With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt."

**Fourthly** -- "With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married."

**Fifthly** -- "With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or

unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.” **Sixthly** -- “With or without her consent, when she is under eighteen years of age.” **Seventhly** -- “When she is unable to communicate consent.”

#### **Exceptions --**

1. “A medical procedure or intervention shall not constitute rape;”
2. “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

Despite the fact that there are a few distinct prisons for women in India, the majority of the accounts we were able to gather regarding women prisoners referred to sections inside large prisons for men where women are housed. This is consistent with the findings of a National Expert Panel on Women Prisoners, which Margaret Alva, then Minister of State for Human Resources in Prime Minister Rajiv Gandhi's government, founded in 1987. According to this panel, “separate institutions are available for only about one quarter of the women in prisons; the rest are housed in sections of prisons for men.”<sup>iv</sup> “Unlike the situation involving juveniles and adults, separation is apparently generally enforced. As would be expected, the number of female inmates is relatively small. Though we lack reliable nationwide statistics, in the prisons and jails (as opposed to the police lock-ups) the number of women is probably no more than five percent of the total.”<sup>v</sup>

But as a matter of fact, we have to accept the fact that there are no or minimal reported cases of sexual assault/harassment of women prisoners done by any official or other inmate. But cases of similar nature, where there is abuse of power can be found in Indian Jail System. There are many reported cases where police officials have abused the power given to them, and sexually assaulted the arrested person or the accused person. The ‘Soni Sori’ incident is one of them.

#### **☐ THE CUSTODIAL TORTURE OF SONI SORI<sup>vi</sup>**

“The young 14-year-old girl in a remote prison in Raipur - Chhattisgarh, sobbed for days at a stretch after facing severe persecution at the hands of the prison personnel. She wanted to pass away than be in prison,” said activist and teacher Soni Sori, who is now a symbol of aversion and inspiration for women across the country, sharing her experience after having been in multiple prisons across India.

Soni Sori is an ethnic human rights activist and a school teacher from the state of Chhattisgarh. Soni Sori, like a significant portion of India's population in Chhattisgarh, is a member of a tribal group that has long been poor and oppressed. She lives in the Dantewada district of Chhattisgarh, a region with a mineral processing manufacturing unit whose residents are among the poorest in the state.”

In Chhattisgarh, the mining industry has enriched a corrupt ministerial class while providing little value to the state's indigenous people. To fight insurgent groups, the Chhattisgarh government has used heavy-handed, hair-trigger policing, extreme aversions to speech and peaceful demurrals, and clandestine support for informal militias. As a result, citizens of Chhattisgarh face intensity from both government forces and insurgents. Critics of the government and Maoist groups are particularly vulnerable to retribution from both sides.<sup>vii</sup> “In September 2011, the police in Dantewada accused Soni Sori of extracting protection money from a mining company on behalf of a Maoist group.”<sup>viii</sup> “A few days later, a police constable from Dantewada admitted to a newsmagazine that the police had pressured Sori and her nephew to entrap an agent of the mining industry, and framed them when they refused to do so. Sori was accused of sedition, plotting to wage war against the government as well as belonging to and supporting an unlawful organization.”<sup>ix</sup>

“The cops had accused Sori of threatening national security on previous occasions too. Multiple criminal cases against Sori in this regard had been previously adjourned for lack of evidence.<sup>x</sup> Her nephew, Kodopi, had faced similar conviction in his work as a journalist. Two years prior, he had been held, without formal arrest, in the toilet of the police station for few days, until a successful habeas corpus petition organized by Sori secured his release. Against this backdrop, fearing what the cops might do, Sori absconded to Delhi to avoid arrest. When Sori was arrested in Delhi on October 4, 2011 and brought before a court, she pleaded not to be sent back to Chhattisgarh - Raipur.” The judge rejected her petition and referred the case to the Dantewada district judiciary, which handed her over to a policeman for questioning after advising them not to torture her. Over the course of two days, the cops tortured and mugged Soni Sori almost as soon as she was taken into custody. She was barely conscious when she appeared in Dantewada district court for a hearing on October 10, 2011. In a recent interview, she recounted the details of being tortured:

“The superintendent, Mr. Garg, asked me to sign documents that would confirm I was involved with the Maoists. I refused. He then asked the lady constables to leave. The officials started abusing me, calling me a

whore and saying I indulge in sexual acts with Maoists. They stripped me naked, made me stand in an 'attention' position and gave me electric shocks on various parts of my body. I still didn't relent. They then shoved chili powder inside my private parts. By now, I was losing responsiveness, but I refused to sign the documents. The cops started inserting pellets into my private parts. Many pellets - so many that they started falling out. I finally collapsed.<sup>xi</sup> The next morning, I could barely walk when I was taken to judicial court. My biggest complaint is that the magistrate didn't even see me once and sent me back to the prison. In the days that followed, I was admitted to the district hospital, where they chained me to the bed. When I asked why, they said it was a protocol. Sori went on a hunger strike in protest and petitioned the Supreme Court for relief. Detailing how she had been tortured, she asked to be moved to New Delhi for a medical examination.<sup>xii</sup> The Supreme Court wavered and postponed a decision on Sori's request. As an interim measure, the Supreme Court ordered that Sori be medically examined in a hospital outside of Chhattisgarh, in Kolkata, the capital of the neighboring state of West Bengal. The medical examination in West Bengal confirmed her allegations, revealing sexual and non-sexual physical injuries, finding remnants of the pellets that had been forced into her body.<sup>xiii</sup>

Soni Sori was denied bail despite the clinical evidence. Instead, the Supreme Court moved her from Dantewada to a prison in another part of Chhattisgarh before transferring her to Delhi for medical care. When Sori's husband died in August 2013, she was still in detention two years later. On temporary bail, she was refused entry to her house, except to perform his last rites and see her three young children on the occasion of his death. The Supreme Court did not grant Sori bail until late 2013, on the condition that she live in New Delhi, have a surety, and report regularly to her local police station. Sori was also forbidden from entering Chhattisgarh, which kept her from seeing her children even after she was released from jail. Sori's bail conditions were modified by the Supreme Court in February 2014, enabling her to return to her home in Chhattisgarh.

Soni Sori's criminal charges are also pending. The Chhattisgarh state government seems to have taken no legal action against the officers who tortured her. Sori remains a target in the absence of any protection: "on February 20, 2016, unknown assailants poured acid in her face." She has stated that she suspects the local cops of involvement in the attack.<sup>xiii</sup>

As a result of this investigation, it is clear that Soni Sori was subjected to gross abuses of her human rights in the name of national security. Her rights to freedom from bodily harm, anonymity, and due process were all violated.

#### ☐ **GANG RAPE OF WOMAN BY CONSTABLES OF THE DELHI ARMED POLICE<sup>xiv</sup>**

"On the 14th of July 2004, a young married woman from Kalkaji - Delhi was kidnapped and gang raped by six persons, including two constables from the Delhi Police. The victim's/ survivor's husband complained to the police the same night that his wife had been kidnapped and was being held near Ghaziabad - Uttar Pradesh by six persons who were demanding Rs. Fifteen thousand for his wife's release. On 15th July, the South Delhi Police arrested all the six men. The medical examination done on the 15th of July 2004 at AIIMS proved rape. The SHO claimed to not remember the facts of the case. He then insisted that the woman's character was not good, implying that the case was a false one and that the police was being unfairly blamed for not handling the case properly."

As per the police version, "the victim was a whore, who on 14<sup>th</sup> July 2004 had gone to Savitri Cinema with her husband, where they apparently met one of their friends. Their friend, Kamal, invited the couple to join him and his acquaintances on an outing. Soon his friends arrived in two cars and the victim and her husband sat in one car and Kamal, in the other. After a while, two persons sitting with the victim and her husband in one car said that they were policemen and started demanding Rs. Fifteen thousand from them while threatening them that they (the couple) could be put behind bars for the reason of the woman being a sex worker.

According to the police, when the couple pleaded that they did not have any money, the policemen let off the husband to arrange for the money. The victim who stayed in the car was then taken to Ghaziabad and brutally raped by the men. The victim reached home and the following morning filed a case at the Kalkaji PS. Following the FIR, the cops made the husband call up Kamal, whose number he had, to say that he had arranged for the money. By taking contact information from Kamal and making phone calls to the others involved, the police managed to catch the six accused."

Two of the six accused - Yoginder and Yashpal, were constables of the Delhi Police.

This case displayed the abuse of power by the cops. The purpose of including this case in this study is to portray that if Police is able to abuse outside the Police station, then who can say what they can't do when they are in their full authority.

## II. RECOMMENDATIONS

The fair care of prisoners can be accomplished by law makers upholding the protections given to them by acts such as the Prison Act of 1894 and other precedents in cooperation with advocates, social movements, and non-governmental organizations (NGOs) by ensuring their access to free legal aid facilities by filing bail applications and providing legal support to those on trial who are languishing in prison without charges in order to ensure that they don't break mentally inside the jails, monetary assistance given to indigent prisoners and their families to fight for their survival inside the jail.

The prisons are built for the purpose of healing, not to fully ruin their inner selves to the extent that they will never be able to blend back into their normal selves in the outside world again. Once inmates are released from jail cells, they become utter misfits in society, having endured inhumane tortures and having to cope with the psychological torment of never being accepted by society or their own families. It's difficult to imagine their behaviour in light of the inept facilities in jails and the inhumane treatment they must endure at the hands of prison officials.

Some suggestions to improve the current situations of women prisoners in prisons:

- The National Model Prison Manual 2016 is the most up-to-date text pertaining to India's correct architecture. It sets out some basic minimum standards for the treatment and welfare of prisoners, and must be adopted by all States as a minimum guideline. It also provides specific measures such as gender sensitive training for all staff dealing with women prisoners, which can go a long way in improving the lives of women in jail.
- The Ministry of Home Affairs has suggested the development of an Integrated Prison Software System, which will house data on inmates and prisons. This could be applied easily in all jails.
- It was suggested that a National Commission for Prisons be established to serve as a specialist advisory body for all jails and related issues.
- The functions of proposed Commission may be to monitor the standards and norms of different categories of prisons, enrol individuals and community groups to serve in the prevention of crime and treatment of offenders, review achievements of State correctional institutions and plan their future organisational and personnel structure in consultation with them, coordinate plans for administrative and operational functioning of prisons with the States/UTs and monitor their progress in order to have an all-India perspective on prisons.
- The National Policy on Prison Reforms and Correctional Administration states "Prisons are hitherto a closed world. It is necessary to open some kind of positive and constructive public discernment. Selected eminent public-men shall be authorized to visit prisons and give independent report on them to appropriate authorities."
- The National Model Prison Manual prescribes the creation of a Prisoners' Panchayat to organise events and activities for prisoners as well as provide an avenue to represent concerns and seek redress of grievances. A 'Mahapanchayat' should be held at least once a quarter with the Superintendent in attendance for the redressal of prisoners' grievances and implementation of their suggestions. The practice of frequent 'Nari Bandhi Sabhas' (women prisoners' councils) should also be motivated.
- Pregnant women prisoners should be temporarily released so that they are able to deliver their child in a nursing home or hospital outside of jail. Suspension of prison term may be considered in the case of casual offenders. The judiciary should also play a proactive role in this regard and should immediately allow pregnant prisoners to be released on bail at least six months before delivery.
- The Mulla Committee Report recommendation for "establishing self-contained family units for a group of 8-10 women, fitted with facilities such as a kitchen, garden area, common room, and common bathroom," should be enforced to ensure better living conditions, improved mental health of inmates, and easier rehabilitation into society after release. Women may act as a family unit here by cooking and cleaning for themselves.
- Prison laws and procedures that treat inmates inhumanely should be eliminated. For example, rules prohibiting prisoners from singing or laughing, making refusing to eat food a crime, and allowing prisoners to wear footwear only with the Superintendent's permission all need to be reconsidered immediately.
- The Prisons Manual also calls for the establishment of a Grievance Redress System in every jail, complete with complaint boxes that are specifically designed for women inmates. Per seven days, the grievances will be reviewed by a Grievance Redressal Committee.
- Severe allegations, such as sexual harassment or torture, should be lodged in a complaint box that only the Board of Visitors can reach. For filing complaints, a log may be posted in a noticeable position

inside the jail. Apart from the inmate, her legal adviser or family members should be able to communicate their frustration with her imprisonment. If the lady medical officer finds signs of assault during a medical examination, she can file a complaint on the woman prisoner's behalf with the consent of the woman prisoner.

- Members of The District Legal Services Authority, the District Magistrate, members of the State Commission for Women, etc, often visit the prisons to inquire about the well being of inmates. During such visits, women prisoners should be allowed to submit their complaints and grievances without any fear. Such grievances or complaints may be submitted either orally or in writing.
- For the purpose of impartially reviewing the grievances and complaints made by women prisoners, women's prisons ought to have a high ranking female police officer (preferably of the rank of Deputy Superintendent of Police or above) in the Grievances Redressal Committee. During weekly parades, female inmates should be able to express their complaints to the Jail Superintendent.
- State prison manuals must be revised and strictly enforced to ensure that all women inmates obtain basic privileges, such as suitable living quarters, bedding, toilets, and outdoor areas. Prisons must be connected to the Swachh Bharat (Clean India) Initiative so that more toilets and bathrooms could be made available for the female inmates in order to improve the hygiene of prisons.
- Prisons that house both men and women, should have more strictness in regard to sexual persecution of women prisoners. No male figures, neither correctional official nor prisoner, should be allowed anywhere near the female inmates.
- Body searches must be carried out in accordance with the protocols. When checking female inmates, the least invasive mode should be used if it is deemed appropriate in the circumstances. The form of search to be performed should be explicitly explained to the prisoner, as well as the reason for it. Strip searches can be performed in two stages, with the upper and lower bodies being searched one after the other, to avoid revealing the whole body at once. As far as possible, body cavity searches should be stopped. Female prisoners' integrity and privacy must be respected when cameras are used.
- With due respect for the safety and health of inmates, alternatives to physical and intrusive search methods, such as body screeners and metal detectors, may be considered for use.
- For all prisoners, a written record of the form and frequency of searches should be maintained, which should be available for review by official visitors.
- Under-trials and convicts must be housed separately to prevent violent episodes between inmates.
- Gender concerns, human rights, and sexual assault must be discussed by those involved in the detention, prosecution, and care of prisoners. Women's Cells and State Commissions for Women may be enlisted to hold sessions in prison.
- To deal with ferocious accidents, enough female workers must be hired. The prison administration must be strict in dealing with cases of ferocity, taking into account the possibility of retaliation.

### III. CONCLUSION

Rape is a heinous crime that not only disturbs and haunts the victim, but also the victim's community, and prison rape is an even more heinous and serious issue that requires strict policies and laws to address. Several studies have found that rape victims in prison are raped repeatedly and on a daily basis. Such atrocities within prisons are not recognized by the law and not only merely recognized but also there are various laws specially enumerated to deal with such offences. The law appears to protect only women, but what about women who are incarcerated and are forced to have sex with other inmates or the people in authority?

The sad reality is that the issues of women lodged in prisons fail to draw that much attention and the cases go unreported and usually ignored. Prisons are already locked off from the outside world, making it much more difficult to maintain healthy conditions and to keep a regular check on the prison authorities. Rape and other sexual assaults against prisoners are common, and these acts are often justified by not only the custodial staff, but also by other inmates, on the grounds that the criminal had been made to suffer in the same way that the victim had been made to suffer because, after all, they are considered demons, and so they should be subjected to ill-treatments and no sympathy should be shown. But the situation will not improve until the prisoners will be regularly interacted with the family members, their legal representatives. One should not forget that Justice is for all and all should have the access to justice, this is something our constitution believes in and specifically states in articles 14 and 21, but it seems that it does not apply in the case of prisoners. There is an urgent need to look into the matters of sexual

harassment and rape of the women behind the bars and take adequate steps to curb this practise. Also women responsive training for prison management and other personnel working with female inmates should be required. This would help them make informed decisions about women in prison. To resolve rights abuses in prison and give inmates a way to interact with the government, a genuine and sensitive grievance redressal process should also be created. The researchers will likely agree that there is a definitive need to reform the largely male-centric prison system so as to make it effective to house and reform women prisoners.

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