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ANGUISH BEHIND THE BARS: SEXUAL HARASSMENT TO WOMEN IN POLICE CUSTODY.

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ABSTRACT:

Homo sapiens have civilized themselves from cave dwellers to modern human beings and developed themselves socially, culturally, economically, and globally. However, some social issues have constantly challenged the evolution of humankind. One among them is gender-biased socio-cultural decorum. The patriarchal mindset of society has always considered women as a medium to satisfy physical and sexual needs. Sexual violence and harassment are some of the social evils that encircle the life and dignity of women. In India, women are not safe in police custody because of repeated sexual harassment, violence, and gender discrimination. The screams of the sufferers who are raped brutally are unheard by the authority and the government. The brutalities and sexual harassment are severely criticized in the laws that are prevalent in India, but these legal provisions are hardly effective in confining and combating these brutalities on women[1]. This paper focuses on the persistent sexual brutality that the women inmates face repeatedly. Also, at the terminating or concluding part of the paper, there are a fair few persuasions to combat sexual viciousness, along with a detailed analysis of the urgent need for suitable regulations that could impose strict restrictions on custodial rape. The paper follows the doctrinal methodology to analyze the existing laws, statutory provisions, and other reliable documents related to the custodial rape of women in India.

Keywords: Inmates, brutality, harassment, torture, sexual violence, gender discrimination, custodial torture, justice.

OVERVIEW:

[1] Srishty Anand and Sharmishtha Nanda, Violence in Public Spaces Against Women and Girls: Narratives from India, Papers ssrn (Jan. 5, 2025, 8:00 P.M.), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4039628.

India is one among such nations where men have been enriched with huge importance since ancient times. All the pages of history are engraved with the heroism and dominance of men.[2] The women and their physique curves have always been a matter of entertainment or fornication for the men. The autonomy of women in health, sexual life, and reputation have never bothered the society or the system. The biggest irony[3] is that a nation where half of the citizens are women considered rape or sexual torture as a heinous crime after almost fifty years of independence. The legislation has been framed by lawmakers in the past few decades, but there is still a persistent darkness under the lamp of justice. Today, society and the mortals are struggling with the acceptance of women's empowerment and their sexual autonomy. The prisons or the custodies, which are believed to be a center for recovering deviated individuals, are now the safest corners for the continuance of sexual exploitation and copulative actions. Mahatma Gandhi once coined "hate the crime but not the criminal' but ironically, in detention centers of India, the female inmates, especially the pre-trial and the under-trial women detainees, are severely tortured and sexually exploited by the male police officers solely for post-haste confession[4]. Prisons are considered one of the most sensitive areas of human rights in a civilized society, especially for women. Besides all other notable challenges related to safety and security, frequently sharing cells with men, poor sanitation, lack of concern of the authorities, and other insecurities have haunted the lives of all the female inmates in India. Every year hundreds of cases are launched regarding custodial rape, but only a few are addressed in a legitimate way. The sole reason behind this is the lack of suitable legislation and penal charters to combat custodial rape in India[5]. The interrogation arises is that the prisons are considered as the correctional homes for the lawbreakers, but is this how a person who is deviated can be reincorporated into society?

Literature Review:

[2] Mushirul Hasan, Nehru: The writer, the historian, The Hindu (Jan. 5, 2025, 8:05 P.M.), https://www.thehindu.com/opinion/lead/Opinion-on-Jawaharlal-Nehru-and-his-writings/article59783280.ece.
[3] Reddit, https://www.reddit.com/r/india/comments/1zio7i/what_is_the_biggest_irony_of_india/ (last visited Jan. 5, 2025).
[4] Avnish Bhatt and Dr. Rajesh Bahuguna, Rights of Prisoners from Human Rights Perspectives: a Select Study of Women Prisoners in India, Research Gate (Jan. 5, 2025, 8:10 P.M.), https://www.researchgate.net/publication/336085773_Rights_of_Prisoners_from_Human_Rights_Perspectives_a_Select_Study_of_Women_Prisoners_in_India.
[5] Diksha Paliwal, Punishment for Rape In India (Section 375 and 376 IPC), I pleader (Jan. 5, 2025, 8:15 P.M.), https://blog.ipleaders.in/punishment-for-rape-in-india/.

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There has been a plethora of resources that have shed light on the emerging concerns related to women and their rights. The studies have extended their ambit to sexual harassment and the related provisions.

Research Gap:

The researchers and policymakers have addressed several emerging concerns related to the provisions of women's safety and legislatures encircling the sole protection of women from sexual harassment[6]. But there has been a persistent lacuna in the legal system of India, which has faintly enshrined any provisions that have directly addressed the evil practice of sexual harassment and custodial brutality on women inmates in the prisons of India. This research paper is embedded with an in-depth analysis of the condition of women detainees in detention centers and the dire requirement of provisions that can emit an effective result to combat the ignoble practice of venereal torture.

Research questions:

1. Are the women behind the bars safe?
2. Is there any law to regulate custodial rape on women inmates?

Research Methodology:

The paper is in the form of doctrinal methodology and aims to highlight the lacunas related to women's safety from sexual harassment in the legal system of India. This paper sheds light on the condition of women inmates, their constitutional rights, and other exemptions enshrined in other laws of the land. As a reference, the author has fetched relevant information from books, journals, statutes, and other online published research articles.

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What is a RAPE?

In legal parlance, the IPC[7] defines 'rape'[8] As a process of insertion of the penis or any other body organs of a man in the vagina (including labia majora) without the women's will or consent or maybe with consent in some abnormal situations, previously rape was not

[6] Nithya Ramani Iyer, POSH Act 2013 – Sexual Harassment of Women at Workplace, Zolvit (Jan. 5, 2025, 8:20 P.M.), https://vakilsearch.com/blog/posh-act-2013-protection-of-women-from-sexual-harassment/.
[7] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).
[8] Indian Penal Code, 1860, § 375, No. 45, Acts of Parliament, 1860 (India).

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considered as a delinquency, but the term was included in the penal laws during the late 1990s. It is the most heinous crime that involves penetration and sexual harassment by applying intense force or manipulation, which directly exploits the dignity and curbs the rights of a woman.

Discrimination based on gender, sex, and sexual orientation:

The prisons, popularly known as correctional homes, are no less as compared to hell to those who belong from a marginalized or underprivileged socio-economic background. The women who are sent behind bars are discriminated against physically, psychologically, and sexually by the authorities and other male inmates. This brutality is to be considered a naked violation of human rights along with dignity and sexual autonomy. Women prisoners are also discriminated against and tortured based on their sexual orientation, not only in India but also women inmates in every corner of the world face a variety of difficulties regarding their choices and sexual behavior. It is often found that women from the LGBTQ+ community (lesbian) have a strong affinity towards their female partners. It has been traced that a lesbian is illegitimately kept with male inmates, believing that it can change her mind.[9]!

What are the legitimate frontiers regarding the Rights of Women Prisoners in India?

Rights of women inmates under the Constitution of India-

Any individual, whether freed or behind bars, is empowered with almost all the fundamental rights that are enshrined in the Constitution[10]. Article 14[11] Depicts that the laws provide equal protection to all individuals without any discrimination. Also, Article 15[12] Provides a direct prohibition to discrimination on any grounds, including sexual or gender-based intolerance. The right to life, autonomy, and liberty with entire dignity is also guaranteed by the Constitution.[13]. Though there are no direct provisions for women inmates in the Constitution, the right to life, liberty, and the right against any sort of exploitation, discrimination, and harassment are clearly prohibited by the mother state of India.

[9] WOMEN IN PRISON: A FACT SHEET, file:///C:/Users/danso/OneDrive/Desktop/women_prison.pdf (last visited Jan 5, 2025).
[10] The Constitution of India, 1950, No. 1, Acts of Parliament, 1950 (India).
[11] The Constitution of India,1950, art. 14, No.1, Acts of Parliament 1950 (India).
[12] The Constitution of India, 1950, art. 15, No.1, Acts of Parliament 1950 (India).
[13] The Constitution of India, 1950, art. 21, No.1, Acts of Parliament 1950 (India).

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Stance of the Prisoner's Act[14] –

The Prisoner's Act provides ample amounts of additional benefits to women inmates, like medical facilities.[15] at normal levels, along with special medical benefits for pregnant inmates[16]. Also, the separation of cells as per gender[17] It is emphasized in this Act. The Act underlines separate provisions for basic need fulfillment and sanitation for the women inmates.[18].

Rights of Women Prisoners under IPC[19]-

The penal charters provide provisions for arrest, procedures to be followed during a penalty, and other relevant ones for protecting and safeguarding the rights of women detainees. The statute deciphers that women should be arrested by a lady police officer.[20]. Also, any sort of search, medical examination, or other proceedings should be executed in the presence or participation of women police officers and the required female professionals. Section 57 emphasizes that a woman detainee should be kept under the custody of a woman police officer. After the inclusion of the provision of rape in the penal legislation, the punishment for rape is also emphasized in the penal code.[21].

Rights secured under the Code of Criminal Procedure[22]-

This code includes provisions that a woman cannot be arrested after sunset and before sunrise, i.e., at night in normal circumstances.[23] The legislation favors bail to under-trial female inmates who are with a child below six years[24] and facilitates female detainees with provisions related to the separation of cells or chambers from male inmates[25].

The stance of the Judiciary of India to combat custodial rape:

The Apex Court of India has often countered several cases related to custodial rape or sexual abuse in the past few decades[26]. There have been several pre-existing provisions to safeguard

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[14] The Prisoner's Act, 1894, No. 9, Acts of Parliament, 1894 (India).
[15] The Prisoner's Act, 1894, § 24, No. 9, Acts of Parliament, 1894 (India).
[16] The Prisoner's Act, 1894, § 27, No. 9, Acts of Parliament, 1894 (India).
[17] The Prisoner's Act, 1894, § 3, No. 9, Acts of Parliament, 1894 (India).
[18] The Prisoner's Act, 1894, § 23, No. 9, Acts of Parliament, 1894 (India).
[19] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).
[20] Indian Penal Code, 1860, § 46, No. 45, Acts of Parliament, 1860 (India).
[21] Indian Penal Code, 1860, § 376, No. 45, Acts of Parliament, 1860 (India).
[22] The Code of Criminal Procedure, 1974, No. 2, Acts of Parliament, 1974 (India).
[23] The Code of Criminal Procedure, 1974, § 50, No. 2, Acts of Parliament, 1974 (India).
[24] The Code of Criminal Procedure, 1974, § 55A, No. 2, Acts of Parliament, 1974 (India).
[25] The Code of Criminal Procedure, 1974, § 59, No. 2, Acts of Parliament, 1974 (India).
[26] Ludwig, https://ludwig.guru/s/In+the+past+few+decades (last visited Jan 5, 2025).

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the rights of female detainees, but over the course of time, the intensity of copulatory delinquencies in the prisons has escalated, so the Hon'ble Courts have deciphered several landmark verdicts according to the needs and variations of the cases. There was a landmark case in which the Apec Court emphasized the importance of family ties of an inmate along with healthy sexual intercourse with the partner. So, there was an establishment of the conjugal rights of the female inmates with their partners during the detention period. In the case of "***Hussainara Khatoon vs State of Bihar*"[27]**,** the legal representation and the obligation of the state to provide legal aid were emphasized. In the landmark case of "*Sunil Batra vs Delhi Administration,"*[28], the provisions for basic amenities and needs were highly prioritized by the Hon'ble Court. The judgment of "***DK Basu vs. State of West Bengal***"[29] underlined the important guidelines of arrest and other important steps of a criminal procedure.

A Brief Whisper of Persuasion:

The sexual abuses are not only restricted to the detainees rather, some of the police officers also play an active role in exploiting the female inmates. These situations persist mainly due to socio-economical and gender discrimination against women who belong to marginalized or underprivileged backgrounds. There is an urgent need for a separate set of strict laws and regulations to check the brutalities and sexual harassment in prisons[30]. The era is in urgent need of anti-torture laws and anti-sexual harassment laws so that the system can put a check on the brutalities that take place inside the prisons on women detainees. Secondly, there is a need for proper training of the policemen and other male staff who reside inside the prison. Proper awareness and knowledge can provide some sort of safeguard to the women detainees. The inmates should be made aware of their legal and basic rights so that they do not get manipulated by the words of the policemen or other detainees[31]. There should be proper provision of cameras inside the prisons to check the internal situations within a prison. Also, regular visit of the judicial and executive officers is important to combat the situations like custodial rapes in the prisons of India.

[27] Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 136.
[28] Sunil Batra v. Delhi Administratiom, 1978 SCC (4) 494.
[29] D.K Basu v. state of West Bengal, (1997) 1 SCC 416.
[30] Reet Balmiki, Need for Reforms in Prison Rules, I Pleader (Jan. 5, 2025, 8:20 P.M.), https://blog.ipleaders.in/need-for-reforms-in-prison-rules/.
[31] Snehil Sharma, A Comprehensive Study about the Rights of Prisoners, Legal Bites (Jan. 5, 2025, 8:25 P.M.), https://www.legalbites.in/topics/articles/a-comprehensive-study-about-the-rights-of-prisoners-893858.

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Epilogue:

Custodial barbarity and custodial rape are the naked violation of human rights and human dignity[32]. The correctional homes were settled to check and balance the behavior of the deviated individuals of the society, but when the detention homes become the home for criminal activities, then the society starts emerging towards a drastic breakdown. For ages, women have faced discrimination and torture related to sex and other physical abuses. The laws of the land have numerous provisions related to women's safety, but the condition of women has still now not improved. The lack of any specific legislation and regulatory provisions, along with lacking proper training and awareness, have collectively contributed to escalating the rate of custodial torture in the prisons of India**.** The inhuman activities of the police officers and the male detainees on the female inmates have clearly threatened the Constitution and other laws of the land. The somatic, psychological, and sexual brutalities to the pre-trial, under-trial, and other women detainees need an urgent prohibition.

[32] Gnanaganga, https://gnanaganga.inflibnet.ac.in:8443/jspui/bitstream/123456789/5514/1/Custodial-Violence-in-India.pdf (last visited Jan. 5, 2025).

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