



## INTO THE SHADOWS: INTERWOVEN VOICES OF SILENCES AND VIOLENCE'S AGAINST WOMEN IN PRISONS

By Trisha Mukherjee

From Army Institute of Law, Mohali

### INTRODUCTION

*“No amount of me trying to elucidate myself was doing any good. I didn't even know what was happening inside me, so how could I even have explained it to them?”*

~Sierra D. Waters

The #MeToo movement reached nationwide attention in October of 2017. Activist Parana Burke created the phrase in 2006 to support women of colour who experience sexual intercourse violence. However, the phrase did not become popular until after the revelation of Harvey Weinstein's abuses, when he acted with actress Alyssa Milano who tweeted “If all women who have been sexually abused or assaulted write '#MeToo' as a condition on their status, we can give people a sense of greatness the problem.”<sup>1</sup>

In 1972, a young tribal girl was allegedly raped by two policemen on the compound of Desaignanj police Station in Gadchiroli, district of Maharashtra and her landmark case awakened India decades ago.<sup>2</sup> But the question is: Do all the voices of sexually abused vulnerable women manage to reach their destination? I open with this example

to connect the following paper about sexual harassment in prisons and rule in national dialogue and activists surrounding social sex harassment and beatings, and to think about why prisoners could not say #MeToo.

India has the world's largest democracy beyond the name. It has free elections, which includes many parties, the Parliamentary system, a unique and free-flowing judicial machine, and a country which abounds with non-governmental organizations that are proud of their independence and who help make community, a living one.

A prison is a rehabilitation centre designed to convert prisoners. Apart from this, prison systems often hide violence and immorality behind closed doors. Problems related to incarceration are becoming more pronounced even under the context of female prisoners.

According to the latest data available since the end of 2015, Indian prisons numbered 17,834 women. Only 17% of these women live in women's prisons, and most end up in women's cells.<sup>3</sup> There is a national and international agreement that the state of prisons and the women living in them need urgent improvement.

### About the paper

Prisons are more violent places as compared to society. The rates of physical abuse of female inmates are 27 times higher than the rates of females in the general population, according to prison ministry figures. Violence in prisons should be a priority issue for prison management for a number of reasons. *First*, violence kindle violence, that

\* The Author is a Fifth Year student, pursuing law from Army Institute of Law, Mohali affiliated to Punjabi University, Patiala.

<sup>1</sup> Nadia Khomami, “#MeToo: How a Hashtag Became a rallying cry against Sexual Harassment,” The Guardian, Oct 20 2017.

<sup>2</sup> Tukaram v. State of Maharashtra, (1979) 2 SCC 143.

<sup>3</sup> As per Prison Statistics India 2015, NCRB, from the end of 2015, there are 4, 19,623 persons in jail in India. Women constitute 4.3% of this figure, numbering a total of 17,834 women. Of these, 66.8% (11,916) are under trial prisoners.



is, exposure to violence among youth increases the risk of later violent and non-violent crime, drug use and intimate violence against a partner.<sup>4</sup> *Second*, under international law, prisoners have a right to protect themselves from violence such as beatings, rape and abuse. According to *Principle 5 of the United Nations Basic Principles for the Treatment of Prisoners*: “Except for those limitations that are demonstrably necessitated by the very fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms began within the Universal Declaration of Human Rights ...”<sup>5</sup> *Third*, it is difficult and very costly to maintain a safe and secure facility with a good quality environment, including a well-functioning environment with a violent organization.

Violence is very difficult to address and accurately assess, because it is surrounded by silence and is therefore rarely reported. For this reason, reporting violence committed by inmates or staff can lead to retaliation. While this might even be the case within the world outside the prison, the deprivation of liberty means a victim who reports the violence has no possibility of shake the retaliation by the perpetrator. A study found that 25% of respondents who had not reported their most up-to-date experiences of assault said that they didn't believe that reporting victimization would make a difference. A further 20% didn't report an assault because they feared retaliation.<sup>6</sup>

Hence, the paper's intentions are to become the voices of oppressed women under the weight of victims' blame.

## CHAPTER 2

### REPORTING A “CUSTODIAL RAPE” OR LABELLING AS “SEXUAL ASSAULT VICTIMIZATION”

*“I just want to sleep. A coma would be nice or amnesia. Anything, just to urge obviate this, these thoughts, whispers in my mind. Did he rape my head, too?”*

~ Laurie Halse Anderson

WHO has defined violence as “*The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a gaggle or community, that either leads to or features a high likelihood of leading to injury, death, psychological harm, mal-development or deprivation*”. It's noteworthy that the definition includes threats just like the potential use of force, which the defining outcome isn't only injury or death but also psychological harm, mal-development and deprivation.<sup>7</sup>

Violence may further be categorized as self-directed, interpersonal or collective when directed towards: (i) oneself (ii) one's family, intimate partner or unrelated person; and (iii) specifically defined groups for reasons of a social, political or economic agenda. Organized groups or

<sup>4</sup> Fagan AA, The relationship between adolescent physical abuse and criminal offending: support for an enduring and generalized cycle of violence, *Journal of Family Violence*, 20(5):279–290, 2005.

<sup>5</sup> Basic principles for the treatment of prisoners. New York, United Nations, 1990 (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>, accessed 7 November 2013).

<sup>6</sup> Gear S. Fear, violence and sexual violence in a Gauteng juvenile correctional centre for males. Johannesburg, Centre for the Study of Violence and Reconciliation, 2007 (Briefing Report No 2).

<sup>7</sup> Global Consultation on Violence and Health. Violence: a public health priority. Geneva, World Health Organization, 1996 (WHO/EHA/SPI.POA.2).



states may perpetrate collective violence. The character of the violence could also be physical, psychological, sexual or deprivation/neglect.<sup>8</sup>

Sexual violence is particularly difficult to review and assess the stigma associated with being raped or abused and also thanks to the danger of reprisals from the perpetrator. Sexual violence could even be defined as behaviour that leads a private to feel that he/she is that the target of aggressive intentions. This may additionally include sexual pressure. During a recent study, sexual victimization was viewed exclusively as non-consensual sexual acts with oral, vaginal or anal penetration also as abusive sexual contacts (touching or grabbing during a sexually threatening manner or touching genitals). Sexual victimization during imprisonment is experienced by between 1% and 40% of the inmates, while physical victimization is experienced by between 10% and 25% of the inmates.<sup>9</sup>

After the rape and murder of a veterinarian in Hyderabad on November 28 and therefore the burning of a rape survivor in Unnao Uttar Pradesh, on December 5, there has been an outcry for justice for the victims. Within and out of doors Parliament there has been a clamour to form the criminal justice system tougher on an offender committing sexual crimes against women and youngsters.

‘Rape’ as a clearly defined offence was first introduced within the Indian legal code in 1860. Section 375 of the IPC made punishable the act of sex by a person with a lady if it had been done against her will or without her consent. The definition of rape also includes sex, when her consent has been

obtained by putting her or an individual in whom she is interested, in fear of death or of hurt. After the Mathura Rape Case of 1972, while the session’s court acquitted both the policemen, the Supreme Court reversed the order of acquittal.

The apex court, in its September 15, 1978 verdict, said no marks of injury were found on the girl’s private part or body after the incident and “their absence goes to an extent which indicates that the alleged intercourse was a peaceful affair”. The controversial verdict sparked wide scale protests across the country seeking a change in existing rape laws. Consequently, the Law was drastically amended and a replacement law entitled legal code Amendment Act, 1998 came into existence during which the very concept of ‘custodial rape’ as being more heinous than ordinary rapes was accepted. This Act caused some important changes within the existing provisions on rape within the Indian legal code. It amended Section 376 of the IPC and has enhanced the punishment of rape by providing that it shall not be but seven years.

It’s also provided enhanced punishment of 10 years of imprisonment for cops or staff of jails, remand homes or other places of custody established by Law. The Act has further inserted a replacement section within the Indian Evidence Act Section 114A which lays down that where sexual activity by the accused has been proved and therefore the victim states before the court that she didn’t consent, the court will presume that there was absence of consent and therefore the onus are going to be on the accused to prove that the ladies had consented to the act. The Act has amended the Code of Criminal Procedure and also provides for trial privately.

<sup>8</sup> Krug EG et al., eds. World report on violence and health. Geneva, World Health Organization, 2002.

<sup>9</sup> Wolff N, Shi J, Bachman R. Measuring victimization inside prisons: questioning the questions. Journal of Interpersonal Violence, 2008, 23:1343.



Custodial rape is an aggravated sort of rape. It's an assault by those that are alleged to be guardians of the women concerned that are specially entrusted for his or her welfare and safekeeping. Just in case of custodial rape, the physical power that men have over women gets intensified with the legally sanctioned authority and power. Single women, widows with young children and ladies belonging to the lower strata of society who need to eke out a living against all odds, become easy prey to custodial rape because they're already bereft of the supportive mechanisms. Fortunately, reporting of custodial rape isn't very frequent during this country. Three rape cases in police custody were reported in 2002 and one such case was registered in 2003 which happened in Tamil Nadu. But albeit one such incident takes place that denigrates the image of the whole criminal justice system.

The Judiciary has taken a really a significant view regarding the commission of custodial rape. Whatever amendments, brought in rape laws to form the punishment more stringent, is especially due to those judgments. Within the *State of Maharashtra vs. Chandra Prakash Keval Chand Jain*<sup>10</sup> case, the court remarked 'decency and morality publicly life are often protected and promoted' if courts deal strictly with those that violate the societal norms. When crimes are committed by an individual in authority, i.e. a policeman, superintendents of jails, or managers of remands homes or doctors the courts approach shouldn't be an equivalent as

within the case of a personal citizen. When a policeman commits a rape on a woman, there's no room for sympathy or pity. The punishment in such cases should be exemplary.

Abusing positions of trust and authority aren't however limited to public officials or cops. Further examination of the last decade of official statistics reveals that while enforcement activity concerning violence against women across all categories has increased,<sup>11</sup> custodial rape continues as a rarity: 2002 statistics reveal that only 3 of the 16,370 rape offences (under section 376 IPC) were custodial rapes, and a decade later, 2012 statistics reveal that custodial rape constituted just one of the 24,206 rape offences.<sup>12</sup>

Reforms to legal code and procedure seem to possess done little to stem the tide of gender violence in India. Does this mean that these legal reforms are a failure? It's documented in criminological circles that 'official' crime reports aren't an accurate estimation of the size or sort of crime in society for a variety of reasons. A 'dark' figure of crime exists, which remains unreported in police official crime statistics. International victimisation studies suggest that much crime against women and youngsters isn't reported. This suggests that the steady increase within the number of rapes and crimes against women that are reported within the official statistics may be viewed because the 'tip of the iceberg'. Furthermore, increased reporting of

<sup>10</sup> 1990 AIR 658.

<sup>11</sup> According to the National Crime Records Bureau (NCRB), Crime in India - 2012 Statistics, 24270 cases of crime were reported against women in 2012. This constituted an annual rise of 6.4 %, with a steady increase in reported offences since 2008.

<sup>12</sup> National Crime Records Bureau, Crime in India 2012, Ministry of Home Affairs, Government of India,

<http://ncrb.nic.in/>. See Table 13.5 – 'Reported custodial rape cases and their disposal by police and courts during 2012', p. 555. The IPC provisions indicating an 8.9% increase since 2008. During 2012, 4.8% cases were reported under the special and laws (SLL) provisions.



rape by victims may simply reflect better and simpler investigative activity.

### CHAPTER 3

#### SEXUAL VIOLENCE IN THE GARB OF “TORTURE”: MUTIFARIOUS FORMS OF VIOLENCE’S AGAINST WOMEN IN INDIA

*“Beauty provokes harassment, the law says, but it’s through men’s eyes when deciding what provokes it.”*

~Naomi Wolf

Violence against women, including sexual violence, has been a persistent and chronic social problem within India. This has been the case notwithstanding the emergence of local reform movements within the 19th and 20th centuries that campaigned to enhance the status of girls and eradicate social practices that have entrenched gender inequality, including the repeal of discriminatory laws and practices concerning dowry, the status of widows, child marriage, and also as demanding better education and equal political rights for ladies.<sup>13</sup>

By the top of the century, British authorities were finding it increasingly difficult to ignore these involves reform in light of the broader demands for political emancipation from colonial rule, and increasingly vocal demands from the suffragette movement on the domestic home-front. Demands for emancipation (both from Empire and Patriarchy) led women to assume leading

roles within the reform movements of India, culminating within the foundation of the All India Women’s Conference (AIWC) within the 1920s.<sup>14</sup>

India’s independence from British rule out 1947 witnessed an extra growth of women’s organisations<sup>15</sup> demanding reform.6 the principles concerning dowry were an early success: the Dowry Prohibition Act 1961, which was amended in 1984, strengthened the legal measures against perpetrators of dowry-related crimes. It might be fair to mention that these early social movements in post-independence India were focused on eliminating the gravest social harms like dowry-related offences of torture, murder and rape.

The key argument of this essay is that a lot of the laws and practices in India that denied women equivalent rights accorded to men were a part of a colonial inheritance, instead of a product of local indigenous customs, traditions and religious practices. That said, custom, tradition and religion in India has played, and continues to play, a big part in sustaining the subordination of girls. Of course, this is often not unique to India, and may be a feature of the many cultures. Because the United Nations made clear in its 1993 Declaration on the Elimination of Violence against Women (DEVAW): “States should condemn violence against women and will not invoke any custom, tradition or religious consideration to avoid their obligations with reference to its elimination.”<sup>16</sup>

<sup>13</sup> Geetanjali Gangoli, Indian feminisms: Law patriarchy & violence in India, (Abingdon, Oxon: Ashgate Publishing Group, 2007), pp. 79-98.

<sup>14</sup> Bipin Chandra, India after independence 1947-2000, (New Delhi: Penguin, 2000), p. 456.

<sup>15</sup> These groups also tackled environmental issues (from pollution to de-forestation), socio-economic issues (from price regulation of rice and the socio-

economic rights of the tribal communities), as well as calling for tougher laws to avert industrial disasters and promote work-place safety.

<sup>16</sup> Declaration on the elimination of violence against women, UN General Assembly, A/RES/48/104, 85th plenary meeting, 20 December 1993 (DEVAW), <http://www.un.org/documents/ga/res/48/a48r104.htm>. DEVAW is a form of ‘soft law’ rather



That religion plays a prominent role in subordinating women is especially in India perplexing since Hinduism is replete with female goddesses, like *Kali and Durga*, who were created from the synergies of the Gods to eliminate demons (evil) and were worshipped as a logo of *Shakti* (feminine power) in Hindu mythology. However these mythological images of feminine power have done little to displace the entrenched and commonplace attitudes that devalue women in modern Indian society. As this essay concludes, it's this paradox that has been at the core of India's social organization and gender relations for hundreds of years, and continues to the present day.

Torture may be a subgroup of collective violence, defined specifically by the severity of the pain, the intentionality, the aim and therefore the perpetrator. Within the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment,<sup>17</sup> torture is defined as: (i) severe pain or suffering, physical or mental; (ii) inflicted intentionally; (iii) with a selected purpose like to get a confession or to punish; and (iv) by an individual acting during a public capacity. In contrast, cruel, inhuman or degrading treatment (also called ill-treatment) may involve less but still substantial pain or suffering and not

necessarily be committed for a selected purpose.

Torture is prohibited consistent with law of nations, and there are not any circumstances that justify an exception to the present prohibition. Nevertheless, consistent with human rights reports, torture is practised in about 130 countries and is widespread and systematically utilized in 80–100 countries.<sup>18</sup> Hostilities facilitate torture, for instance, between the fighters in an armed conflict or between religious, sexual or political majorities and minorities. Such hostility may become de-individualization and dehumanization. Torture could also be interpreted as socialized obedience in an environment where the perpetrators see themselves as performing an excellent service by punishing a gaggle that they perceive deserves ill-treatment. For this reason, minorities (of a sexual, political or religious nature) are at increased risk of being victims of torture and should be in need of stronger protection measures. Torture leaves fightful marks on the body and mind. A recent review of 181 studies demonstrates that posttraumatic stress disorder and depression are frequent consequences of torture and related trauma.<sup>19</sup>

The relationship between prisoners and human rights has always been erratic. There always are conflicting opinions on the

than binding legal treaty. Significantly DEVAW confirms that “gender-based violence” is a form of discrimination and violation of human rights, prohibited under Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations in 1979. Accessed 12<sup>th</sup> July 2020.

<sup>17</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by the General Assembly of the United Nations on 10 December 1984. New York, NY, United Nations, 1987 (Treaty Series. Vol. 1465) (<http://treaties.un.org/doc/Publication/UNTS/Volume%20>

1465/volume-1465-I-24841-English.pdf, accessed 12<sup>th</sup> July 2020).

<sup>18</sup> Modvig J, Jaranson J. A global perspective of torture, political violence, and health. In: Wilson JP, Drozdek B, eds. Broken spirits: the treatment of PTSD in asylum seekers and refugees with PTSD. New York, NY, Brunner-Routledge Press, 2004.

<sup>19</sup> Steel Z et al. Association of torture and other potentially traumatic events with mental health outcomes among populations exposed to mass conflict and displacement. A systematic review and meta-analysis. *Journal of the American Medical Association*, 2009, 302(5):537.



position about whether the prisoners are entitled to human rights or not. Some people have the opinion that, when an individual becomes deviant and commits a criminal offense, he should be bereft of all his rights. However, others are of the opinion that some rights remain vested during a person even after commission of a criminal offense by that person. There are certain basic rights which the prisoners are entitled to which safeguard them from some abhorrent practices. One such detestable practice is 'Torture' which is employed against the prisoners and under-trials to urge confessions from them a few particular event.

Unfortunately, torture has increased alarmingly throughout the planet. Consistent with famous NGO 'Amnesty international', quite 100 countries have sanctioned the utilization of torture on their people.<sup>20</sup> The word torture is defined as "intensive suffering, physical, mental or psychological, which is employed to force someone to mention or confess about something against his or her own will". This paper aims to determine that the people undergoing incarceration referred to as 'Prisoners' also are entitled to a number of the essential rights even when a number of their rights are curtailed.

Human rights are best defined because the rights which each person inherits by birth. They're absolute as they are available from eternity and goes to eternity. They will be understood as inalienable rights "to which an individual is entitled to easily due to him being a part of the human family". Every person enjoys these rights despite of their

nation, location, language, religion, Ethnic or the other status.

'Article 1' of "*Universal Declaration of Human Rights*"<sup>21</sup> states that "All individual are born free and with equal dignity and rights". By reading this text in UDHR, it is often construed that every person is equal in their rights before law and no exclusions are made even when an individual has committed a criminal offense. Human rights are considered as legal rights and because of their legal nature it has a corresponding duty to protect these rights of every individual living in their territory.

It is established through different texts and judicial interpretations that committing a criminal offense doesn't reduce the status of a person, being into a non-human being. The provisions for the treatment of prisoners has been recognized on international levels and are discussed under various International Instruments like "*Universal Declaration of Human Rights*" (UDHR), "*International covenant on Civil and Political Rights*" (ICCPR), the "*United Nations Standard Minimum Rules for treatment of Prisoners*", the "*European convention for prevention of torture and inhuman or degrading treatment for treatment of prisoners*", "*United Nations basic principles for treatment of prisoners*" and "*United nations convention against torture and other cruel, inhuman and degrading treatment*" (UNCAT).

The attention of the Indian Supreme court was first drawn to the Rights of prisoners in 1983 while deciding the case of *T.V. Vatheeswaran v State of Tamil Nadu*.<sup>22</sup> The court held that the essential fundamental rights that are provided under 'Articles 14,19

<sup>20</sup> 'Stop Torture' (Amnesty.org, 2019) (<https://www.amnesty.org/en/get-involved/stop-torture/>) accessed 12<sup>th</sup> July 2020.

<sup>21</sup> Universal declaration of Human Rights, (<http://www.un.org/en/universal-declaration-human-rights/>) accessed 12<sup>th</sup> July 2020.

<sup>22</sup> [1983] AIR 1983, SC 361.



and 21' under Part III of the Indian Constitution are available to prisoners in the least times as are given to the freemen. The court further stated that the walls of prisons cannot keep fundamental rights out.

The Indian Constitution doesn't state any provisions concerning torture, however, the Indian Supreme Court, while deciding the scope of the elemental rights granted to each individual under Part III of the Indian constitution asserted that "each and each individual has the proper to life and he should live it with human dignity" which incorporates that torture shouldn't be used on an individual which affects his right to measure with dignity. Therefore, the Indian judiciary while deciding different cases has played a serious role in granting the prisoners their rights.

Under the National legislations, "Indian legal code 1890", under "Sections 330 & 348", makes the act considered as torture as penal, with 7 and three years of imprisonment, but when this offence is committed by a policeman on duty, it's not applied. Therefore, these provisions falls in need of covering all the prospects of torture as defined within the Convention against torture.

Custodial torture in India is so common that the overall public has accepted it as a traditional routine interrogation conducted by police on account of a criminal offense committed by a private. Only the foremost grievous cases of custodial torture are reported, there's nothing quite a momentary shock within the society which eventually leads to a public outcry. Only after this public outcry and appeals, the govt takes the notice of things of prisoners and under-trials in

prisons because they're left with no other option. Even when the govt is to require action against the guilty officers, the very best punishment the officer gets may be a suspension. After the incident fades far away from the general public memory, the guilty officer resumes their services.<sup>23</sup>

Even the Indian Supreme Court, within the recent case of *Munshi Singh Gautam vs. State of Madhya Pradesh*<sup>24</sup> summarizes their grief concern about this problem of torture in Indian prisons by police. The Supreme Court stated that:

*"The dehumanising torture, assault and death in custody which have assumed alarming proportions raise serious questions on the credibility of the rule of law and administration of the criminal justice system... the priority which was shown in Raghbir Singh case quite 20 years back seems to possess fallen on deaf ears and thus things doesn't seem to be showing any noticeable change. The anguish expressed within the cases of Bhagwan Singh v State of Punjab, Pratul Kumar Sinha v State of Bihar, Kewal Pati v State of UP, Inder Singh v. State of Punjab, State of MP v Shyamsunder Trivedi and thus the by now celebrated decision within the landmark case of D K Basu vs. State of West Bengal seems 'not even to possess caused any softening of attitude within the inhuman approach in handling persons in custody'."*

Therefore, I will conclude by saying that human rights are available to every individual, even when he's a civilian or a criminal. The prison bars cannot exclude the essential rights of a private. It's also been established that the prisoner while in custody of police in India is entitled to 'Right against

<sup>23</sup> R S Saini, 'Custodial Torture in law and practice with reference to India' (1994) 36 Journal of the Indian Law Institute

([https://www.jstor.org/stable/43951530?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/43951530?seq=1#metadata_info_tab_contents)) accessed 12<sup>th</sup> July 2020.

<sup>24</sup> Appeal (CrL.) 919 of 1999.



custodial torture' under 'Article 21' of the constitution. However, watching the present scenario in India and reports of the National right commission and other NGO's like amnesty international etc, it's clear that this right of prisoners are still violated in Indian prisons on a day to day even when the politicians deny it.

The Indian government being a signatory to the "United Nations convention against Torture" has did not perform their obligation to guard this right of people including prisoners. Monthly a replacement case is being reported in India concerning death in police custody because police torture. The Indian government till now has not ratified the "United nations convention against torture" and even after the introduction of 'Prevention of Torture Bill, 2017' in Indian parliament, no such legislation was passed. This shows the voluntarily delay of the Indian government to ratify the convention, the most explanation for which is to stop themselves to be answerable to the United Nations for the torture cases.

#### CHAPTER 4

#### **"COUNTING OF RISK" OR "PREVENTION OF ASSAULT": WHICH ONE WILL YOU CHOOSE?**

*"We mute the belief of malevolence- which is just too threatening in touch - by turning offenders into victims themselves and by describing their behaviour because the results of forces beyond their control."*

~Anna Salter

Indian Constitution grants equal rights to women, prisoners rights and arrested persons rights under Articles 14, 15 (3), 21, 22. Various legislations also are enacted to

protect the women prisoners from violence like Prisoners Act, 1984, Indian code, Criminal Procedure Code, 1973, Indian Evidence Act 1872. The govt. is additionally providing various recreational programs inside the prison for rehabilitation of prisoners like Education, Yoga, Mediation, Library, Prison Labour and Visiting their relations. Once they are released from the prison, the govt. also provides for "Aftercare services for released prisoners" to protect them from social stigma. The matter arises only when the poor and illiterate female enters into the prison and in repeatedly they are physically and mentally harassed by the prison staffs.

The worst kind of custodial violence is custodial rape of women prisoners by prison staffs. In difference, it is a significant issue which they're facing. There are horror stories about the torture in custody to the women prisoners. Asian Centre of Human Rights (ACHR) stated that "custodial rape remains one of the worst kinds of torture perpetrated on women by enforcement personnel and sort of custodial rapes of women happen at regular intervals". Women prisoners who are within the custody of police complained particularly of harsh treatment by the police including sexual indignity or abuse, physical torture, beating and rough handling. An entire disregard by the police of procedures applicable to arrest, search, custody, and other rights creates immense hardship for the women. Variety of the incidents of custodial rape and thus the relevant decisions of upper courts are as follows.

Padmini, wife of a suspect during a theft case, was gang-raped in 1992. Her husband was taken to the Annamalai Nagar police station in Chidambaram for interrogation on May 30, 1992 and kept in custody till June 2, 1992. Her husband was beaten to death. When



Padmini visited the police station to meet her husband, she was gang-raped. Out of the 11 policemen involved during this case, 7 were acquitted and 4 convicted to undergo imprisonment for 10 years. The convicts went in appeal to the Supreme Court, which upheld the conviction of the trial court and Madras High Court. Before the intervention of the High Court of Madras, the Tamil Nadu government offered to pay Rs. 1 lakh as interim compensation and also agreed to provide Government employment and accommodation in government homes.<sup>25</sup>

Soni Sori a 35 year old adivasi school teacher, warden and mother, subjected to sexual violence while in custody within the Dantewada police station in Chhattisgarh under directions of the Superintendent of Police (SP) says in her letter to the Supreme Court advocate that "After repeatedly giving me electric shocks, my clothes were taken off. I was made to stand naked in front of SP who was watching me, sitting on his chair. While watching my body, he abused me in filthy language and humiliated me. The Supreme Court released her on bail in 2013.<sup>26</sup> Women prisoners aren't safe in lock ups. Ms. Saradha was delivered to Special Prison for girls, Vellore, Tamil Nadu, as a remand prisoner having been remanded by the Judicial Magistrate. She was undressed totally and dragged nude for quite awhile till they reached the doorway of her cell and was put in solitary confinement and was never given back her clothes and no official within the prison bothered about her. She was only offered compensation by the court.<sup>27</sup>

The Supreme Court has rightly observed in *State of Punjab v. Gurmit Singh*<sup>28</sup>, that a rapist not only violates the victim's privacy

and private integrity, but inevitably causes serious psychological also as physical harm. Rape isn't merely a physical assault; it's often destructive of the entire personality of the victim. A murderer destroys the human body of his victim; a rapist degrades the very soul of the helpless female.

So, women face a lot of hurdles altogether stages of criminal justice process, especially while in police custody. At the time of her arrest, the women suffer from lack of knowledge about her basic rights. This custodial violence is daintily a menace or cancer to our Indian Society.

To address the prevention of violence, the beginning line is within the reason of models of violence. To understand prison violence, there are two main models, which are as followed:

The *importation model* emphasizes that prisoners bring their violence-prone behaviour to the institutions through their histories, personal attributes and links to criminal groups, as an example. This model would show efforts of prevention towards addressing the individual prisoners' susceptibility to violence through social programmes like anger management programmes.

The *deprivation model* holds that prison and deprivation from liberty can cause psychological trauma so as that, for self-preservation, prisoners create an oppositional prison subculture promoting violence. This model would direct prevention efforts towards the environmental factors and general prison climate, which require to be addressed by prison management. Recent literature has predominantly focused on the tiny print of prison organization, interactions

<sup>25</sup> Padmini v. State of TamilNadu, 1993 CriLJ 2964.

<sup>26</sup> Soni Sori v State of Chattisgarh (2011) 14 SCC 658.

<sup>27</sup> P. Pugaletni v The State of Tamil Nadu (2019) 3 MLJ.

<sup>28</sup> 1996 SCC (2) 384.



between people and situational factors of considerable significance for prison violence.

### **Risk factors associated with prisoners**

Individual risk factors ranges from potential violence to assaults with serious injuries. Youth and short sentences are associated with higher levels of violent misconduct, while older age, drug convictions and a better educational attainment indicate reduced violent misconduct. Using registration of injury, Sung<sup>29</sup> found that a history of violent offences, violent victimization and psychiatric treatment were associated with increased risk of injuries. Work assignments reduced violence-related risks but increased the likelihood of accident-related risks.

Wolff, Blitz & Shi<sup>30</sup> studied sexual victimization in prison for inmates with and without mental disorders, and located that the rates were approximately 2.5 times higher for inmates with a mental disturbance and 3 times higher among female inmates compared to males.

Other special needs groups are likely to be in danger of victimization, like inmates affected by chronic diseases, minorities (ethnic, sexual, religious) and inmates with drug abuse. Also the rising population of older prisoners is victimized to an outsized degree. Considering the health problems and functional deficits prevailing among older prisoners, it's likely that such victimization features a considerable impact on their quality of life and feelings of safety and security.

<sup>29</sup> Sung H-E. Prevalence and risk factors of violencerelated and accident-related injuries among state prisoners. *Journal of Correctional Health Care*, 2010, 16(3):178–187.

<sup>30</sup> Wolff N, Blitz CL, Shi J. Physical violence inside prisons: rates of victimization. *Criminal Justice and Behavior*, 2007, 34:588.

### **Situation risk factors**

Studies have found a greater risk of violent incidents in higher-security facilities. This could be expected because high-security facilities host more violence prone prisoners. However, it'd even be expected that security measures serve to manage the danger of violence and thereby prevent it.

There is also evidence that mixing the ages of prisoners could also be related to lower levels of violence than those found among groups of younger prisoners. Violence between inmates and violence against staff are correlated because staffs are often injured during attempts to interrupt up fights between inmates<sup>31</sup>.

Crowding is assumed to be a risk factor for violence, but the evidence for this is often not convincing. Last, risk factors for violence in prison settings involve factors associated with the extent of security, mixture of prisoners, staff experience, days of the week and management approaches and relationships between different staff groups.<sup>32</sup>

### **The role of the prison health services**

While the prison management, including security measures and prison climate, has been identified above because the key think about preventing violence, the health services have the potential to form a crucial contribution to the prevention of violence. Access to health care is related to the prison climate: a positive prison climate facilitates interactions between correctional and health care staff and prisoners, while in negative

<sup>31</sup> Kratcoski PC. The implications of research explaining prison violence and disruption. *Federal Probation*, 1988, 52(1):27–32.

<sup>32</sup> Gadon L, Johnstone L, Cooke D. Situational variables and institutional violence: a systematic review of the literature. *Clinical Psychology Review*, 2006, 26:515– 534.



climates correctional staff act as a filter or barrier between inmates and therefore the health services.

When violence results in injuries or to psychological consequences, the prison health service is usually involved in getting to the victims. In delicate cases (cases of sexual violence, torture, or staff-on-prisoner violence), the health services could also be involved under a false pretext, like accidents, fights between prisoners or “falls”. They’ll even be pressured to form a false report on the causes of the injury. However, it’s important to develop a particular health information registry of the causes and circumstances of the injury, that is, violence between prisoners or between staff and prisoner. With an injury registry in place, the injury data can provide indispensable information on the way to prevent violence through the examination of such factors because the place, time and day, circumstances, persons involved and therefore the nature of the violence.

Of particular importance for the prevention of violence is that the initial checkups administered on arrival within the institution<sup>33</sup>. This examination should specialise in, inter alia, identification of indications (report, signs, and symptoms) of violence or maybe torture experienced before arrival at the institution. A careful record should be made from such signs and symptoms and made available to the prisoner for potential subsequent complaint or legal remedy.

In addition to the health information registry of episodes of violence for internal consumption and quality development, the health services got to have a reporting

mechanism to independent authorities, like the ministry of health or an independent human rights body, to make sure that the fragile and punishable cases of violence, torture or sexual assault could also be evaluated neutrally.

The integrity of the health services, that is, the power to work professionally independent of the prison management, is at stake here, as is that the technical capacity to document sensitive cases of violence, torture and sexual assault for future documentation and legal remedy.

## CHAPTER 5

### RECOMMENDATIONS AND SUGGESTIONS

*“Until justice rolls down like water and righteousness like a mighty stream.”*

~ *Martin Luther King Jr.*

As Kiran Bedi, Retd. Joint Commissioner, Special Branch has observed:

*“The law of rape isn’t just a couple of sentences. It’s an entire book, which has clearly demarcated chapters and can’t be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to possess understood and applied it.”*

Custodial rape is an epidemic problem in certain nations. An individual is in ‘custody’ when he/she is under the care, supervision and control of another person or institution, called custodian. Normally, the custodian has an absolute or a high degree of control over the individual, including his/her mobility, liberty, food and water, contact with the surface world, and such. This relationship of

<sup>33</sup> Committee for the Prevention of Torture. CPT standards. Strasbourg, Council of Europe, 2010 (CPT/Inf/E (2002) 1 – Rev. 2010)

(<http://www.cpt.coe.int/en/documents/eng-standards.pdf>, accessed 12<sup>th</sup> July, 2020)



control and dependence casts a robust duty of care and protection on the custodian. Rape, under such circumstances, may be a much more serious violation, since the aggressor takes advantage of his position of control over the lady, violating not only her bodily integrity but also the duty to worry and protect.

The most common example of custody is detention by the State, through the police, army and other security forces, which can be at police stations, lockups, prisons and interrogation centres. As an example, in February 2005, a soldier with the Tripura State Rifles raped a minor girl in West Tripura district. In January, a report prepared by retired judge Chanambam Upendra Singh found 2 members of the 12th grenadier's military unit guilty of raping 15-year-old Sanjita Devi in Manipur in 2003. In February, an Assam Rifles constable allegedly raped a 12-year-old girl within the Karbi Anglong district of Assam, sparking widespread protests from various women's organizations. In September authorities charged two members of the Bihar police with the custodial rape of a 35-year-old widow who was detained on a murder indictment.

The rape of persons in custody was a part of a broader pattern of custodial abuse. Most of the NGOs asserted that rape by police, including custodial rape, was more common than NHRC figures indicated. A better incidence of abuse appeared credible, given other evidence of abusive behaviour by police, and therefore the likelihood that a lot of rapes went unreported thanks to the victims' shame and fear of retribution. Consistent with 2002 records from the National Crime Records Bureau (NCRB), the newest available, courts tried 132 policemen for custodial rape, but only 4 were convicted.

The Ministry of Defence reported that it filed 17 rape cases and 10 murder cases against army personnel from 2003-2004. To date, one rape case and five murder cases led to guilty verdicts. Within the remaining cases, the investigations remained ongoing or the fees were proved false. It had been during this climate that three cases of custodial rape occurred in quick succession, Mathura Rape Case, Rameeza Bee and Maya Tyagi. The three incidents were targeted sorts of violence against women, which also involved an abuse of power by public servants who are duty-bound to guard the people of India.

So how can we then add up of those selective, extreme responses? Why selective outrage for "brutal" rapes? Isn't all rape brutal? Why selective outrage for "rape accompanied by torture"? Isn't all rape torture? When women are alive, we don't believe their testimonies. Can we need women to die to storm the streets? During this paper, I hope to convey that knee-jerk reactions demanding harsher punishments for particular sorts of rape are patriarchal in principal and harmful in practice.

While it's difficult to prosecute and punish a rape accused, the challenge is even greater when it involves custodial rape. In legal code, the state is taken into account to be the protector of the people, which is why it's the state that prosecutes rape cases, and not the victim. However, this logic doesn't hold true in cases of custodial rape. Since incidents of custodial rape typically happen in police stations, jails and other places travel by / under the control of the govt, the evidence is within the control of the general public servants. It's possible for them to destroy the evidence from the place of crime. To counter this, the women are asked for a shift in onus of proof from prosecution to accused in custodial rape cases.



However, it's difficult to even register an FIR against the police. Problems encountered by women with registering FIRs are:

1. Police or other forces refusing to simply accept the complaint of the victim. This might be under the authority of either Police Standing Orders, or the impunity for offences granted under unjust laws like the soldiers Special Powers for the Police, Central (Armed) Reserve Police Forces or the Army
2. Police practice of recording informal complaints within the sort of Community Social Register (CSR) instead of FIR – this has the effect of removing the recording of the offence outside the purview of CrPC and therefore the safeguards it provides victims;
3. The political compulsion to suppress crime statistics, including statistics about custodial rape.

Even if FIR is registered, S. 197 CrPC prescribes that a employee can't be prosecuted for any offence for any act done while discharging the official duty, without the prior sanction of the state or central government, whichever was the authority that appointed the general public servant.

In principle, the demand for harsh retributive justice for rape is summarized upon a patriarchal understanding of rape. It views rape as more horrific than other sorts of violence. Since we feel something more is lost when a woman is raped- her value and honour and identity- we feel compelled to require more justice for rape than other sorts of violence, albeit all violence is non-consensual. This is often why we get moved to calling for lynching, castration and hanging of rapists.

To understand the impact of harassment on women one must hear the account of its victims as nobody conveys the meaning and truth of harassment better than the ladies who have endured it. Women often internalise

male perceptions of harassment and blame themselves for having brought on the harassment.

Sexual harassment is nothing but the showcasing of male dominance. Every hour, two women are raped during this country. What's more horrendous is that 133 elderly women were sexually assaulted last year, consistent with the newest report prepared by the *National Crime Records Bureau (NCRB)*. a complete of 20,737 cases of rape were reported last year registering a 7.2 per cent increase over the previous year, with Madhya Pradesh becoming the "rape capital" of the country by topping the list of such incidents.

Law remains but the amount of victims (including minor) continues to extend destroying the very soul of the helpless women. The concept of marital rape doesn't exist in India. Contrary to the favoured belief rape is nearly never perpetrated for sexual gratification. It's an 'acts of violence that happens to be expressed through sexual means'.

Severe and certain punishment during a time bound manner, of the rapists has some deterrent value. Arrest alone might not constitute a robust societal response. Lengthy prison sentences have some behaviour-altering deterrent values. Many well-known jurists and public men have advocated execution for the criminals who commit rape because it is an offence worse than murder thus far as its impact cares.

The courts need to comprehend the very fact that these conscienceless criminals- who sometimes even beat and torture their victims- who even include young children, aren't getting to be deterred or ennobled by such a little time of imprisonment. Therefore, within the best interest of justice and therefore the society, these criminals should be sentenced to captivity execution.



---

Therefore, we need to address custodial rapes  
as a social evil existing in our society.

\*\*\*\*\*

