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Sexual Harassment in Prison

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ABSTRACT

A prison is a place decided by the government for those who don't follow the norms of societal law. The sole motive behind creating a specific place is to teach them a lesson that these types of acts are harmful to society. Although, behind the bars, many malpractices occur which creates problems in achieving the purpose for which offenders are forced to live here. Thus, it is important to analyse the problems of the offenders to satisfy the sole purpose of prison. This condition takes a complex form in the matter of women and children's since they belong to vulnerable groups. In today's modern society also, the no. of women prisoners only constitutes a small population in the prisons. They face a lot of sexual abuse every day. It becomes a challenge for the executives to stop it. Various laws and treaties are made for the proper facilitation of prisoners especially for vulnerable groups at the national and international level. In this paper, we are going discussion about the sexual abuse faced by the vulnerable groups in the prison.

I. INTRODUCTION

The Today, we are living under a new normal i.e. in the time of the pandemic. In this time, the most basic fundamental human right of right to life is in danger. Everyone faces a type of challenge in this time and the condition of Indian are not different. They face a lot of difficulties like overcrowding, not proper sanitary facilities and other things. A proper distancing couldn't be maintained in the prisons. Although, strict directions have been given by the apex court of the country then also the state governments are not able to implement the directions. On the contrary level, the problem of sexual abuse in the prison has always remained a sensitive issue for society. Offenders are harassed regularly in the prisons illegally. It is one of the largest problems in the administration of prison faced by the executives. This problem doesn't relate to women but men also. Sometimes, men face more violence in comparison to women.

II. STATEMENT OF THE PROBLEM

The condition of women in society has always remained bad. They always become an easy target for harassment and violence. Proper research has to be done for the welfare of women

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in the prison since they are not kept there for harassment. Criminal activities are done by the people of both the genders but the intention differs sometimes. The crime rate of women has always remained at low positions but in recent time it is increasing at an alarming level.

When an offender commits a crime then he has to face some type of punishment. It is mostly given in the places named prisons for their betterment. But women face various type of harassment in these places. They have to face various type of problems. They live there in a bad condition. The conditions where they live are too much harsh and they face a lot of things there. Sexual abuse is the most badass type of harassment they face. They are sexually abused daily by the prison administration. This is a serious issue since women act like a foundation in society. Thus, it becomes important to study this issue for the welfare of prisoners.

III. STATISTICS ON WOMEN IN PRISON

In India, more than four lakh people are there in the prisons at the end of 2015. Although, women constitute only a small number of it of about 4.3%. Out of this data, more than 66% of them are not convicted of their crimes. In our country, the number of women prisoners are increasing at an alarming rate in the period of every five years.² They are increasing by more than 0.3% every five years. The women prisoners form a minority all over the world but they are almost increasing more than the rate of male prisoners in every region in the world.

The maximum number of women prisoners are from the age group of 30-50 which constitutes half of women prisoners population. Then comes the age group of 18-30 which are more than 30% as per the data. In the whole country, there are only 18 prisons maintained only for women's. Thus, most of the women prisoners are forced to keep in the general prisons where they face numerous type of problems. From all the states, Uttar Pradesh forms the highest number of women prisoners of more than three thousand followed by West Bengal, Madhya Pradesh and Maharashtra.

IV. SEXUAL ABUSE TO WOMEN PRISONERS IN INDIA AND THE ROLE OF THE JUDICIARY

Sexual abuse is one of the rigorous crime done in prisons by officials. This is the major problem vulnerable groups are facing all over the world. The custodial rape becomes a bad lifelong dream for a women prisoner. They are raped in the most inhuman way which sometimes people cannot even think. Asian Centre for Human Rights (ACHR) held that custodial rape is the worst form of crime done against women's in society. It is done by the

² India- World Prison Brief (last visited on September 22, 2020) <https://prisonstudies.org/country/india>

prison officials full of lust. They mostly complain about sexual harassment and violence against them in the custody.

The rights of the convicted are not truly liberal in nature but are not restricted as a whole. They are also entitled to get access to the basic fundamental human rights that are necessary. Our Constitution of India doesn't directly define the rights of citizens but the legal rights are developed through the judicial interpretation. As held in the leading case of *T.V. Vatheeswaran v. State of Tamil Nadu*³, it was held that the prisoners are entitled to the basic right to equality, freedom and life as enshrined under article 14, 19 and 21 of the Indian constitution.

The courts in our country have introduced various judgements in the favour of prisoners and issued various guidelines and many times directed the government's to enforce them. Some of them are mentioned here as follows:

- In the case of *Tukaram v. State of Maharashtra*⁴, the apex court of the country gives bail to a criminal because of some loopholes in the criminal justice system. Protests are held all over the country which led to the major amendments in the Criminal law.
- In the case of *State of Punjab v. Gurmit Singh*⁵, the apex court held that rapist doesn't only violate the basic right of privacy of a person but also it has an everlasting effect over the victim for the whole life. It is not only a physical assault but also a cause of a mental disability. It ruins the whole life of the victim. A rapist is far more dangerous than a murderer because he affects both the physical as well as mental health of the victim.
- The apex court of our country has issued important guidelines in the case of *Vishaka v. State of Rajasthan*⁶, where the matter is related to the sexual harassment of women in office.
- In the case of *State of Maharashtra vs. C.K. Jain*⁷, the matter is related to sexual harassment and rape. In this case, the apex court held that the evidence plays an important role. The presumption should be made that the allegations are true and are to be examined later in the case. Also, the large difference in the time in making the

³ 1983 AIR 361; 1983 SCR (2) 348

⁴ 1979 AIR 185; 1979 SCR (1) 810

⁵ 1996 AIR 1393; 1996 SCC (2) 384

⁶ AIR 1997 SC 3011

⁷ 1990 AIR 658

complaint should not be considered as a matter of vagueness. In the case of punishment, there is no relaxation given.

V. RECOMMENDATIONS

Proper implementation of the laws of the criminal justice system themselves improves the condition of prison and prisoners. It has been almost a long time since the implementation of the existing criminal justice system and the reforms are needed as per the time. The National Model Prison Manual 2016⁸ is one of the best modern document which deals with mostly all the problems faced by the vulnerable groups in the prisons. It should be adopted by all the states of our country. As suggested by the Mulla Committee a National Commission for Prisons should be formed by the central government for the betterment of the prisons as well as prisoners. A central would be more effective than that of state. Proper and regular maintenance of the prisons from time to time and inspections done by the high-level authorities should be a better way to maintain a healthy environment in the prisons. If the proper procedure will be followed then the existing problems of the prisons can be cured. An independent body has to be established to hear the matters of prisoners from the lower level to a higher level.

A proper and specific procedure can be made for the women prisoners to ensure their safety. At the time of arrest and entering prisons, women face the harshest phase of their lives. They are exploited and harassed in different manners. Special provisions have to be made for procreation of child of women prisoners and other things do that she can enjoy all the major events of his life like others. A proper diet has to be followed. Children's shouldn't be treated ill and like prisoners. Physical and mental should also be taken into consideration daily. Proper medical facilities have to be ensured by the prison administration so that any difficulty can be reduced before time. Proper education as demanded by then should also be provided from time to time. Various types of basic skills have also been introduced to the prisoners for their betterment.

VI. CONCLUDING REMARKS

Prisons are the place made for the reformation of the offenders and welfare of society. But when these places become the point of harassment then it becomes a serious threat for a peace living society. The type of harassment these vulnerable groups faces are of that much harsh level that when they come in the public people can't believe it. They are so much insensitive in nature. These type of abuse are a serious threat to a peace living society where

⁸ National Prison Manual 2016 (National Crime Records Bureau, New Delhi 2016)

women are treated like goddesses. There is a serious threat for the women in the present criminal justice system from the time of the arrest to the prisons. These type of abuse mostly happens because of the lack of legal education. Most of the women's doesn't know about their basic fundamental right ensured by the constitution and criminal justice system. The victims of this type of abuse weren't able to overcome after a long period also. Thus, it has to be stopped immediately and strict rules have to made at national and international level and their execution has to be ensured.
