



CUSTODY OF WOMEN PRISONERS IN INDIA

KEYWORDS

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ABSTRACT *Indian society gives a respectable status to the women. Nowadays women are playing vital role in all aspects. Constitution of India gives status of equality to the women in India. It also imposes obligation on the State to protect the rights of the women and to fulfill the requirements of international conventions regarding the rights of the women. The Governments are also enacting welfare laws in favor of the women in order to protect their rights as well as to prevent them from violence. But the reality is women in prisons are facing a number of problems. Even her basic human rights are being ignored despite of a number of directions from the Supreme Court, High Courts and by recommendations of different Committees. It creates difficulties to them in the prison custody which requires a special attention and needs to be removed. Women prisoners in Indian jails are less in number than the male prisoners. It may be a reason to give less importance to the rights of women prisoners. The main purpose of this research paper is to highlight the problems faced by the women prisoners in custody, to list out human rights and constitutional rights of the women prisoners and to suggest remedial measures.*

Introduction

Indian Constitution grants equal rights to women, prisoners rights and arrested persons rights under Articles 14, 15 (3), 21, 22. Various legislations have been also enacted to protect the women prisoners from violence like Prisoners Act, 1984, Indian Penal Code, Criminal Procedure Code, 1973, Indian Evidence Act 1872. The Government is also providing various recreational programs inside the prison for rehabilitation of prisoners both the male and female like Education, Yoga, Meditation, Library, Prison Labor and Visiting their family members. Once they released from the prison, the Government also providing Aftercare services for released prisoners to protect them from social stigma. The problem arises only when the poor and illiterate female enters into the prison and in many times they were physically and mentally harassed by the prison staffs.

Custodial Violence to Women Prisoners

The worst form of custodial violence is custodial rape of women prisoners by prison staffs. In another way it is a major problem which they are facing. There are horror stories about the torture in custody to the women prisoners. Asian Centre for Human Rights (ACHR) stated that "custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel and a number of custodial rapes of women take place at regular intervals". Women prisoners who have been in the custody of police complained particularly of harsh treatment by the police including sexual indignity or abuse, physical torture, beating and rough handling. A total disregard by the police of procedures applicable to arrest, search, custody, and other rights creates immense hardship for the women. Some of the incidents of custodial rape and the relevant decisions of higher courts are as follows.

1. *Tukaram v. State of Maharashtra.*

Mathura was a young orphan tribal girl living with one of her two brothers. She was a dalit. The incident is suspected to have taken place on 26 March 1972, she was between 14 to 16 years at that time. Mathura occasionally worked as a domestic help with woman named Nushi. She met Nushi's nephew named Ashok who wanted to marry her, but her brother did not agree to the union and went to the local police station to lodge a complaint claiming that his sister, a minor, was being kidnapped by

Ashok and his family members. After receiving the complaint the police authority brought Ashok and his family members to the police station. Following general investigation Mathura, her brother, Ashok and his family members were permitted to go back home. However, as they were leaving, Mathura was asked to stay behind while her relatives were asked to wait outside. Mathura was then raped by the two policemen. When her relatives and the assembled crowd threatened to burn down the police chowky, the two accused policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama (legal recording of evidence)

The case came for hearing on 1 June 1974 in the Sessions Court. The judgment returned found the defendants not guilty. It was stated that because Mathura was 'habituated to sexual intercourse,' her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape. On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused to one and five years imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse. However, in September 1979 the Supreme Court of India justices Jaswant Singh, Kailasam and Koshal in their judgement on Tukaram vs. State of Maharashtra, reversed the High Court ruling and again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby suggesting no struggle and therefore no rape. The judge noted, "Because she was used to sex, she might have incited the cops (they were drunk on duty) to have intercourse with her".

After the Supreme Court acquitted the accused, there was public outcry and protests, which eventually led to amendments in Indian rape law via The Criminal Law (Second Amendment) Act 1983 (No. 46).

2. *Padmini v. State of Tamilnadu.*

Padmini, wife of a suspect in a theft case, was gang-raped in 1992. Her husband Nandagopal was taken to the Annamalai Nagar Police Station in Chidambaram for interrogation on May

30, 1992 and kept in custody till June 2, 1992. Nandagopal was beaten to death. When Padmini went to the police station to meet her husband, she was gang-raped. Of the 11 policemen arraigned in this case, seven were acquitted and four 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 the Madras High Court.

Before the intervention of the High Court of Madras, the Government of Tamil Nadu offered to pay Rs. 1 lakh as interim compensation and also agreed to provide Government employment and accommodation in any one the Government homes.

3. *Soni Sori v. State of Chattisgarh.*

Soni Sori a 35 year old adivasi schoolteacher, warden and mother, subjected to sexual violence while in custody in 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. SP was watching me, sitting on his chair. While looking at my body, he abused me in filthy language and humiliated me. The Supreme Court released her on bail in 2013.

Women prisoners are not safe in lock ups. Ms. Saradha was brought to Special Prison for Women, Vellore, Tamil Nadu, as a remand prisoner having been remanded by the Judicial Magistrate. She was undressed totally and dragged nude for quite some time till they reached the entrance of her cell and was put in solitary confinement and she was never given back her clothes and no official in the prison bothered about her. She was awarded 50000/- as compensation by the court.

The Supreme Court has rightly observed in *State of Punjab v. Gurmit Singh*, "We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably caused serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.

Sheela Berse v. State of Rajasthan, the case is relating to the custodial violence to women prisoners confined in the police lock-up in Bombay. Women prisoner has been assaulted and tortured by the police in police lock-up. The Supreme Court issued guidelines:

1. Police lock-ups where only female suspect should be kept and they should be guarded by female police. Female should not kept in prison where male prisoners are staying.
2. Interrogation should be carried out only in the presence of female police officers.
3. Whenever a person is arrested immediately informed to the nearest legal aid committee in order to give a legal assistance.
4. The person should be informed about the grounds of arrest and right of bail.
5. Immediately after the arrest of person, it should be informed to the friends and relatives of person who is arrested.

Rights of the Person at the Time of Arrest including Women

1. Right to know the grounds of arrest (Section 50(1) of Criminal Procedure Code, 1973).

2. Right to know full particulars of the offence (Section 50(1) of Criminal Procedure Code, 1973).

3. Right to inform the friends/relatives (Section 50A (1) of Criminal Procedure Code, 1973).

4. It is the duty of the police officers to inform the rights of the person (Section 50A (2) of Criminal Procedure Code, 1973).

5. Right to be produced before the Magistrate within 24 hours of her arrest (Section 56, 57, 76 of Criminal Procedure Code, 1973).

6. Right to consult a legal practitioner (Article 22 of the Indian Constitution).

7. Women prisoners should not be arrested after sunset and before sunrise.

8. Right against harassment and torture is violation of fundamental right under Article 21 of the Indian Constitution.

9. Right to bail under Section 437 and 438 of the Criminal Procedure Code. If the arrested person is accused of bailable offence and is poor cannot furnish surety, the court can release her without sureties.

10. Right to be examined by Magistrate (Section 50A (4) of Criminal Procedure Code, 1973).

11. The investigating officer has to give a written order to call anybody for police station. Nobody can be compelled to answer any question.

12. Right to protection of identity of rape victim (Section 228A of Indian Penal Code).

13. A woman cannot be called to the police station or anywhere else for examination as witness. They can be questioned at the residence.

14. The Criminal Procedure Code makes it mandatory that a female shall be searched only by another female under Section 160(1).

Conclusion

In ancient period women have been greatly praised. They have been called Devi and Sakthi in Hindu religion. Many times women are suffering through sexual harassment during their custody. The conditions of this lovely, gently gender, even in custody, is so inhuman that sensitive people feel a sense of shock and shame since die-hard resistance to reverence of the women sector defeats humanism, softness, compassion and affection which mankind owes to its sisterly half. So, women are facing a lot of hurdles in all 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. It is most common in case of poor and illiterate and most often they are the victims of custodial violence. This custodial violence is definitely a menace or cancer to our Indian Society. It has to be cut down from the society.

Suggestions

1. Moral and legal education should be provided to the police officials and prison staffs especially the punishment and its severity should be known to them.

2. Education should be provided to all sectors of women. Then only they should their basis rights.

3. Legal awareness program should be conducted in remote and rural areas especially for women.
4. Severe punishment should be provided to officials misusing their official capacity.
5. The NGC's and voluntary organization should give hand to the victims of custodial violence.

REFERENCE

1. Article 14 of the Indian Constitution- Right to Equality, Article 15(3) of the Indian Constitution – Special Legislation can be passed for the welfare of women and children, Article 21 of the Indian Constitution – Right to life and personal liberty, Article 22 of the Indian Constitution – Arrest guidelines.^[2] *Tukaram v. State of Maharashtra*, (1979) 4 SCC (Jour) 17, ^[3]. Available at http://www.academia.edu/5450727/RIGHTS_OF_WOMEN_PRISONERS_IN_INDIA_AN_EVALUATION, viewed on 12-11-2015 at 04.30 pm.^[4] The Criminal Law (Second Amendment) Act 1983 (No. 46) made a statutory provision in the face of Section 114 (A) of the Evidence Act made 25 December 1983, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent as a rebuttable presumption. New laws were also enacted following the incident. The Section 376 (punishment for rape) of the Indian Penal Code underwent a change with the enactment and addition of Section 376(A), Section 376(B), Section 376(C), Section 376(D), which made custodial rape punishable. Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused once intercourse was established; it also added provisions for in-camera trials, the prohibition on the victim identity disclosure, and tougher sentences.^[5] *Soni Sori v. State of Chattisgarh*, 2013.^[6] *Padmini v. State of Tamilnadu*, Available at <http://indiankanoon.org/doc/620570/>, viewed on 13-11-2015 at 06.30 pm.^[7] <http://www.thehindu.com/news/national/tamil-nadu/4-policemen-taken-into-custody/article3573929.ece>, viewed on 15-11-2015 at 08.30 pm.^[8] *P. Pugalenth vs The State of Tamil Nadu* on 17 July, 2009, <http://indiankanoon.org/doc/1830978/>^[9]. *State of Punjab v. Gurmit Singh*, 1996 SCC (2) 384^[10]. *Sheela Berse v. State of Rajasthan*, 1982 SC 1054^[11]. *V. R. Krishna Iyer*, "Are not women human even when in custody". *Human Rights Year Book* (2000), P. 94.