
THE UNENDING HORROR FACED BY WOMEN BEHIND BARS

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ABSTRACT

This piece of writing centers around the atrocity that is rape, being faced by women while they are in judicial custody. While this barbaric act is common in several parts of the nation, women are haunted by it in places that are meant to guard and uphold the sanctity of law. This appalling act has been pervasive since decades for which no effective antidote has been constructed yet. This writ-up reviews the inception of custodial rapes and its far-flung nature. Several landmark judgements and recourse taken by courts is reflected upon. The judgments are prima facie dubious and problematic that makes justice more arduous for the victims. The victims are stuck in the judicial battle of trying to acquire justice for years with the verdicts leaving them in a highly distressing place. Such results not only discourage victims from initiating a court battle in hopes of delivering the deserving penalization to such perpetrators but also increases reoccurrences of these atrocities. Although provisions exist that target this problem, procedural drawbacks make it taxing for the process to reap decisions that are based on justice and equity. The statistics depict deplorable numbers which are not seen to be improving satisfactorily throughout the years. Census provides for custodial rapes widely being committed by male officeholders. India's high rape statistics with respect to women are a product of the patriarchal nature of our society along with the omnipresent objectification of women. It is no different for custodial rapes with police stations, jails and detention centers having high number of male officers in proximity. Presence and supervision by women officers does not seem to be a reliable solution as they too, are suppressed several times from voicing out their concern. The resulting conditions of victims are ghastly with most of them not recovering from the horrors that are perpetually plastered in their memory.

One of the darkest periods in modern history occurred in the late 70s when national emergency was declared by the then Prime Minister Indira Gandhi from 1975-77. During this period, the power was at the easy disposition of the states. The freedom and liberty of ordinary citizens was snatched. This power was majorly misused in the form of custodial rape to shell out torture. In 1983, the phenomenon of custodial rape gained attention. The public servants and officials being the perpetrators, did not fear for the consequences by virtue of the unfettered power they enjoyed. At that time, adhering to any structured protocol regarding such cases was not widespread which made it easy for them to wipe out any corroboration regarding the same.

When a person is under the supervision of another person, who enjoys a position of authority, and these persons misemploy their power to violate a woman's bodily autonomy and rape her, it comes under the ambit of custodial rape. Such persons are instilled with a responsibility to act as guardians for the persons under custody, but they instead misuse their post in indictable ways. Such officials take undue advantage of their authority and induce females under custody to engage in sexual intercourse with them. These cases are dealt with under section 376 of the Indian Penal Code, 1860 which talks about 'Sexual Intercourse by a person in authority'. Such cases are of a grave nature as the woman's bodily integrity is violated along with her mental serenity. Such experiences shake the entire psychology of a woman and lead her into a severe emotional crisis.¹

The Mathura case² of 1972 was a watershed moment in India's rape laws. Mathura, a girl who at the time was between 14-16 years old had eloped with a man from her tribe. An FIR had been filed by her brother who disapproved of her relationship. After the statements of all concerned persons were taken, she was asked to stay back by two police constables. She was forcefully taken to the back of the building and was brutally raped. She decided to take the case to court where the sessions court held the defendants not guilty. Fortunately, the Bombay High court's judgment deferred and the accused were sentenced to one and five years of imprisonment respectively. A relevant excerpt from the judgment is as follows "*Mere passive or helpless surrender of the body and its resignation to the other's lust induced by threats or fear cannot be equated with the desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition.*" However, this decision was overturned by a highly disheartening judgment of the Supreme Court that pronounced the

¹ Gururaj Udagi, Custodial Rape, lawcolumn.in (Dec. 26, 2021), <https://www.lawcolumn.in/custodial-rape/>.

² Tuka Ram And Anr. Vs. State Of Maharashtra 1979 AIR 185, 1979 SCR (1) 810

defendants not guilty on the grounds that she raised no alarm along with the fact that there were no visible signs of struggle on her body and the two finger test determined that she was habituated to sexual intercourse. Evidently, the judgement and the factors that it was based on was deeply flawed and problematic. Despite the protests and demonstrations that took place in the country following this judgement, the case was not ruled in Mathura's favour.³

This demonstrated an urgent need for the reformation of rape laws in the country. The burden of proof which usually falls on the prosecution in criminal trials is given an exception in cases of custodial rape. The Criminal Law (Amendment) Act 1983 added section 114A in the Evidence Act, 1872 as a result of which the onus lies on the perpetrator to prove that sexual intercourse had taken place with the woman's consent. Furthermore, the illegality of the two finger test was reaffirmed. In 1983, the term "custody" was expanded and the concept of custodial rape was introduced. The problem of non-registration of FIRs at the police officer's discretion in such cases was addressed. In accordance with this, The Criminal Law Amendment Act, 2013 recognised failure to register an FIR and to launch an investigation as offences under IPC. Subsequently, section 166-A was inserted which dictated the punishment for the same.

NCRB report demonstrates that only 29% of rape crimes are reported in India with the conviction rate being 32.2%. When compared internationally, this rate is critically low. The 2021 report states that the conviction rate was held to be just 28.6% out of the total cases reaching 1,85,836 that had undergone trial. While statistics depict that it is effortful to persecute a perpetrator, the challenge is more complicated in cases of custodial rape. When rape is committed within the premises of police stations and institutions under state control, the evidence is readily available and reachable by public servants and it can be tampered with. There also exists political pressure to suppress crime statistics in the country, which is applied to figures of custodial rape as well.⁴

It had been stated by the Asian Centre of Human Rights 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*". There have been numerous other landmark cases such as *Soni Sori v. State of Chhattisgarh*⁵, *Padmini v. State of Tamil Nadu*⁶,

³ Custodial Rape in India, freelaw.in (Apr. 7, 2022), <https://www.freelaw.in/legalarticles/Custodial-Rape-in-India>.

⁴ Sreyasi Bhattacharya, Custodial Rape In India, lawcian.com (Aug. 17, 2020), <https://www.lawcian.com/post/custodial-rape-in-india>.

⁵ *Soni Sori v. State of Chhattisgarh*, 2005 CriLJ 4461

⁶ *Padmini v. The State Of Tamil Nadu And Others* 1993 CriLJ 2964

*Arati Majhi v. State of Odisha*⁷, *Vasanthi v. The Home Secretary*⁸ and so on. It had been observed by the Apex court in *State of Punjab v. Gurmit Singh*⁹ that, “We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes 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.”¹⁰

Right against harassment and torture is a fundamental right under Article 21 of the Constitution. This is seemingly not being enjoyed by women prisoners in almost all Indian states with Lucknow holding the top position for ‘maximum rapes in custody’ followed by Uttar Pradesh. Rajasthan is at the top most position with a staggering 295% rise in the reported rape cases in the last decade. A four-time increase was seen from 2009 to 2019 according to the NCRB data. Kerala holds the second position for being the poorest performing state for women showing the 256% increase from 2009 to 2019, followed by Delhi, Haryana and Jharkhand. A number of provisions have been enacted to provide women with some rights in order to secure their arrest and to prevent the occurrence of custodial rape and violence. Some of these significant sections are as follows: Section 50(1) of CrPC, 1973 provides the right to know the grounds of arrest, section 160(1) of CrPC makes it mandatory for a female to be searched by another female, Right to know full particulars of the offence under section 50(1) of CrPC, Right to be produced before the Magistrate within 24 hours of her arrest under sections 56,57 and 76 of CrPC, 1973 and so on. Victims of custodial rape are most commonly women having a poor and illiterate background who are unaware of their rights, therefore the responsibility lies with the state to make this knowledge widespread for the welfare of women.¹¹

There has been a disappointing development of women’s status over time. While during ancient times, women have been greatly praised for their softness, humanism and compassion, the same qualities are now being defiled. Women are facing numerous hurdles while undergoing the criminal justice procedure, especially during the period of custody. The voices of several victims of custodial rape go unheard. For some, this traumatic experience continues for the

⁷ Arati Majhi v. State of Odisha, 2014 SCC OnLine Ori 179

⁸ S. Vasanthi v. State of T.N., 2015 SCC OnLine Mad 6545

⁹ State of Punjab v. Gurmit Singh, (2014) 9 SCC 632

¹⁰ Nishtha Shanti, The Mathura Rape Case Of 1972: A Watershed Moment In Indias Rape Laws, feminismindia.com (Sept. 2, 2021), <https://feminismindia.com/2021/09/02/mathura-rape-case-1972-watershed-moment-india-rape-laws/>.

¹¹ Mayank Jha, Custodial Rape, a & s jurisprudential (July 20, 2021), <https://www.a-and-s-jurisprudential.com/post/custodial-rape>.

entire length of their sentence. Post-Traumatic Stress Disorders are commonly found in such victims. For some, such damaging experiences leave them with physical afflictions that did not receive the required medical attention when most vital. Even after their release, these sufferers are stuck in the horrifying memories in which they remained helpless. Custodial Rape is a lingering cancer in our society for which eradication is crucial.