
PRISON RAPE: LEGAL CHALLENGES AND INSTITUTIONAL ACCOUNTABILITY

Swathy Resmi S, B.A.LL.B. (Hons), National University of Advanced Legal Studies

ABSTRACT

The principle of Justice and human dignity is a significant concern worldwide. Prison rape is one of the various challenges which affect Justice and human dignity. Even though legal frameworks and international guidelines exist, systemic impediments remain. This paper explains the reasons and effects of rape in prison. The paper also examines the effectiveness of the Prison Rape Elimination Act in the United States, international human rights standards like the Nelson Mandela Rules, and legislation in specific countries. The challenges are primarily in implementing the law and the lack of evidence when the case comes to the Court. The paper gives some suggestions for mitigating these risks.

INTRODUCTION

Prison rape can be defined as sexual violence, abuse, or assault happening in jail or prison. This can occur when a prison inmate sexually assaults another or a correctional staff involved in the sexual abuse of inmates. Sexual abuse may involve forced sexual acts, coercion by threats, and acquiring sexual favors by using one's position. In most cases, the victims are people in vulnerable conditions, like younger inmates, sexual minorities, or those who are excluded from the rest of the prison population. According to the US reports, primarily men are the victims of prison rape. The power dynamics that exist in the workplace often cause exploitation. In most cases, people give consent out of fear or fear of speaking against the perpetrators. Overcrowding, understaffing, lack of good supervision, and institutionalized corruption enable this to happen in most cases. Survivors often face sexually transmitted diseases(STDs), depression, post-traumatic stress disorder (PTSD), and suicidal thoughts. When victims report sexual abuse, they frequently get isolated, so they refuse to address it, which often leads to further complications in the future. The late president of the organization Stop Prison Rape once said, "The rape of males is a taboo subject for public discussion; if ever there was a crime hidden by a curtain of silence, it is male rape." According to the reports, there are high rates of forced oral and anal intercourse happening in prisons. When we analyze different cases, it is evident that some prisoners are targeted from the time they enter prison; the criteria for it are mainly their age, looks, sexual orientation, etc. There are cases of gang rape since gang leaders are the ones who initiate it.

LEGAL FRAMEWORKS

Legal frameworks have been developed to tackle this issue worldwide and establish Justice.

Some of them are discussed below.

1) The Prison Rape Elimination Act (PREA), 2003 (United States)

Prison Rape Elimination Act (PREA) was passed in the United States to make sure that prison rape would be reduced and controlled. Since the USA faces this issue frequently, PREA is highly relevant. According to PREA: "The Prison is said to be a rehabilitation institution, whereby inmates out of redeemable sort receive behavioral and/or educational training to dispense through to their societies; the word prison creates a connotation of fear." For example, prisons differ from each other, especially in terms of rules and manners of operation.

There require a systematic collection and analysis of data about incidents of rape and making sure that it is integrated with the surveys conducted. There needs to be a system to prevent, detect, and respond to the abuse happening in prison. PREA enables training programs to reduce and prevent sexual violence.¹

2) United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)

It is more popularly called the Nelson Mandela Rules and was adopted by the UN General Assembly in 2015 as international guidelines. It defines the general principles for the humane treatment of all detained individuals, and it is named after Nelson Mandela, who spent 27 years in prison and became a beacon of global dignity and human rights. The Rules prohibit any means of torture or cruel, inhumane, or degrading treatment of prisoners. Anything that causes injury, harm, physical or psychological, including sexual violence, extended and prolonged isolation beyond 15 days, or denial of medical care, is a violation, and strict actions will be taken against that. All prisoners are entitled to treat themselves respectfully for their dignity, regardless of the offenses committed. All prisoners should be provided with all their rights and access to Justice. The prison has to be a protective shelter from abuse. Rule 1 and Rule 34 of the Nelson Mandela Rules mention ensuring conditions that provide safety and dignity to the prisoners.

3) Convention Against Torture (CAT)

This is an international human rights instrument adopted by the United Nations General Assembly in 1984 and ratified in 1987, aiming to extend a universal ban against torture and other forms of cruel treatment. This treaty obliges states to prevent, address, and punish sexual violence. Rape, sexual assault, and sexual harassment that occur in detention centers are viewed as, in their nature, acts of torture under CAT. Under this treaty, states must make sure that proper training is provided to prevent exposure to sexual torture, ensure victims' safety, take accountability, and further provide support for victims.²

4) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985)

¹ Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (2003)

² Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85

i) The Belgium Rules

This is implemented for juvenile delinquents. The main thing that these rules ensure is that juveniles are separately placed away from adults since, in most cases, it results in issues. There are facilities provided to juveniles to prevent physical or sexual abuse. The main emphasis is on rehabilitation rather than punishment. This is important since many cases are against juveniles due to their vulnerability.³

ii) The Bangkok Rules

These are rules made exclusively for women prisoners. This was adopted in 2010. The Rule addresses sexual violence, exploitation, and access to health services. There should be facilities implemented to protect women against sexual violence. Staff in women's prisons must also receive gender-sensitive training on preventing and handling cases of sexual violence and exploitation effectively. This is also important as the vulnerability of women is concerned.⁴

NATIONAL LAWS AND JUDICIAL OVERSIGHT

1) India

In India, courts have expanded the scope of Article 21 of the Indian Constitution to include dignity, protection from torture, and humane treatment of prisoners. The judiciary has repeatedly emphasized that despite being deprived of liberty, prisoners do not lose their fundamental rights. The Supreme Court in *Sunil Batra v. Delhi Administration*(1978) held that the inhumane treatment of prisoners violates Article 21 and directed prison authorities to protect prisoner rights. In *D.K. Basu v State of West Bengal* (1997), the Court established guidelines to protect prisoners from custodial violence, including, *inter alia*, mandatory registration of all arrests and timely medical examination of arrested persons.⁵

2) United Kingdom

i) The Prison Rules 1999

These rules lay down the minimum requirements for treating prisoners by focusing on safety, dignity, and respect. Prisoners also have ways to make complaints about their mistreatment,

³ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Dec. 17, 2015)

⁴ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("The Bangkok Rules"), G.A. Res. 65/229, annex, U.N. Doc. A/RES/65/229 (Dec. 21, 2010).

⁵ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

such as sexual violence, and observe the conditions within the prison regularly to prevent abuse.⁶

ii)The Human Rights Act 1998

This Act aims to enforce its prisoner's rights and provide protection under domestic law. Articles 3 and 8 of the Human Rights Act emphasize prisoners' rights.

Article 3: Prohibition of torture and inhuman or degrading treatment, including sexual violence.

Article 8: Right to respect for private and family life, which includes protection from sexual abuse. Prisoners can sue for damages in UK courts for violations of the Human Rights Act.⁷

3)South Africa

i)Correctional Service Act, 1998

This enables local actors to enact laws for the treatment of convicts and ensure their protection. As per this Act, provisions are made so as to keep the vulnerable detainees-women and juveniles-from possible exploitation. Precise specifications should be made available for inmates to voice any sexual abuse. Outside bodies should conduct regular inspections to ensure compliance with the law. It guarantees dignity, safety, and freedom from abuse in South Africa's Constitution-Bill of Rights, including for those in detention. South Africa is a signatory to the Convention Against Torture and other international instruments that reinforce her commitment to the eradication of sexual violence in prisons.⁸

CHALLENGES

Despite the best intentions of international standards and national legal codes against prison rape, reporting, prevention, and prosecution remain integrated into a single box that raises significant barriers. Rapes are less likely to be reported by victims considering the fear of retaliation or violence against them. As a result, a majority of troops typically get away with their torture. Most of these complaints are dismissed by prison officers for reasons of the reputation of the institution or to avoid public scrutiny, which leads to a failure to hold perpetrators accountable. A controlled environment, such as a prison, thrives on minimal opportunities to gather physical evidence or identify witnesses to the crime. Reporting delays

⁶ The Prison Rules, 1999, G.S.R. 590(E), (India)

⁷Human Rights Act 1998, c. 42 (U.K.).

⁸ Correctional Service Act 111 of 1998 (South Africa).

typically lead to the loss of valuable and crucial forensic evidence. Incidents of sexual violence evoke substantial social stigma for their survivors, especially in cultures where discussion about sexual abuse is taboo. This absence of faith in reporting results in victims being reluctant to come forward with their issues, fearing they may be judged and/or scorned.

WAY FORWARD

This can be reduced by ensuring the proper implementation of laws and rules. There should be independent institutions to monitor detention facilities and investigate allegations of abuse. Moreover, the victims should have the possibility to report abuse without fear of retaliation or stigmatization. The function of third-party advocates or ombudspersons should be to receive impartial complaints. Equip prison authorities to prevent sexual violence efficiently and to deal with incidents of sexual violence when they arise. Access to free legal aid and counseling should be provided so that inmates can pursue their cases of abuse and receive the appropriate medical and psychological assistance to help them recover and reintegrate into their community. Proper awareness should be given to the people and inmates and equip them to help themselves from those situations. As always, "prevention is better than cure," ensuring that the proper law implementation prevents this.

CONCLUSION

Prison rape is a gross violation of human rights that exploits the essential principles of dignity, safety, and Justice within the prison. Legal frameworks across the globe include PREA in the USA, International Guiding Principles such as the Nelson Mandela Rules, and similar frameworks defining the basis for taking action. Correctly applying these can ensure safety and hold the perpetrators accountable, reducing the fear among many people about addressing these issues. Make sure that victims are not facing any isolation. Proper awareness should be given among the people, thereby reducing the risk of Prison Rape in the future. More than legal frameworks, society can help the victims return to their lives, so ensure it. By working on all these, we can try to reduce prison rape happening worldwide and make betterment to the society.