

CRITICAL ANALYSIS OF SEXUAL OFFENSES COMMITTED BY PUBLIC EMPLOYEES IN PRISON OFFICIALS, WITH SPECIAL FOCUS ON CUSTODIAL RAPE

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ABSTRACT

Custodial rape, a sort of sexual assault committed by those in positions of trust or power against those who are in their care, is a serious topic that is examined in this research paper. The nature of custodial rape and its legal ramifications, the power dynamics involved, and the difficulties in reporting and dealing with such incidents are all thoroughly examined in this research. The research examines preventative tactics with the significance of encouraging responsibility, and methods to protect the rights and dignity of persons who are susceptible to custodial abuse by drawing on legislative frameworks. This research paper's objective is to provide a comprehensive analysis of custodial rape, focusing on its nature, legal characteristics, and for effective preventative measures.

INTRODUCTION

Custodial rape is a form of sexual assault where an individual abuses their authority or trust to engage in non-consensual sexual acts with someone under their custody. This form of sexual assault violates human rights and often results in severe physical, emotional, and psychological trauma for the victim. It occurs in various settings, such as prisons, detention centres. The power imbalance between the perpetrator and victim makes it difficult for them to report the abuse, perpetuating a culture of silence and fear. It is important to address this issue is crucial for ensuring the protection and safety of all individuals, especially those in vulnerable positions. While it is important to prioritize the needs and well-being of survivors is essential to heal and seek justice. It is important to take collective action and commitment to change can dismantle the culture of silence and fear surrounding rape-custodial cases.

DEFINITION OF CUSTODY

Custody, also known as guardianship, is the legal authority to care for someone. The custodian exercises complete or significant authority over the person, often detained by the state through police, military, or other security services. A custody can be applied to various settings, including lockup, prisons, hospitals, mental health institutions, refuge homes, and juvenile homes.

CUSTODIAL RAPE

Custodial rape, also known as institutional rape or prison rape, occurs when a victim is under the care or control of an offender, such as a staff member, another prisoner, or someone with authority or influence over the victim. This crime is a serious violation of human rights and a criminal felony, resulting in substantial bodily and psychological harm. Custodial rape can occur when authorities abuse their power, such as allowing female convicts to engage in sexual behaviour with them. This grave violation occurs when the aggressor takes undue advantage of the individual's authority to control them, violating their bodily integrity and duty to care for

and protect citizens and their rights. The act of custodial rape is a grave violation of human rights. It can also apply to staff members of prisons, jails, juvenile detention facilities, hospitals, mental health institutions, rehabilitation centres, and officers, management, or employees of any juvenile or homicide detention facility.

NATURE AND CAUSES OF CUSTODIAL RAPE

Custodial rape is a complex issue rooted in power imbalances between public workers and vulnerable victims. This imbalance allows for the abuse of authority, which is exploited by perpetrators who often hold power over vulnerable victims. Victims rely on public workers for their well-being and safety, and perpetrators exploit this dependency to manipulate and coerce them into non-consensual sexual acts. In some custodial settings, there may be a lack of proper oversight and accountability mechanisms, creating an environment where perpetrators feel emboldened to commit acts of sexual violence with reduced fear of consequences. A culture of silence in institutions can further exacerbate the power imbalance. Inadequate training and awareness for public servants working in custodial environments contribute to inappropriate conduct and abusive behaviour. Without proper knowledge of professional boundaries and consent, public servants may unknowingly engage in behaviour perpetuating a culture of abuse within custodial environments. Inadequate legal frameworks may not adequately address custodial rape as a distinct offense, resulting in under reporting and diminished accountability for offenders.

The absence of clear guidelines and protocols for investigating and prosecuting custodial rape cases can lead to inconsistent and ineffective responses, exacerbating the problem. Understanding these underlying causes is crucial for developing effective prevention strategies and addressing this grave issue.

HISTORICAL PERSPECTIVE

India's national emergency between 1975 and 1977 exposed the abuse of power by authority figures, particularly women, and highlighted the risks of unchecked governmental authority. To address custodial rape, a comprehensive approach is needed, including training and education for public servants, institutional oversight, a culture centred on survivors, and comprehensive prevention and support services. India became a signatory to the United Nations Convention against Torture in 1997 but has not yet fully implemented all articles. In 1980, a campaign against rape in India led to the Women's Rights Movement, which focused on the rape of women in police custody, the rape of the poor, and the sexual molestation of tribal women.

The 1980 Supreme Court decision on the Mathura Rape Case sparked public outcry, leading to the formation of feminist organizations like Forum Against Rape and Forum Against the Oppression of Women. They began a campaign to reopen the case and demand amendments to the Indian Penal Code. The 113th Law Commission's study recommended several changes to the Indian Evidence Act of 1872, including adding Section 114-B15, which allows the court to presume that a police officer caused bodily injuries while in custody unless the officer proves the injury was caused by the officer. In the case of *Sakshi v. Union of India* (2004), the Supreme Court of India was criticized for insufficient laws on rape, leading to the 172nd Report by the Law Commission of India. The report suggested modifying Section 375 of the Indian Penal Code to be gender-neutral, recommending adjustments in Sections 376, 376A, 376B, 376C, and Section 376D. The Commission also recommended the addition of a new Section 376E to the Indian Penal Code, the deletion of Section 377, and the escalation of punishments outlined in Section 509. The Conventions of the United Nations and numerous constitutional provisions emphasize the importance of safeguarding children from sexual exploitation and adolescent pregnancy.

CONSTITUTIONAL RIGHTS

In India, there are legal safeguards against incarceration-related rape, including ex-post facto law. The article 20(1) of the Constitution states that no person can be convicted of any offense

except for a violation of the law in force at the time of the offense, and no person can be subjected to a greater penalty than what could have been imposed under the law in force at the time of the offense. Article 21 guarantees life or personal liberty but does not explicitly prohibit torture or detention-related offenses. The article 22 (1) ensures detainees are informed of the arrest's grounds and have the right to counsel and be defended by a lawyer of their choosing.ⁱ

RELEVANT JUDGEMENTS AGAINST CUSTODIAL RAPE

In the case of *Smt. Rameeza Bee v. D Arumugam, lady Rameeza Bee*, a 26-year-old woman, was arrested alongside her spouse. They were returning from a movie theatre. They were detained by the police for loitering. To pay the fine, her husband returned home to obtain funds. In her husband's absence, three police officers violated her. Her spouse had protested upon his return home. He was fatally assaulted. The court convicted the police officers of rape murder and assault.

In the *State of Maharashtra vs. Tuka Ram and Anr, Mathura*, a 16-year-old girl, was performing housekeeping at Nunshi's residence. During her employment, she met Nunshi's sibling, with whom she subsequently eloped. Her sibling and sister were sued by her brother. The police discovered and apprehended them. Mathura was violated by two police officers at the police station. Mathura brought charges against police officers. The Supreme Court overturned the High Court's judgment in a case of consensual sexual intercourse, setting the accused free. The court ruled that the victim did not raise any alarm for help and consented to the sexual activity. This case led to the Criminal Law (Amendment) Act, 1983, which changed Section 114(A) of the Indian Evidence Act, made custodial rape a punishable offence, and prohibited the publication of victim identities.ⁱⁱ

LEGISLATIONS FOR THE PREVENTION OF CUSTODIAL RAPE

The section 376C of the IPC defines "sexual conduct by a person in authority" A subsequent amendment added a new category of sexual offences. The section states that any individual who is in a position of authority or in a "fiduciary" relationship or is a public servant,

superintendent or manager of a jail, remand home or another place of custodial establishment established or maintained under or pursuant to any law for the time being in force, or a women's or children's institution; or on the management of a hospital or being on the staff of a hospital, and who abuses such a position or fiducial In addition to a fine, the punishment for the same will be a minimum of five years and a maximum of ten years in prison, with the possibility of extensionⁱⁱⁱ.

According to Section 376E of the Indian Penal Code, a person who has been previously convicted of an offence punishable under Section 376, Section 376A, or Section 376D (i.e., committing rape, causing death or a vegetative state in the course of committing rape, or committing gang-rape) and is convicted for an offence under the aforementioned sections for a second time may receive either the death penalty or a life sentence. However, it must be emphasized that a prior conviction must be present, followed by the subsequent conviction, in order to sentence the offender.

The section 197 of the Criminal Procedure Code of 1973, which addresses the prosecution of judges and public officials, has been amended. The amendment to Section 197(1) ensures that prior authorization from the relevant government is not required in order to prosecute a public servant for any sexual abuse-related offence. This amendment was passed for the apparent reason that Section 197 strongly favours the protection of public servants against malevolent prosecutions for any activity committed in the course of their employment. No public officer can contend that sexual activity was performed in the performance of official duties; consequently, the law was amended to permit the punishment of public servants for rape and other forms of sexual abuse.^{iv}

The Criminal Law (Amendment) Act of 1983 amended The Indian Evidence Act of 1872 by adding Section 114A, which stipulates that if sexual intercourse is validated and the victim asserts that it occurred without her assent, the court must conclude that no consent was given. The onus then shifts to the perpetrator to prove that the woman gave her assent and that the intimate encounter took place with her permission. After the 2013 amendment, if a government official fails to disclose a rape, he is deemed to have supported the perpetrator, which is a crime.^vThe officer may face life in prison and a fine if he fails to submit a First Information Report. This Amendment Act modified Sections 376B, 376C, and 376D pertaining to aggravated rape

while in custody. The provisions of sections 376B and 376D have been incorporated into section 376C. In addition, the sanction was increased from five years of imprisonment in addition to a fine to ten years of imprisonment in addition to a fine.

MEASURES TO PREVENT CUSTODIAL SEXUAL VIOLENCE

The shift towards gender equality in police stations should be accompanied by measures and reforms. It is crucial to hire female constables to create a safe environment for female victims of crime. The Indian police force currently has only 12% of women working in 2020. Establishing an internal complaints committee for female personnel is essential, and a fast reaction desk is necessary to address allegations of sexual assault committed by correctional officers.

The Supreme Court of India ordered the installation of closed-circuit television cameras in police stations and prisons, as well as the establishment of human rights commissions. These measures, along with the use of technology, can help reduce instances of rape and torture committed against individuals in custody. Cameras have always been placed in prisons, but they were often placed in areas such as mess, external walls, and towers. The installation of CCTV cameras will not automatically reduce or eliminate instances of rape and torture, but it will make it easier to obtain convictions as the activity is recorded by the camera, establishing it as a reliable source of evidence. All these methods can be adopted to combat custodial issues and promote gender equality in the police force.

CONCLUSION

Custodial rape is a serious issue that involves the sexual abuse of vulnerable individuals while in the custody of government employees. This violation of trust and authority is a significant concern. To combat this issue, institutions, governments, and society must work together to implement effective prevention, reporting, and assistance mechanisms. These mechanisms are crucial for safeguarding the rights of survivors and holding those who abuse power

accountable. By addressing custodial rape, we can create a safer and more equitable environment for all, ensuring that all individuals are treated with respect and dignity.



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- Scholarly Research Journal for Humanity Science & English Language, Online ISSN 2348-3083, SJ IMPACT FACTOR 2021: 7.278, www.srjis.com , Asst. Prof. Jyoti Bhimrao Shinde, Ph. D. RIGHTS OF WOMEN AGAINST CUSTODIAL RAPE- CONSTITUTIONAL ASPECT

ENDNOTES

ⁱ article 21, The Constitution of India

ⁱⁱ State of Maharashtra vs. Tuka Ram And Anr, Mathura 1979 AIR 185 1979 SCR (1) 810 1979 SCC (2) 143

ⁱⁱⁱ section 376, Indian Penal Code

^{iv} section 197, The Criminal Procedure Code of 1973

^v Section 114A, The Indian Evidence Act of 1872