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# Prison Rape and Violence in India

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## ABSTRACT

*The prisoners experience sexual violence in prisons and they are exposed to it, which drastically drags them into trauma and insecurity. The trauma consequently stays with the victim and he carries it to the society when he releases. The prison violence is not any gender specific issue, although since early times mostly prisoners were men and women have been majorly in prisons in recent decades. The prison violence can include numerous acts with it namely physical sexual violence, abusive acts, rape, verbal violence, inappropriate comments or touch, and many more. The Indian system of punishment positively believes in giving chances to prisoner to recreate his thoughts realize his mistake and feel the guilt, but the violence and sexual abuse in prisons make it inimical. Lately, there has been a widespread perversion of the cause of imprisonment and dignity of prisoners. This is a globally spread issue which must not be shunned over the beliefs and the taboos existing in the society. Prison rape and violence has a long path to be eliminated, so why not initiating steps today to wipe it out? The governments should amend or introduce laws for the protection of the prisoners. Those prisoners who are victims must be provided a counselor. The society should also grab courage and come forward to speak up for the rights of prisoners. Prisoners are also humans and they do deserve to be treated like humans, rather being brutally punished and harassed for their wrong doings.*

## I. PRISON BRUTALITY IN INDIA

Rape in prisons is not like those in our society. In prisons, rape is the act of force and violence which intends in a sexual manner towards a less powerful person. Rapes and violence in prisons have dreadful aftermaths on the prisoners. This abuse is also not perpetrator specific, in prisons, the perpetrator can be anyone like the guards, the jailer, the staff, any other prisoner, and so forth. The Indian prisons are crowded with narrow minded people who has the perception that the perpetrator is always the strong person and the victim is weaker and feminine in nature whether it's a male or female. This eventually makes the prisoners unfortified to the crime.

The prisoners who are generally victimized are principally the part of LGBTQ Community.

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The people belonging to this community and this concept are aberrant to Indian society. Specifically the Indian prisons are grossly affected by this parasitic thinking and thus the homosexuals and transgender are main victims of sexual abuse and violence in prisons. Even in women prisons, the targets are harassed and raped by other inmates or the guards or other officials. In Indian prisons, the prisoners are victimized in a variety of abuses. The prisoners are forced to trade their body in order to protect themselves.<sup>2</sup> This consequently results them getting involved in prostitution after release. The Delhi High Court has also noticed umpteen incidents of violence and sexual abuses in Tihar Jail, though the allegations were being denied by the jail authorities.<sup>3</sup>

The sexual abuses, violence, custodial rapes, are not part of penalty of the prisoners or the detainees. No law in India states about brutality or violence with the detainees. They are supposed to realized their mistake and feel guilty about it. The abuses in no way are going to make them feel guilty, but it will definitely debauch their minds and enfeeble them from further abuses after release.

## II. CHECK ON HUMAN RIGHTS

The human rights and its concepts are not new to the present world. They are fundamental to the existence of human race. The Convention Against Torture (CAT)<sup>4</sup> defines in its Article 1 the term “torture”. The sexual abuse and violence in prisons clearly satisfy the requisites of the definition. Article 3 of UDHR<sup>5</sup> mentions about right to life, security and liberty of person. The right to life fortifies the rights of normal humans as well as the rights of prisoners. The prisoners also have the human right of living their life untethered from torture, abuse, sexual violence, etc.

The human rights are universal, they won't be limited if a person has committed crime. The prisoners are forced into custodial rape and violence without any consent. Every human has its own dignity that can't be used by anyone else more powerful. The rape in prisons has become usual to women, but it do exist in male prisons too.

The rights of trans women are also being neglected in prisons. In India they are put into male prisons, where they continuously face sexual harassment, repeated rapes, verbal abuses and many more. These situations lead them towards the path of prostitution after release. The

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<sup>2</sup> Raj Shekhar, Rampant sexual abuse is a real nightmare in Tihar, Times of India ( June 11, 2015), <https://timesofindia.indiatimes.com/city/delhi/Rampant-sexual-abuse-is-a-real-nightmare-in-Tihar/articleshow/47621742.cms>.

<sup>3</sup>*Ibid.*

<sup>4</sup> CONVENTION AGAINST TORTURE 1975 ART. 1.

<sup>5</sup>THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948 ART, 3.

Constitution of India has dearth of laws to protect the rights of the prisoners. Though some judgments have been putting forward the rights and necessities of the prisoners of India.

### III. GLOBAL SCENARIO OF PRISON RAPE AND VIOLENCE

In early times the prison rape and violence was accepted as a usual thing or as a joke worldwide. Prison rape has a long towards elimination. It has existed in society since a long time. The war prisoners used to get treated brutally and had to witness rape and sexual brutality. The violence they had to face was par the imagination. Most of the victims of this had been the male section of the population.

If the cases are still coming into light, then the foremost reason is the awareness and fearlessness of the victims. Prisoners do not obtain any personal benefit for filing complaints of sexual abuse.<sup>6</sup> In numerous prisons, there exists suppression of reporting of the abuse. Many countries have laws to protect the prisoners from rape and abuse in the prisons and from other powerful inmates or any of the staff. In Europe Economic Area (EEA) about 9 countries have only recognized that the sex without any consent is rape.<sup>7</sup> The sexual harassment, sexual abuse, rapes, and violence in prisons apart from the perpetrators exhibit the failure of the country's government.<sup>8</sup> A numerous human rights advocates agree with the fact that mast of the prison violence and sexual abuse victims still are bashful to open up about their experiences.<sup>9</sup>Warzone prisons are also grossly affected by the sexual assault and brutality.

### IV. IMPACT ON PRISONERS

The foremost purpose of imprisonment is aimed that the prisoner realizes his mistakes and crimes, he should learn to follow laws and regulations of country. He is made to stay in prison in order to rejuvenate his skills and to rehabilitate so as to learn societal norms and etiquettes.<sup>10</sup>

The victims of rape whether it is committed at home, office, any workplace or prison, have critical physical, emotional and mental consequences. Even the prisoners who are victims still

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<sup>6</sup> Alysia Santo, Prison Rape Allegations Are on the Rise, The Marshall Project (2018), <https://www.themarshallproject.org/2018/07/25/prison-rape-allegations-are-on-the-rise> .

<sup>7</sup>Stefan Simanowitz, Times Up for Europe's dangerous and antiquated rape laws, Amnesty International (28 June 2019), <https://www.amnesty.org/en/latest/news/2019/06/times-up-for-europes-dangerous-and-antiquated-rape-laws/> .

<sup>8</sup> Sexual Abuse in Prison: A Global Human Rights Crisis, Just Detention International, [https://justdetention.org/wp-content/uploads/2015/11/International\\_Summary\\_English.pdf](https://justdetention.org/wp-content/uploads/2015/11/International_Summary_English.pdf) .

<sup>9</sup>*Ibid.*

<sup>10</sup>Human Rightsand Prisons, Manual on Human Rights Training for Prison Officials, UNHCHR, page 3, <https://www.ohchr.org/Documents/Publications/training11en.pdf> .

have to continue to face their perpetrator in the prison. If the perpetrator is one of the inmates then he or she continuously takes advantage of the victim being submissive.<sup>11</sup>

The victims of sexual assault and violence suffer from injuries like broken bones, wounds, etc, which often goes untreated. If the female victims get pregnant, often they are forced for abortion, which grossly affects the minds of the victims. After getting released, there are chances of them drowning into depression and suicidal premonition. They are likely to get involved with alcohol and drug addictions also<sup>12</sup>.

## **V. PREVENTION FOR RAPE AND VIOLENCE IN PRISONS**

The violence and sexual abuses in prison can be positively reduced to an appreciable and controllable rate. The governments and their legislatures should look upon this matter. There should be introduction of laws regarding prison rape, violence, abuse, etc. laws must be made to applicable in all parts of the country. Since the United Nations have their own Conventions and Laws for protection of Human Rights of the Prisoners, yet, many countries on the globe does not have such laws of their own.

The prisoners should be provided with consultants or counselors in prisons, who would listen to them and their problems, with whom they get to talk freely without any hesitations or suppressions and verbalize whatever they face in prison. There must be laws and availability of different prisons for people possessing different sexual orientation, resulting the trans women not being forced into male prisons leading their exploitation. The victims of sexual assault should no longer be made to stay in the same prison, rather they could be imprisoned at separate detention along with taking care and development of their mental as well as physical health.

Awareness should be created among the inmates chiefly concerning sexual assaults, violence, verbal or physical abuses, and motivating them against these assaults. There is need to normalize complaining or reporting the assaults conducted in prisons. The officers, authorities, or any powerful inmate must be refrained from suppressing the victim. A committee in prisons should be established particularly to look into the brutality against the prisoners. Resourceful medication and health services must be effectively provided to the prisoners.

The prison guards should be educated and made aware of the circumstances, in addition, an upper committee must always keep an eye on their actions towards the prisoners. The

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<sup>11</sup>*Supra* note 7.

<sup>12</sup>*Supra* note 7.

perpetrators must be held liable for the abuse committed without dodging the issues and concerns. The victims of abuse essentially be treated in a protected manner and developed in a way that they would not drown into depression or any negative thoughts. The victims should be successfully rehabilitated ensuring perpetrators be punished.

## **VI. CONCLUSION**

The prison brutality has been prevalent since older times. The brutality in prisons has a long way to get fully eliminated. The victims of these brutalities are women, men, trans people, people belonging to LGBTQ Community. Women rape and brutality is not new to the society, yet it still breathes around in the society. The male rape and sexual abuse is still a taboo towards Indian society at large. Indian society is generally unaware and judgmental towards this violence. They cannot dare to stand for rights of men against brutality and male rape.

The prisoners are facilitated with their own human rights which they possess from birth. They are not provided with adequate medical and hospital facilities to stay protected from communicable sexual diseases and other treatments. The prisoners are being targeted by other powerful inmates, guards, or other officials. According to UN, the imprisonment is given to a person for him to realize his mistakes and wrong doings and recreate himself by ways provided within prisons.

There are a numerous countries which do not have any specific law or regulation concerning the rights and protection of the prisons. Yet, there are also some countries which safeguard the rights of their prisoners. The violence in prisons grossly affects the mind of the victims. Continuously getting suppressed makes them vulnerable to further sexual abuse. Consequently, shoves them into depression and suicidal thoughts.

The governments must take measures to eliminate abuses and rapes to a greater extent. This issue should not be neglected and rammed aside. Awareness of the issue must be done in the society. Special detention centers should be setup for the victims so they rehabilitate and recreate themselves. Psychologists should be appointed to talk with the victims and making them speak up against the brutality, rape and sexual violence. The responsible perpetrators must be held liable for their wrongs and the complaints or reports filed by prisoners must not be neglected, ignored or put aside, those reports must be regarded at priority in the court of law.

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