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PREGNANCIES IN JAIL: A CASE OF CONCERN

Introduction

An amicus curiae informed the division bench of the Calcutta High Court consisting of, Chief Justice T.S. Sivagnanam and Justice Supratim Bhattacharya that about 196 babies were said to have been born in different jails in the state of West Bengal.¹

Lawyer Tapas Kumar Bhanja, who was appointed as amicus curiae by the court in a 2018 Suo motu motion on overcrowding in prisons, made the submissions before the division bench of Calcutta High Court Chief Justice T.S. Sivagnanam and Justice Supratim Bhattacharya.² The matter however has been placed before a division bench hearing criminal cases, and was given the direction to hear the case on 12th February, 2024 (Monday).² The public prosecutor would also be present during the hearing of the matter at the division bench having the criminal roster system.² The High Court recorded that, “Learned amicus curiae has mentioned these matters and has placed a notice pointing out certain issues. One such issue is that women prisoners while in custody are getting pregnant and at present there are as many as 196 babies staying in different prisons in West Bengal.”²

Suggestions by the Learned Amicus Curiae:

The Learned amicus curiae suggested to the division bench of the High Court consisting Chief Justice T.S. Sivagnanam and Justice Supratim Bhattacharya that, prohibition must be laid on the entry of male employees of the correctional homes into the enclosure of women prisoners and the same was recorded by the Hon’ble High Court.¹ The note by the amicus curiae further suggested that all women prisoners should undergo a pregnancy test before being sent to the correctional homes. “Let all the learned District Judges (as they are the

¹ Shiv Sahay Singh, Women prisoners in custody getting pregnant: Amicus Curiae tells Calcutta HC, THE HINDU, Feb 8, 2024, 9:39 pm, <https://www.thehindu.com/news/national/other-states/women-prisoners-in-custody-getting-pregnant-calcutta-hc-prohibits-entry-of-male-employees/article67825476.ece>.

² Express News Service, Women prisoners getting pregnant, 196 babies in Bengal prisons, HC told, THE INDIAN EXPRESS, Feb 9, 2024, 5:29 pm, <https://indianexpress.com/article/cities/kolkata/calcutta-hc-plea-seeks-prohibition-on-entry-of-male-staff-into-correctional-homes-9152184/>.

Chairman of the Board of Visitors), may visit correctional homes under their respective jurisdiction to find out how many women prisoners have become pregnant during their stay in correctional homes. Also, necessary directions may be given to the Learned Chief Judicial Magistrate of all the districts to monitor a pregnancy test upon all the women prisoners, before sending them to correctional homes, to avoid sexual exploitation upon them. Pregnancy tests to this effect are done by all Police Stations of West Bengal. Necessary orders/ directions may be given by this Hon'ble Court to this effect," the notice of the High Court stated.²

The suggestions given by the amicus curiae were upon the visits made by him and his assistants along with, the Secretary, District Legal Services Authority (DLSA), Alipore, South 24-Paraganas in the presence of Ajay Kumar Thakur, Special Inspector General of Police (correctional services), West Bengal to the correctional homes.²

Reaction of Women Prisoners in the State of West Bengal:

After the learned amicus curiae urged the Hon'ble Court to prohibit the entry of male employees, women prisoners in the State of West Bengal protested against the report of the amicus curiae. Women who are incarcerated in state jails, furious of the report say that "slur" and "irresponsible allegations" would make it difficult for them to reintegrate in the society.³

This coincides with a multi-agency probe comprising the state prisons department and the state women's commission finding out that 181 women prisoners stay with their children in Bengal's jails and that all of them had conceived prior to being jailed or while being on parole.³

The intervention of the State:

As the Supreme Court of India also agreed to look into the matter followed by National Commission for women conducting a separate probe, the State has decided to move the High Court and the Supreme Court, seeking an immediate legal intervention. Laxmi Narayan Meen, ADG (prisons) stated, "these are demeaning, false and motivated allegations, very insulting to women."³ She further stated that the allegations made should be thoroughly checked before making a statement in the court of law.

³ Saibal Sen, Women prisoners protest in jail pregnancy 'slur' by HC amicus, TIMES OF INDIA, Feb 14, 2024, 12:30 pm, <https://timesofindia.indiatimes.com/city/kolkata/women-prisoners-protest-jail-pregnancy-slur-by-hc-amicus/articleshow/107682605.cms>.

Comments from Women in leading organizations:

Leena Gangopadhyay, State women's commission chairperson stated, "A pregnant inmate at Alipore Women's Correctional Home said after 14 years in jail, during COVID-19, she was granted a year-and-a-half of parole. She stayed with her family and returned to the prison pregnant. Most pregnant women, whom we spoke to (11 in Alipore and 78 in Dum Dum correctional home) entered the prison pregnant. We make periodic checks in women's prisons and never come across such allegations."³

Aparajita Bose, state project coordinator of an NGO working with woman prisoners and their kids, said, "Where did this number, 196, come from?". She pointed out that, "A cell has four to six women, supervised by two to four guard, including women. Entry and exit of women from their cells are logged. No woman prisoner complained about sexual abuse."³

Conclusion:

The case posted before the Hon'ble Court calls for a curious concern. Upon examining the statements of the division bench, the learned amicus curiae and the female coordinators and chairpersons from different organizations across the state of West Bengal has put in a dilemma of sorts concerning the facts submitted before the Hon'ble Court. Who is right in this matter? Whether the report submitted by the amicus curiae calling out 196 babies are currently staying with their mothers who were found pregnant in jails makes it viable to request a prohibition of the entry of male employees in the women correctional homes is valid? Or whether the opinions and the facts submitted by the organizations including the National Commission for Women who propose to conduct a separate probe to fact check the report of the amicus curiae is permissible?

The immediate requirement of thorough checking of the data and further additional probes would in my opinion solve the current case before the Calcutta High Court. The immediate issue of publishing fact checked data is the requirement of the hour to prevent fallacies in judgements which would affect largely the character of women and their integration back in the society. The need of the hour is to properly check the facts and seek justice. False pretense would only harm the dignity of women and that is not acceptable.