**Prison Law**

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Prison law exists to protect the rights of the incarcerated individuals during their stay in correctional facilities. This paper discusses the Farmer v. Brennan, 511 U.S. 825 (1994) while defining the prison rape culture and "deliberate indifference" related to the case. The paper also discusses the 2003 Prison Rape Elimination Act's purpose (PREA) and the dynamics of prison rape compared to domestic violence and rape in a "free" society. The compounding effects of the correctional environment on prison rape victims and the advantages and disadvantages of counseling programs in correctional facilities are also part of this paper. Lastly, the paper presents PREA's requirements from both the administrator and correctional officer's perspectives. While they may be guilty of offenses, prisoners also have rights as human beings.

**A recount of the Facts in Farmer v. Brennan, 511 U.S. 825 (1994)**

Prison rape culture considers that the rape of an incarcerated individual is part of prison life and therefore unavoidable as a punishment for being a lawbreaker. The perpetrator can either be an inmate or a staff in prison. This was the case that Farmer faced. Her transfer from the correctional to penitentiary facility exposed her to one of the most severe male criminals who raped her. The litigation filed against the government explained that the transfer of Farmer to a male prison despite being under transition into the female sexuality was an act of deliberate indifference, thus violating the eighth amendment. Deliberate indifference involves acts or omissions with sole intentions of causing harm or with the awareness that particular harm could occur. Therefore, Farmer demanded that government should pay her for damages and sought restrictions against any form of future penitentiary confinement against her. However, Farmer lost the case because the court ruled that a breach is only possible if the prison officials had prior knowledge of potential danger, which was not in Farmer's case since she had not raised the concern on time. Though Farmer lost, the court considered the need to protect prisoners from prison rape and thus introduced the Prison Rape Elimination Act of 2003.

**The Prison Rape Elimination Act of 2003's (PREA, 2003) purpose**

The Prison Rape Elimination Act's sole purpose was to protect prisoners from assault from fellow inmates or the prison staff. According to the National PREA Resource Center (n.d), the Act demands the detection of prison rape, its prevention and reduction in prison, and punishment of perpetrators of the prison rape. PREA also collects information about prison rape, disseminates it, and even awards grants to help in the ACT's implementation by the state or local governments. Through the National Prison Rape Elimination Commission, the Act ensures the drafting of specific standards to eliminate prison rape. Therefore, the primary purpose is to eliminate cases of prison rape.

**Prison rape's dynamics compared to "free world" dynamics on domestic violence and rape**

Prison rape cases are proliferating and sad. According to McFarlane & Rothstein (2010), it is currently one of the United States' most neglected human rights crises. In checking on statistics, reports indicate that 20% of incarcerated men get abused sexually, and one in every four women in the worst facilities also experience the same. Unfortunately, Youths are at higher risks, with the staff carrying out 80% of the cases. Many of the abused end up with physical injuries, psychologically harmed, pregnant, infected with sexually transmitted diseases, and HIV AIDS. McFarlane & Rothstein (2010) assert that victims suffer drug addiction, unresolved anger, Rape Trauma Syndrome, and posttraumatic stress disorder, which follows them home to their families after release. The majority of the victims are either gay, Lesbians, transgender or bisexual; in essence, the marginalized people based on their sexual orientation suffer the most. The non-violent people, the youths, and short in stature prisoners also suffer sexual abuse.

While we may presume that such extreme abuse happens in prisons only, reports indicate severe cases of rape and domestic violence, which have similar side effects to victims of domestic abuse, also occur in a "free" society. According to McFarlane & Rothstein (2010), perpetrators abuse others to assert their power and control over their victims. The victims, in the end, always choose to compromise to survive. For instance, an inmate asserted that he gets protected by having a "husband" who offers protection in exchange for sexual favors. Besides that, they chose to prostitute themselves in exchange for other favors to avoid abuse to the point of selecting slavery [become a slave to a powerful prisoner] over abuse from gang rape. McFarlane & Rothstein refer to the phenomenon as "hooking up/protective pairing." The cases are many.

*In the same way*, victims of domestic violence also experience persevere abuse in the form of beating and even sexual harassment by their intimate partners. In the long run, the victims experience emotional effects of abuse in the same way the rape victims experience while in prison. However, while those in "free society" may have a chance of reporting abuse and even leaving the abusive environments, the victims in prison do not. They relive the trauma every time since they cannot avoid the environment unless they get released, thus experience even worse psychological harm. Unfortunately, not many people take the reports of abuse by the prisoners seriously.

**The compounding effect of a correctional environment on rape trauma syndrome victims**

Sufferers of abuse tend to experience even more traumatizing moments whenever they are in the correctional environment. For example, in one of the accounts on prison rape, an inmate related how hearing others go through the same abuse or even seeing the exact location they got abused from exacerbates their trauma (McFarlane & Rothstein, 2010, pp. 7). Apart from reliving the traumas, the correctional environment still poses similar threats because those in charge do not care much about the torture they experience as incarcerated individuals. Even though the people in charge act sometimes, they always place the victims in segregated areas that prevent their access to critical services and programs. Moreover, the correctional environment may trigger other mental illnesses as victims struggle to live through the trauma. Others may even land themselves in problems because the correctional environment may make them react contrary to prison laws. The suffering these people undergo is severe, and they need interventions in the form of counselors to remind them that it was not their fault that they got raped.

**The advantages and disadvantages of having a rape counseling program in a correctional facility**

Individuals who undergo prison rape, like any victims of abuse, require counseling. Some of the advantages of counseling in correctional facilities are that the counselors help victims overcome self-blame after prison rape. According to McFarlane & Rothstein (2010), dangerous myths such as those raped deserved what they experienced may drive the victims into self-blame, which is detrimental to their mental health. Also, myths such as women cannot sexually assault fellow women, no one cannot rape a gay man, or that men with feminine characteristics and women are attention seekers may make victims blame themselves. Therefore, an intervention through a counselor would help (McFarlane & Rothstein, 2010, pp. 8) because counselors also provide the victims with coping methods while still in prison. Opening up to someone may also encourage a victim to report if they initially had not. Overall, counselors help victims start healing.

Even though counseling in prison facilities is critical for the healing of incarcerated people, it also has a disadvantage. According to McFarlane & Rothstein, 2010), such counseling provides no confidentiality, especially from the mental health care personnel and medical health staff. One of the requirements is that they reveal cases of sexual assault, which may make the victims not seek out help with the fear of the confidentiality breach.

**PREA requirements' application from an administrator and a correctional officer's perspectives**

As a correctional officer, I must ensure that incarcerated individuals get protected from rape by staff in prison or their fellow inmates. Also, I must strive to detect all moves that may bring about rape and provide information as soon as possible to the proper authority for immediate action. As an administrator, I must ensure that all victims receive help as soon as possible. That is not all. I must ensure that the perpetrators receive punishment to ensure that no one loses their rights though imprisoned. In essence, as the administrator, I must ensure that no prison rape gets perpetuated. However, if it happens, I must ensure that the guilty parties get punished, and the victims receive immediate help. I must ensure that prisoners are safe from assault because they have equal rights like any other human being.

In conclusion, while they may be guilty of offenses, prisoners also have rights as human beings. Prison rape is a common phenomenon that affects a significant population, especially the youth and the marginalized group such as the gays, lesbians, transgender, or even the bisexual. The perpetrators of the crime are usually the inmates or the prison staff who may take advantage of the others and commit the assault. Most of the assaulted people suffer psychologically, and the majority tend to suffer from rape trauma, posttraumatic stress disorder, drug abuse, to mention a few. However, to protect the rights of the incarcerated individuals, the Prison Rape Elimination Act of 2003 was put in place to address prisoners' issues about sexual assault. The Act demands the detection, prevention, and report of rape cases with perpetrators brought to justice to ensure that prisoners do not get abused. Prisoners, like any other human being, suffer and needs protection.

**References**

Legal Information Institute (n.d). "FARMER v. BRENNAN, WARDEN, et al. certiorari to the united states court of appeals for the seventh circuit. No. 92-7247. Argued January 12, 1994 -- Decided June 6, 1994." *Cornell Law School*. Retrieved from https://www.law.cornell.edu/supct/html/92-7247.ZS.html

Linda McFarlane, L., & Rothstein, M. (2010). "Survivors Behind Bars: Supporting Survivors of Prison Rape and Sexual Assault." *California Coalition Against Sexual Assault*. Retrieved from https://www.calcasa.org/wp-content/uploads/2010/12/Survivors-Behind-Bars.pdf

National PREA Resource Center (n.d). "Prison Rape Elimination Act". Retrieved from https://www.prearesourcecenter.org/about/prison-rape-elimination-act#:~:text=The%20purpose%20of%20the%20act,Rape%20Elimination%20Act%2C%202003.)