

Women and Criminal Law

Dr.Mallika Begum

Assistant Professor, Department of Historical Studies, J.B.A.S. College for Women

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“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

Women who constitute half of the population did not enjoy the equal amount of rights as heir men do. From the initiation of humanity into the earth, women were given out a lower treatment. They are bounded and blinded and by the chains of society, family, culture and so on... They continue to suffer due to unawareness of their rights, illiteracy and oppressive practices and customs.

In 1993, the Committee overseeing Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) implementation, adopted the General Recommendation 19, which challenged the form of discrimination that inhibits a woman’s ability to enjoy rights and freedom on a basis of equality with men. It directed the Governments to take this into consideration while reviewing their laws and policies.

Violence against women is broadly classified under two categories.

(1) Crimes identified under the Indian Penal Code (IPC)

(2) Crimes identified under Special Laws (SL)

In 1983, domestic violence was recognized as a specific criminal offence by the introduction of Section 498-A into the Indian Penal Code.

The Indian Penal Code

Under the IPC, ‘culpable homicide’ is defined as causing death by doing an act:

1. With the intention of causing death. In other words, which intention of causing such bodily injury is likely to cause death.
2. The second meaning of this phrase, with the intention of causing death’ is with the knowledge that it is likely to cause death.

Culpable Homicide amounts to murder unless it is committed without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Female Infanticide, or forcing the wife to terminate her pregnancy, Dowry death, Marital Rape comes under domestic violence. In 1983, matrimonial cruelty was introduced as an offence in the IPC. It includes harassment of the woman in connection with demands for property and the like.

Suppression of Immoral Traffic in Women and Girls Act, 1956

The Suppression of Immoral Traffic in Women and Girls from a typical mode of exploitation not altogether unknown in the country. Keeping a brothel is punishable under Section 3 of the above Act, entailing a punishment of imprisonment for not less than one year and with a fine which could extend up to Rs. 2000/-. Similarly, any person above the age of 18 years, who lives wholly or in part on the earnings of the prostitution of a woman or a girl, can be punished with imprisonment for a term which may extend to two years or with a fine which may extend to 1000/-. Procuring, inducing or taking women, or girls for the sake of prostitution is also made punishable with rigorous imprisonment for a period of one year and with a fine which may extend to Rs. 2000/-. For the second and subsequent convictions, greater penalties are imposed.

The Law Commission in its 64th Report, which is devoted to the Suppression of Immoral Traffic in Women and Girls 'Act, 1956, comments on the "narrow scope" of the Act and finds historical precedents for it in the British laws against vagrancy, bawdy houses, street offences, sexual offences, etc. The British Law punished the keeping of brothels, hiring of premises for brothel keeping, etc., but always steered clear of imposing a legal ban on prostitution.

Dowry Prohibition Act, 1961

In order to prohibit the evil practice of giving and taking of dowry, the Parliament has passed the Dowry Prohibition Act, 1961. The Act has been substantially amended by the Amending Acts in 1984 and 1986. For the sake of convenience, the problem of dowry has been discussed under three heads namely, The Dowry Prohibition Act, Dowry Death and Suicide, and Cruelty by Husband for Dowry-related issues.

- The Dowry Prohibition Act, 1961 was amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the Houses of the Parliament by making the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from Women's Voluntary Organisations and others to the effect that amendments made are still inadequate and the Act needs to be further amended. The salient features of the Bill are:
- The minimum punishment for taking or abetting the taking of dowry under Section 3 of the Act has been raised to five years and a fine of Rupees fifteen thousand.
- The burden of proving, that there was no demand for dowry, will be on the person who makes or abets the taking of dowry.
- The statement made by the person aggrieved by the offence shall not subject him to prosecution under Act.
- Any advertisement in any newspaper, periodical, journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the Printer or Publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees.
- Offences under the Act are proposed to be made non-bailable.
- Provision has also been made for the appointment of Dowry Prohibition Officers by the State Governments for effective implementation of the Act. The Dowry Prohibition Officers will be assisted by Advisory Boards, consisting of not more than five Social Welfare Workers (out of whom at least two shall be women).

- A new offence of “dowry death” is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872 have been also been proposed. Any person, who takes or gives or abets the giving or taking of dowry, is liable to be punished with a minimum imprisonment of 5 years and with a minimum fine of Rs.15000/- or the amount of the value of such dowry, whichever is more. However, the court is empowered to award a sentence of imprisonment for a term not less than five year, for adequate and special reason to be recorded in the judgement. The very fact that a minimum imprisonment of five years has been provided, for the offence of giving or taking the dowry, speaks volumes about the intention of the Legislature to eradicate this evil system.

The Medical Termination of Pregnancy Act, 1971

The Parliament has passed The Medical Termination of Pregnancy Act, 1971 and the Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 to deal with unlawful abortions and also infanticide as well as foeticide. Two explanations are offered in the enactment itself of what constitutes grave injury to the mental health of the pregnant woman. The first explanation reads: “When any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

The second explanation is more intriguing in that “anguish” is given an extended application. It states: “Where a pregnancy occurs as “ a result of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman. Though the promotional slant of the Government’s family planning programme may be perceptible in this explanation, it is evident that Parliament cannot be blamed for any lack of concern for the largest minority in the country”.

Dowry Homicide

The dowry death is generally perceived to be of a woman on the dowry issue. But before the act of killing, several forms of harassment and humiliation take place against the victim. Section 304-B of Indian Penal Code deals with dowry deaths. The Section 113B of The Evidence Act, 1872 was added to the Criminal Law (Amendment) Act, 1983.

Section 304B punishes a husband or his relatives if his wife dies due to any burns or bodily injury under abnormal circumstances within seven years of her marriage and if it is shown that immediately before her death, she was subject to cruelty or harassment by her husband or his relatives in connection with any demand for dowry. A person causing dowry death is liable to be punished with a minimum imprisonment of seven years but which may be extended to imprisonment for life also under Section 304B.

Rape

Section 376 provides for punishment to the offender who commits Rape. It is important to know that this Section imposes a mandatory imprisonment of not less than 7 years which may be extended to either ten years or even life imprisonment, depending on certain circumstances.

Sections 375 and 376 have been substantially changed by the Criminal Law (Amendment) Act, 1983. The same Act has also introduced several new sections viz., Section 376A, 376C, AND 376D of the Indian Penal Code. Of these, Sections 376A punishes sexual intercourse with wife without her consent by a judicially separated husband. Section 376B punishes sexual intercourse

by a public servant with a woman in his custody. Section 376C punishes sexual intercourse by the Superintendent of Jail, Warden of Remand Home etc., with inmates of such institutions. Section 376D punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

Kidnapping and Abduction

Trafficking of women and girls has become a highly organised interstate business. According to Section 366, Kidnapping or abducting any woman with the intention of compelling her to marry any person against her will, or to seduce her to illicit intercourse with another person, is punishable with a maximum imprisonment of ten years. Therefore sheltering girls to seduce them to illicit intercourse and forcefully marry a girl abducted, would amount to offences under Sections 351 and 362. The expression “illicit intercourse” used in Sections 372 and 373 means sexual intercourse between persons not united by marriage or recognised as a marital relation by any personal law.

Wife Battering and Harassment

The practice of assaulting one’s wife is socially tolerated but not legally legitimized. Not only do our customs point to the continued acceptance of the right of husband to strike his wife but also legal precedents fail to indicate that Wife Battering was not a part of husband’s prerogative. Wife Battering was not viewed in practice as a criminal problem and hence no official records were kept and no need was felt for carrying out research in this area. It is only recently that conjugal violence or exploitation of wife by husband has come to be recognized as a social problem. The Section, introduced in 1983 (Act No. 46) makes such ‘cruelty’ a specific cognisable offence, punishable with imprisonment up to three years and fine.

Tamil Nadu Prohibition of Eve-Teasing Act, 1998

The Tamil Nadu Prohibition of Eve-Teasing Act came into being in July, 1998, following the public furore over the death of a college student Sarika Shah, in an eve-teasing incident in Chennai. The legislation was amended and equipped with the provision of Section 357 of the Code of Criminal Procedure. As of now, the penalty for eve-teasing is only imprisonment for a term which may extend to one year or a fine which may extend to Rs. 10,000 or both. In another significant recommendation, the Commission has recommended Section 4, 5 and 6 of the Act to be made cognisable to provide for arresting the perpetrators and their accomplices, including the drivers of the vehicles used to commit the crime, without a warrant.

Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002

The word eve-teasing is replaced by ‘Harassment of Women’ wherever it occurs, either in the title or in the body of the Act. This particular changes has introduced an element of focus, besides sounding deterrent. Penalty for Harassment of Women was upto a period as per the imprisonment, with or without a fine not exceeding Rs. 10,000/- providing for imprisonment for a period upto 3 years and fine which shall not be less than Rs. 10,000/-. Also new sections have been introduced as 4A, 4B AND 4C which define suicide as a result of the harassment, besides defining the presumption that would arise in all cases of harassment death and abetment of harassment suicide. This Amended Act came into force from 16th December 2002.

Women and Domestic Violence Act 2005

The Act views ‘domestic violence’ as human rights violation and tries to wipe out the phenomenon of domestic violence which is ‘invisible’ in the public domain. Cruelty against women is already

covered under the Indian Penal Code. But the remedy prescribed by the Act is unsatisfactory to the aggrieved because it does not compensate the affected women. On the other hand, the present legislation gives a sort of ‘civil remedy’ with immediate relief.

In order to protect and promote the Protection Officer and Service Provider were appointed and declared as “public servants” within the meaning of Section 21 of the Indian Penal Code. Any person interfering with the function of these personnel can be prosecuted under law.

Child Marriage Restraint Act

Several studies, including National Family Health Survey (NFHS-3) of 2005 to 2006, have shown that child marriages take place despite legislation such as the Child Marriage Restraint Act, 1929, and the Prohibition of Child Marriage Act (PCMA), 2006. These two Act never prevented a child bride from living with her husband or from being abused, sexually or otherwise.

The writ petition had argued that although the Indian Penal Code did not have a definition for child, the age of consent for sexual intercourse for women was 16 under Section 375 of the IPC while for married couples, the age of consent was presumed to be 15. Relevant sections in personal laws also did not allow a court to declare marriage null and void even if either party was underage. The Hindu Marriage Act is a classic example. The Shariat allows marriages at the age of 15. Under section 375 of the IPC, a husband is exempted from marital rape if his wife was not under 15 years of age. This meant that marital rape was acceptable between the ages of 15 and 18.

From the above analysis it is revealed that there are a number of legislations available for the protection of women from domestic violence. But it is suggested that the existing legislations for the protection of women should be stringent. Severe punishment should be imposed on those who use women as a ‘disposable commodity’. New legislations must be introduced.

General sensitization of the public about the existing legislations needs special mention here. On the other hand, the legislations alone cannot solve the problem.

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