

Legal Requirements to Prevent Matrimonial Cruelty

Ajai Veer¹, Dr. Jayendra Singh Rathore²

¹Research Scholar, ²Guide
Department Of law, OPJS University

Abstract

This study considers the implementation of anti-matrimonial cruelty legal provision within the social fabric of Uttar Pradesh in last one decade. The aim is to deepen our understanding of the domestic violence, firstly, by relating it to the dynamics of dowry practices and related forms of torture and, secondly, by contextualizing this in criminal justice procedures in Uttar Pradesh. It is argued that there are clear connections between the general implementation of these legal provisions and perceptions of stakeholders. Besides, location of women in broader social, economic and political arrangements in general and socio-economic status of individual survivor also be considered in the discourse on domestic violence.

Introduction

It is submitted that overt violence of any category is not a necessary element of rape as defined in section 375. Rather, the cardinal fact is the absence of consent on the part of the woman. In order to absolve one of criminal liability in a case of rape, the consent should be real.²⁰ Explanation 2 to section 375 provides that consent means an unequivocal voluntary agreement" which can be vitiated by 6 circumstances that take away the freedom of choice. A combined reading of section 90 of IPC (deals with consent for the purposes of the Code) and seven clauses in section 375 provide grounds of vitiation, which includes against will; without consent; consent obtained in fear of death or hurt; misrepresentation as being her husband; unsoundness of mind; intoxication or administration of stupefying substance(s); under eighteen years of age; and inability to communicate consent. The Law Commission Report (LCR), 1980 noted that, consent should be active consent, as distinguished from that consent which is said to be implied by silence.

The author submits that section 114A of the Indian Evidence Act deals with presumption of absence of consent in certain rape cases provided under section 376 (2) of IPC, where if the sexual intercourse is proved and the woman denies consent, then the court shall "presume absence of consent. Thus, a mandatory presumption is placed on the court if for instance, among other cases, the woman is under sixteen years of age, or the offender is a person in a position of trust or authority over the woman. This presumption does not apply when a woman of fifteen years or over is raped by her husband who holds a position of trust, as it stands exempted under exception 2 to section 375. It is, therefore, pertinent to address this patriarchal injustice and the resulting ambiguities in the Amendment Act of 2013. 21. Surprisingly, the exemption given to sexual intercourse of man with his wife has necessarily eliminated the requirement of any voluntary consent. Thus, a woman may be under duress or coercion or intoxication, and yet, her husband can rape her without her free and voluntary consent.

The Ambiguities and Discrimination in the Criminal Law (Amendment) Act, 2013

The 2007 Report of the Committee on the Elimination of Discrimination against Women removes the exception of marital rape from the definition of rape. "Despite such recommendations, and the continued demands from women groups, the retained marital exception exhibits many discrepancies in the Amendment Act of 2013 and evidences an unnecessary policy of discrimination.²³

The LCR 1971²⁴ introduced the concept of marital rape on the basis of absence of consent when husband and wife are living apart under a decree of judicial separation or by mutual consent, to a limited extent.²⁵ Following the amendment to Child Marriage Restraint Act, 1929 (CMR Act), the LCR 1980²⁶ provided an amendment to the marital rape exemption by increasing the age of the wife to eighteen years as it believed that since

marriage with a girl below 18 years is prohibited (though it is not void as a matter of personal laws), sexual intercourse with a girl below 18 years should also be prohibited. Subsequently, this was reiterated in LCR 2000²⁷ and also in the 2006 Draft Bill presented by the National Commission for Women which sought to criminalize marital rape. In the 2007 Report, the Committee on the Elimination of Discrimination against Women (CEDAW) has recommended the removal of the marital rape exception.²⁸

Subsequent to the Delhi gang rape incident, the JVC was constituted. It suggested the criminalization of marital rape, reasoning that consent will not be presumed in the event of an existing marital relationship between the complainant and the accused.²⁹ The Bill that was introduced in the Lok Sabha on December 4, 2012 had retained the exception, which subsequently failed to incorporate the recommendations of the JVC Report 2013, which was eventually received on April 2, 2013. On the non-inclusion of marital rape, Union Home Secretary R.K. Singh clarified that accusations of rape might cause irreparable damage to the institution of marriage

30 A wife cannot be made a victim of rape and torture in order to protect the institution of marriage. Further, it is amusing that marital rape is partially recognized when the spouses are living separately,³¹ but not otherwise.

The IPC has been considerate in recognizing the fact that people holding positions of trust with the victim should be made severely liable in cases of rape, with a punishment of for a term of ten years which may extend to life imprisonment.⁵⁰ This, however, intensifies the debate as to whether a husband would qualify as holding a position of trust towards his wife.⁵¹

Further, in section 376C, the IPC penalizes the perpetrator of the crime with a punishment of more than 5 years, if he happens to be in a fiduciary relationship with the victim, even though the victim might have been instigated or seduced into giving consent.

One party acts as a fiduciary to another when a party acts "for the benefit of another person. as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part."⁵² The Supreme Court laid down the requirements for determining fiduciary relationship between husband and wife and their children in the case of Marcel Martins v. M. Printer⁵³ stating that the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. It is submitted that in a marriage, the spouses depend on each other for material and physical comforts, companionship, and love thereby creating a fiduciary relationship. The fiduciary nature of this relationship is evidenced in section 122 of IEA, which deems communication during marriage as prolonged and is prevented from being disclosed in any court, except when one married partner is being persecuted for an offence against the other. Consequently, any evidence is inadmissible unless it is a prosecution for battery, or some related physical or mental abuse considered as cruelty.

Dowry Death

Another atrocity inflicted upon a woman for bringing insufficient dowry is dowry death. Dowry deaths are the deaths of young women in India who are murdered or driven to suicide by continuous harassment and torture by husbands and in-laws in an effort to extort an increased dowry. As per the statistics there was a rise in the incidence of crime against women during 1999-2001, especially dowry deaths, sexual harassment, kidnapping and abductions and offences registered under the indecent representation of women (prohibition) Act. While dowry deaths have been on the rise (3.92 per cent), cases booked under Dowry Prohibition Act have come down sharply by 38.3 per cent, from 3,064 in 1999 to 1,891 in 2000. "The daily newspapers are writ large with reports⁴⁵ about the deaths of young brides in the hands of their husbands or in laws. Though the dowry related problems have been on the rise throughout the post-independence period, in the last two decades dowry demand has been associated with its violent manifestations such as bride burning and dowry death. Bride burning and dowry death are extreme form of dowry violence, which can be both, homicidal or suicidal in nature.

For years the phenomenon of bride burning for dowry was considered as an aberration of certain North Indian communities. Today this shameful crime has permeated all communities irrespective of caste, creed and class. Earlier, cases of bride burning and dowry deaths were camouflaged by the police as accidents or suicides. By

1977-78, it could be realized that most of the deaths of married women which were registered as accidental deaths or cases of suicides were, in fact, murder or induced suicides. Further probe into such cases revealed that a large percentage of such cases involved newly married girls and post marriage dowry demands in cash or kind had been an important factor in their harassment. Everyone knew that the root cause of such deaths was demand for more and more dowry. Therefore, such deaths began to be called dowry deaths. Today dowry is not the innocent practice as it started out but has turned into a social menace that cannot be reverted back to its original form; hence it must be eradicated from our society permanently. The payment of a dowry gift, often financial, has a long history in many parts of the world. But it took more than a decade for the legislature to make dowry deaths' a crime under the Indian Penal Code and to prescribe sentence for culprits. In India, the payment of dowry was prohibited in 1961 under Indian civil law and subsequently Sections 304B and 498A of the Indian Penal Code were enacted to make it easier for the wife to seek redress from potential harassment by the husband's family.

Section 304B Indian Penal Code

As the legislature was aware about the fact that dowry deaths occur in the four walls of the house and it is difficult to get the direct evidence for the same a need was felt to enact a special provision thus punishing homicide or suicide of a woman by her husband or in-laws induced by dowry demand. Accordingly Section 304B was inserted in the Indian Penal Code by 1986 amendment. The wording of the law states as follow:

"Section 304B: Dowry death

1. Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation: For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).⁵⁰ (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

Thus, in order to prove the guilt of a person under Section 304B of the Indian Penal Code the following ingredients are required to be proved:

2. The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
3. Such a death should have occurred within seven years of her marriage.
4. She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
5. Such cruelty or harassment should be for or in connection with the demand of dowry.
6. Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

References

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