

## OFFENCES RELATING TO MARRIAGE AND CRIMINAL LAW IN INDIA

By

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### I. Introduction

Marriage is recognised as the basis of society, it is a social institution, social interest is involved, therefore society is interested in preservation and protection of the institution of marriage. At international level United Nations Organization has adopted the Universal Declaration of Human Rights, 1948 which, *inter alia*, recognized that all human beings are born free and equal in dignity and rights, Article 1 of UDHR, 1948, Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. The family is the natural and fundamental group, unit of society and is entitled to protection by society and State, Article 16 of UDHR, 1948.

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979 obligates the member States to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

The Indian Constitution, which is a stepping stone to reach the temple of justice guarantees not only equality before law and equal protection of law to men and women. It also confers on men and women equal rights and opportunities in the political, economic and social spheres, Article 14 of Constitution of India, and also empowers the State to make special provisions for women and

children, Article 15(3) of Constitution of India.

In spite of availability of several protections through the International and National instruments not a single day passes without the news reports on atrocities on women, more specifically of offences relating to marriage such as bride burning, dowry harassment, dowry death, cruelty to women, driving women to commit suicide *i.e.*, abetment of suicide, and domestic violence *etc.*

### II. Object of the article

Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, Gotra and maidenhood. She expects not only to be a daughter-in-law, but a daughter in fact. Alas, the alarming rise in the number of cases involving harassment to the newly wed girls for dowry shatters the dreams. In-laws are characterized to be outlaws for perpetrating a terrorism which destroys matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction, 2003 CriLJ 3711 (SC).

In India to deal with matrimonial offences apart from enacting new legislations, various new provisions have been incorporated into the existing Acts. In spite of several changes from time to time in this field, laws

are facing the challenge of a newly emerging social order and there is no end to violence against women. The object of this paper is to make a study by consolidating all the legal provisions relating to matrimonial offences in criminal law and to examine its adequacy in controlling such offences in our society.

### III. Hypothesis and Methodology

There are enough legislative provisions are existing in our laws to protect the women, the reason for day by day increase in offences against women may be ineffective implementation of laws and attitude of the society and individual. This hypothesis has been tested by following the doctrinaire approach combined with case-law analysis. For this purpose reference of relevant provisions from Child Marriage Restraint Act, 1929, Indian Penal Code, 1860, the Dowry Prohibition Act, 1961 and the Code of Criminal Procedure, 1973 have been made in the following paragraphs.

### III. Offences relating to marriage

#### (a) Child Marriage Restraint Act, 1929

We have pre and post Constitutional legislations to deal with offences relating to marriage. During the British rule in India, child marriages were very common and it has many evil consequences, therefore to prevent such marriages the Child Marriage Restraint Act, 1929 was enacted. It prescribed the minimum age of marriage, twenty one years for boys and eighteen years for girls. Whoever contravenes these provisions are liable for punishment but marriage remains valid. This Act is applicable to persons of all the religions, *Muzaffar Ali Sajjad v. State of Andhra Pradesh* (2001) 2 Femi Jueris 137 (AP).

#### (b) Indian Penal Code, 1860

Chapters XX and XX-A of the Indian Penal Code deal with offences relating to

marriage and there are also some other provisions of this Code like Dowry death, Section 304-B of Indian Penal Code, 1860, abetment of suicide, criminal misappropriation and criminal breach of trust to deal with related offences. Section 198 of Cr.P.C. bars the Court from taking cognizance of offences punishable under Chapter XX of the Indian Penal Code, 1860 except upon a complaint made by some person aggrieved by the offence.

#### *Dowry death*

The offence of dowry death under Section 304-B of IPC was only introduced in the statute book in the year 1986. 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. For the purpose of this sub-section "dowry" shall have the same meaning as defined in Section 2 of the Dowry Prohibition Act, 1961.

In *Ashok Kumar v. State of Rajasthan*, *Ashok Kumar v. State of Rajasthan*, (1991) 1 SCC 166, Supreme Court expressing the anguish over dowry deaths observed that dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satisfy the greed of husband or his family members and make the boy available once again in the money market. It is found that most of the cases of cruelty is on the part of the husband or relatives of husband leading to suicide or murder of women and most of such cases are taking place normally in protected homes where

outsiders cannot sneak into and consequently there cannot be any eye-witness for prosecution. Therefore, realising this difficulty to console the souls of unfortunate victims of such crimes, certain special provisions have been incorporated in the Indian Evidence Act, 1872, which enables the Court to draw an adverse presumption against the accused in case of suicide by married women resulted due to abetment and cruelty by her husband or any relatives of husband, Section 113-A inserted by amendment in 1983 to the Indian Evidence Act, 1872, and in dowry death cases, Section 113-B inserted by Act No.43 of 1986 to the Indian Evidence Act, 1872.

The maximum punishment for the offence of dowry death is life. The Allahabad High Court in *Dev Prasad and others v. State of U.P. and others*, *Dev Prasad and others v. State of U.P. and others*, 2002 Cr.LJ 4291 All H.C. has observed that we are surprised that while an ordinary murder can be punished by a death sentence under Section 302 IPC, a dowry death, which is much worse offence, has a maximum punishment for life imprisonment. An ordinary murder is committed in a fit of rage or for a property, but a dowry death is not just an ordinary crime, it is a social crime. It outrages the modern conscience it makes the whole of society revert to feudal barbarism. Hence, it commended the Parliament to amend the law and provide for death sentence in dowry death cases.

#### *Abetment of Suicide*

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine, Section 306 of Indian Penal Code, 1860. If the commission of suicide is by married woman and it is within seven years from the date of her marriage and when it is proved that she had been subjected to cruelty by her

husband or any relative of her husband Court may presume that such persons had abetted the suicide, Section 113-A of IEA., 1872.

#### *Criminal Breach of Trust*

If a married woman gives her Stridhan or other personal property to her husband or any relatives of husband for safe custody and any dishonest misappropriation or selling of such property or refusal to return such property will constitute an offence of criminal breach of trust, *Pratibha Rani v. Suraj Kumar*, (1985) 2 SCC 370. Whoever commits Criminal Misappropriation of Property, Sections 403 and 404 of IPC, and Criminal breach of Trust, Sections 405 and 406 of IPC, are punishable under Indian Penal Code.

Section 493 of Code punishes a man either married or unmarried who induces a woman to become, as she thinks, his wife, but in reality his concubine. It is a cohabitation caused by a man deceitfully inducing a belief of lawful marriage. Marrying again during lifetime of husband or wife constitutes the offence of bigamy, Section 494 of IPC, The problem in bigamy cases for the aggrieved party, most often the first wife, is to prove that the essential ceremonies for solemnizing a marriage had been performed. In most bigamy cases in Hindu Law, it is difficult to furnish such proof of the second marriage conducted according to shastric or customary rites, *Laxmi Devi v. Satyanarayana*, The Hindu, December, 25, 1994. The offence of bigamy is committed only if the required ceremonies of marriage are performed, *S. Varadarajan v. State of Madras* 1965 SC.

The Code provides punishment for concealment of former marriage from person with whom subsequent marriage is contracted, Section 495 of IPC. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be liable to be punished, 496 of IPC.

### *Adultery*

A person is guilty of adultery if he has sexual intercourse with a person, who is, and who he knows, or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to that of rape, Section 497 of IPC. It is an offence committed by a third person against a husband in respect of his wife and male offender alone has been made liable to punishment. It will not be an offence in this provision if a married man who has sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consents to it.

### *Constitutional validity of Section 497 of IPC*

This section punishes man only for the offence of adultery and exempts woman from punishment even though she may be equally guilty as an abettor. Supreme Court while upholding the Constitutional validity held that this section is valid since the classification was not based on the ground of sex alone, *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321. It does not allow the wife to prosecute her husband for adultery, *Sonmibhri Vishnu v. Union of India*, 1985 CrLJ 1302 (SC). This section is so designed that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. Thus the law permits neither the husband of the offending wife to prosecute his wife nor does the law permit the wife to prosecute the offending husband for being disloyal to her. Thus both the husband and wife are disabled from striking each other with the weapons of criminal law.

The Code also deals with cases of deprivation of the husband of his custody and his proper control over his wife, Section 498 of IPC. Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of

separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine, Section 376-A of IPC.

### *Cruelty by Husband or Relatives of Husband*

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. It is not every harassment or every type of cruelty that would attract Section 498-A. The complainant has to conclusively establish that the beating and harassment in question was with a view to force her to commit suicide or cause grave injury or danger to her life, limb or health, or to fulfil the illegal demand of dowry. There is no time limit for the application of this provision, it may be invoked anytime after the marriage. In Andhra Pradesh the offence of Section 498-A and the offence of Bigamy was made compoundable by Criminal Procedure (A.P. Amendment) Act, 2003, It shall come into force by Gazette publication, but by virtue of judicial decisions compounding of these offences has been in practice.

### (c) The Dowry Prohibition Act, 1961

In order to prohibit the evil practice of giving and taking any dowry the Indian Parliament has enacted Dowry Prohibition Act, 1961 and this legislation has been substantially amended by the amending Acts in 1984 and 1986 basing on the recommendations made by Joint Parliamentary Committee. According to this legislation “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -(a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party in marriage or by any other person, to either party to the marriage or to any other person, at or before or anytime after the marriage, in

connection with the marriage of the said parties, but does not include dower or mahr. This definition includes any property or valuable security given or agreed to be given at or before or after anytime of marriage in connection with marriage.

(d) Maintenance

In India all most all the religions have recognized the responsibility of husband to provide maintenance to his wife. The same is also recognized under personal laws. To provide speedy relief to the needy person the Code of Criminal Procedure, 1973 contains provisions in section 125 to 127. Section 125 of the Code provides that if any person having sufficient means neglects or refuses to maintain, his wife, unable to maintain herself, may claim maintenance from her husband. Under the Code 'wife' includes a woman who has been divorced by or has obtained a divorce, from her husband and has not re-married. This provision has no application to the Muslim divorced women, they are governed by Muslim women (Protection of Rights on Divorce) Act, 1986.

## V. Conclusion

The above study reveals that there are enough legal provisions are available under criminal law to deal with offences relating to marriage. In spite of existence of number of such legislative provisions to punish the offenders involved in offences against marriage, there is no end has seen of such violence.

This evidence would lead to draw the inference that it could be due to lack of social awareness and ineffective implementation of existing legal provisions.

In criminal cases, the delay in conduct of trial kills all chances of prosecution to prove the case, with witnesses turning hostile and evidence drying up, therefore, there is need to conduct speedy trial in the interest of justice. It is also noticed that in some cases after the death of their daughter parents compromise with the offender by receiving some amount or properties given to him. This kind of practice should also be given up, parents and relatives should come forward to give testimony in Courts to prove the offences and atrocities against women and see that the offender must be punished according to law. In criminal cases police is the main law enforcement agency on whom there are number of responsibilities, therefore, there is a need to create separate agency for the enforcement of law relating to marriage.

At the end it may be further concluded that law by itself is no deterrent against crime, it is the attitude of the society in general and the individual in particular that determines the effectiveness of legal system. For every social problem passing of legislation is not the answer, what is required is creation of social awareness and education to eradicate social evils. Hence, it is suggested that there is a need to bring social awareness in eradication of such evils from society apart from stringent enforcement of law.

## INDIAN CONSTITUTIONAL VISION ON HUMAN RIGHTS

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The concept of human rights in current politics. The rapid growth of Law relating to international protection of human rights. The

frequent appeals to human rights for social change, curbing Governmental law lessens social oppression. In this context we would