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Offences against Marriage: A Socio-Legal Study

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ABSTRACT

The sanctity and importance of the marriage has been recognized among all the people of the world. In India, a list of offences against marriage and punishment provided in the Indian Penal Code, 1860 which had passed during the British era and at that time the social status of women in India was pitiable. Women were not independent economically and were considered as an object. The structure of the society was different from what it is today and several social evils were prevalent during those days. Polygamy, child marriage and Sati system were common and since women were observed as a property of men. Women were subjugated and exploited by men and this led to the framing of such laws.

The Investigator in this article will review the sanctity of the institution of marriage, which is very basic to Indian society, needs to be preserved at all cost, by analyzing the various provisions of the Indian Penal Code, 1860, specifically deals with offences relating to marriage, through a doctrinal study on the topic based on secondary sources of data such as books, magazine, journal, news paper and reports of various governmental and non-governmental organizations.

Keywords: Society, Marriage, Offences, Legal perspective, Purity and Sanctity.

I. INTRODUCTION

It is a well-established and recognized fact that family as a social unit is regarded as the most important institution for preserving the identity of individual and enabling one to live reasonably protected life that will promote proper development of one's personality. The sanctity and importance of the marriage has had been recognized among all the people in the world over. Therefore, legal regulation of marriage is a topic of vital importance in the promotion of welfare of the society in its totality. Such regulation includes the laying down of certain norms by law and prescribing of sanctions for the breach of those norms through appropriate legislation. Since the sanctions for breach of legal norms are as important as norms themselves, therefore, the study of these norms should be considered as a matter of

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great practical importance.²

Research Methodology

The method of the research is doctrinal based secondary sources. The secondary sources include enacted laws, judicial decisions, reports of the committees and commissions, debates and discussions, views of the authors, jurists and collected from relevant books published by the Indian and foreign authors, articles published in various journals and newspapers and periodicals. The internet has been accessed to ascertain relevant material in respect to comparative study.

Research Questions

The present study seeks to test the following research questions: (1) Whether the laws dealing with offences relating to marriage has been successful in fulfilling the expectations of the society? (2) Whether the chapter in IPC on offences relating to marriage requires a relook? (3) Whether to deal firmly and effectively with violators of sanctity of marriage there is need to have a uniform civil code? (3) Whether section 494 of the Indian Penal Code, 1860 has been effective in punishing a spouse who commits bigamy? (4) Does Muslim Law need to be amended to abolish polygamy? Does the present provision suffer from discrimination against women. (5) Section 497 of the Indian Penal Code, 1860, does not provide punishment for the wife guilty of adultery as a better. Is this exemption made in favour of women justifiable in the contemporary society. (6) A woman is denied a right to prosecute her erring husband who has been guilty under section 497 of the Indian Penal Code, 1860. Is this a rational position? (8) Whether Section 497 of the Code is not unconstitutional? (9) Why women are not punished for adultery. (10) That whether there should be an amendment made to correct the reverse gender bias contained in the country's age-old law on adultery? (11) Whether the Indian-law on adultery, drafted more than a century ago should be retained as such in the light of changing social norms? (12) Whether Section 498, Indian Penal Code intended to protect the husband only? (13) Whether offence punishable under Section 498 is a minor offence as compared with an offence punishable under Section 366 Indian Penal Code, 1860?

Statutory Provisions (Penal Offences under Indian Penal Code, 1860)

Bigamy: According to Section 494³– “Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which

² Indiankanoon.org

³ <http://164.100.47.134/intranet/Crimeagainstwomen.pdf> browsed on 1st July, 2015 Indian Penal Code, 1860 : Section 494

may extend to seven years, and shall also be liable to fine.

Exception- This section does not extend to any person whose marriage with such husband has been declared void by such court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

Essentials - • The accused spouse has already been married •whilst the first marriage was subsisting, the spouse contracted a second marriage. • Both marriages are valid.

Adultery: According to Section 497⁴ - “Whoever has sexual intercourse with a person who is and whom 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 the offence of rape. Is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor.”

Essentials• Sexual intercourse must be committed with the wife of another man. • The person must have knowledge or has reason to believe that the woman is the wife of another man •Such sexual intercourse must be without the consent or connivance of the husband. • Such sexual intercourse must not amount to the offence of rape. •Wife not guilty of adultery.

II. RECENT JUDGEMENT ON ADULTERY

In a landmark judgement, the Supreme Court scrapped the 150-year old adultery law. Reading out the judgement, CJI DipakMisra clearly stated that equality is the need of the hour. He also added that time has come when the husband should not be considered the master.

"Adultery cannot and should not be a crime. It can be a ground for a civil offence, a ground for divorce," a five judge bench led by outgoing Chief Justice of India DipakMisra said.

⁴Ibid : Section 497.

Cruelty According to Section 498-A⁵ - “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.” Explanation- For the purpose of this section, “cruelty” means- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause a grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

Essentials a. The woman must be married b. She must be subjected to cruelty or harassment c. Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

Dowry Death⁶ According to Section 304-B⁷ - (1) “Where the death of a woman is caused by any burns or 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. (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.”

Essentials a. The death of a woman caused by bodily injuries or otherwise than under normal circumstances. b. Such death should have occurred within seven years of marriage. c. She must have been subjected to cruelty or harassment by her husband or any relative of her husband. d. Such cruelty or harassment should be for or in connection with the demand of dowry. e. Such cruelty or harassment was made soon before her death.

III. MOCK MARRIAGES

Other than the abovementioned offences which are very popular, there is another category of offences which are not much highlighted. They are “Mock marriages” i.e. fake marriages where one person makes the other person to believe that he/ she is lawfully married to the

⁵ Chapter XXA, OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND inserted by Act 46 of 1983, Sec. 2(w.e.f. 25-12-1983)

⁶ Indian Penal Code, 1860 : Section 304B.

⁷ Inserted by Act 43 of 1986, Section 10 (w.e.f. 19-11-1986)

former and in that belief the former enters into a sexual relationship with the latter. These marriages can be committed by concealment of material facts or by fraudulent representation of the facts or by fraudulently performing marriage ceremonies. These mock marriages are described under Section 493 and 496 of the Indian Penal Code, 1860 and are on a rise these days but not noticeable and rarely reported. Therefore, as such no reliable data is available for such offences. Both of these sections are more or less alike. Few differences which can be mentioned are section 494 is committed by man whereas section 496 can be committed by man or woman. Secondly, section 494 requires some deception of material facts and sexual intercourse consequent on such deception but for Section 496 deception or cohabitation is not required.

According to Section 493 of the Penal Code⁸, “Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.” Essentials a. Deceit causing a false belief in the existence of a lawful marriage. b. Sexual intercourse with the person causing such belief.

According to Section 496 of the Penal Code⁹, “Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.” Essentials a. Ceremonies of marriage performed which would in no case constitute a valid marriage. b. By such performance of marriage one of the party is deceived.

IV. OTHER SPECIAL LAWS

i) Domestic Violence Act, 2005 According to Section 3- “For the purposes of this Act¹³, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it- (a) Harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse; or (b) Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) Has the effect of threatening the aggrieved person or any person related to her by any conduct

⁸ Indian Penal Code, 1860 : Section 493.

⁹ Ibid : Section 496.

mentioned in clause (a) or clause (b); or (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person". ii) Dowry Prohibition Act, 1961 This Act was passed by the legislature to prohibit the giving and taking of dowry. According to Section 2 of the Act- "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly- ¹⁰ Domestic violence Act, 2005 103 (a) By one party to a marriage to the other party to the marriage; or (b) By the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in case of person to whom the Muslim Personal Law (shariat) applies.

Review: As quoted by Swami Vivekananda," that country and that nation that do not respect women have never become great, nor ever be in future."¹¹

In socio-cultural level, to bring the idea of gender equality to public is one tough mission of the government. The process of socialization is obscure; however, the effects are obvious. Only in a more gender-equal society, women who have suffered violence could get rid of shame/self-blame.¹²

V. CONCLUSIONS

After analysis of the topic the Investigator come to conclusion that the crimes against women are as old as civilization and equally ancient are the efforts to curb them. Women have been subjected to socio, economic and cultural deprivations for a long time. There is general indifference and lack of awareness for crimes against them. Though Constitutional protection has been provided and large number of protective laws were enacted to prevent and to control the crimes against women but these crimes have continued their upward trend. A large number of women are becoming the victims of rape, cruelty, bride burning, Molestation, prostitution wife beating etc. Generally it has been found that women hesitate to knock the doors of the Court due to long, unending and extremely legal battles. Even the courts do not give priority to these cases. On the other hand the enforcement authorities seem to be reluctant or keep silence with regard to the cases of atrocities against women which are reported to them. The nature of the crimes is multi-causal and multi-dimensional. The crimes have socio-economic, cultural and political repercussions. It clearly reveals from the present study that the role of the law is very important to combat these crimes. Law is the best

¹⁰Domestic violence Act, 2005

¹¹ Gaur KD, „A Textbook on Indian Penal Code’, Universal Law Publishing Co.: Lucknow; 2011 available at <http://www.lawctopus.com/academike/offences-women-ipc/> browsed on 1st July, 2015

¹² <https://drive.google.com/> browsed on 1st July, 2015.

instrument to provide the immediate relief to such women. If other agencies co-operate, the law becomes more effective to deal such cases.

VI. SUGGESTIONS

(i) Cases of Crimes against women should be investigated within a definite time frame and investigation should also be started without delay so that culprit cannot destroy the evidence or create it's in his favour and get time to escape. (ii) The Women Police officers, specialized in the field of investigation of the crimes against women should be appointed to restore the confidence of the victims women. (iii) It has been found that generally the police is reluctant to lodge the complaint of women It should be made obligatory for the police to lodge complaint immediately and on not doing so the person responsible should be severely punished. (iv) All the crimes against women should be consolidated in one chapter under Indian Penal Code or by a separate central legislation. In this regard, Retired judges, Senior Advocates Women's organization, Law officers, legal luminaries should be involved while amending the old laws and enacting the new one. (v) Lack of clarity and ambiguity of expressions in the existing protective laws is a major cause of legal wrangles. The provision should be made in the Act itself to ensure the correct interpretation of the laws. (vi) Rules should be made along with the enactment for the speedy implementation of the law.
