



Crime against women in India with reference to the Indian Penal Code.

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Abstract

Section 10 of the Indian Penal Code (IPC), 1860 defines woman as a female human being of any age. In recent times, India, as a country, is progressing steadily in terms of development. Contrary to this, there has been an alarming increase in crimes against women in India. Although, crime against women exists in all almost all countries, regions, cultures and communities, the rate of crime in India poses a serious threat to the sustainability of Indian societies. Crime against women prevails at various levels viz. physical, mental, emotional, domestic and public. In fact, due to the lack of information and awareness, such crimes become a part of a woman's life without their knowledge. Herein come the responsibility of a person from the legal field to contribute towards increasing the level of awareness among the common people regarding this issue. The present study is one such attempt to investigate and discuss the various crimes against women under the IPC so as to reach out to the masses.

Keywords: Awareness, Crime, India, IPC, Women

1. Introduction

Crime is defined as "an act punishable by law as forbidden by statute or injurious to the public welfare" (Morris Terrence). Anything which is injurious to public welfare is a crime. In simple crime means those acts which are inserted as crime by any Act. For example 'Adultery' is a crime under the Indian Penal Code (IPC) but not in the continental countries. No part of the IPC defines the word 'Crime' but Section 40 defines 'Offence' as a thing punishable under the Code or under any special or local law as hereinafter defined.

In our old, great nation a woman is the personification of a goddess, a symbol of respect and devotion to the gods. We have all been brought up in a way that commands the highest honour and respect for the fairer sex. Yet, unfortunately the latest statistics do not reflect this but in fact, demand introspection. Today, there is a rape every 29 minutes, a case of

molestation every 15 minutes and a dowry death every 4 hours (Anand A. S., 2002). This is, inhuman for a nation that prides itself for all the dignity it gives to its women as part of its culture and traditions. Although the IPC details the various ingredients which constitute these crimes, but the prevailing condition of lack of awareness among the women of our society has been attributed to the major cause for the rise in the rate of such crimes. In fact, due to the lack of information and awareness, such crimes become a part of a woman's life without their knowledge. Therefore, it is only necessary that we look into the details of the various offences under the IPC against women and the laws that guard them.

2. Aim of the study

The objective of the study is to give some conceptual notion of crimes against women happening in our society. The intended outcome of the study is to

compile and discuss the various crimes against women under the IPC so as to reach out to the masses. This would in turn help in creating awareness among the masses about the topic

3. Materials and method

This paper is based on the doctrinal study approach wherein a number of research papers and articles related with the topic were studied and analysed. The analysis was aimed at identifying the various crimes or offences against women as enumerated under IPC and for which a male can specifically be charged..

4. Key findings

Various research papers and articles were studied and analysed to identify the crimes or offences against women as enumerated under IPC and for which a male can specifically be charged. The key findings of the analysis are compiled and discussed in the following sub-sections.

4.1 Dowry death

Section 304B of the IPC defines dowry death as ‘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 harassments 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’. Defining the meaning of ‘Dowry’, the Section further states that ‘dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. Under this Section, ‘Dowry’ means any property or valuable security given or agreed to be given either directly or indirectly- by one party to a marriage to the other party to the marriage.

Anyone found guilty of the crime are punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. The offence is cognizable, non-bailable, triable by Court of Session and non-compoundable. Essential ingredient for Dowry Death are (a) death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances, (b) death should have occurred within seven years of her marriage, (c) the woman must have been subjected to cruelty or harassment by her husband

or any relative of her husband, (d) cruelty or harassment should be for or in connection with the demand for dowry and (e) cruelty or harassment should have been meted out to the woman before her death.

4.2 Intention to outrage the modesty of women

The offence of outraging the modesty of a woman has been dealt with in the IPC under Section 509 and Section 354, which is an aggravated form of the offence mentioned under Section 509. Section 354 states that whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punishable with imprisonment of either description for a term which may extend two years or with fine or with both. The term ‘modesty’ is discussed under Section 354 as an attribute associated with female beings as a class. It is a virtue attached to a female owing to her sex. The act of pulling a women, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a women. The ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a women.

Section 354 of the IPC was modified under the Criminal Law (Amendment) Act, 2013 and the following sections have been inserted.

4.2.1 Sexual harassment (Section 354A)

1. The following acts or behaviour shall constitute the offence of sexual harassment
 - i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii) A demand or request for sexual favours; or
 - iii) Making sexually coloured remarks; or
 - iv) Forcibly showing pornography; or
 - v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
2. Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.
3. Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend to one year, or with fine, or with both. Assault or use of criminal force to woman with intent to disrobe.

4.2.2 Assault or use of criminal force to women with intent to disrobe (Section 354B)

Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and with fine.

4.2.3 Voyeurism (Section 354C)

Voyeurism means being happy or deriving pleasure simply by seeing a scene. This section provides that any man who watches or captures the image of a woman engaging in a private act commits an offence. Whoever watches, or captures the image of, a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

For the purposes of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim’s genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

Where the victim consents to the capture of images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

4.2.4 Stalking (Section 354D)

Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking: Provided that the

course of conduct will not amount to stalking if the person who pursued it shows (i) that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or (ii) that it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or (iii) that in the particular circumstances the pursuit of the course of conduct was reasonable.

Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

4.2.5 Buying or disposing of any person as a slave (Section 370)

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

4.2.6 Buying and selling of minor for purposes of prostitution (Section 372 & Section 373)

Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

4.3 Rape (Section 375 & Section 376)

Rape, its definition, elements and punishments have been given under Section 375-376. These sections

were substantially amended on the recommendations of the Justice J.S. Verma Committee that was setup in wake of the 16 December 2012 gang rape case. The amendment was made to make the provisions more inclusive and at the same time award a stricter punishment. Under Section 375, Rape which derives from the Latin word 'rapio' meaning 'to seize' (Nelson, 1983) is defined as any act of penetration by penis or another body part or object, or any manipulation the woman's body parts under the following circumstances.

Against her will. Here, 'will' refers to the faculty of reasoning or the mental capacity to understand the consequences of doing or not doing a particular act.

Without her consent. Consent refers to the positive concurrence of a woman's will. This is based on the principle that a man is the best judge of what is good for him/her and can consider and give consent to what he feels is good for him. In Queen v. Flattery (!877 QBD 410), it was held that the girl's consent was meant for a surgical operation and not for sexual intercourse and such a consent was manufactured and was not a ground for exemption from criminal culpability.

- a) Consent obtained by fear of death or hurt of person or someone close: In State of Maharashtra v. Prakash (AIR 1992 SC 1275), it was ruled that where a gypsy woman was raped by police constables who beat her husband and threatened to put him in remand, it accounted for being a threat manufacturing a false consent.
- b) Under the pretence of being her husband: Queen v. Elbekkay (AIR 1979 SC 185), held that even on the account of a man representing himself to be a woman's boyfriend to have sexual intercourse, it accounted to false pretence.
- c) Under intoxication or unsoundness of mind by which capacity to consent is undermined: This provision was a consequence of the Criminal Amendment Act of 1983 according to which where a woman has been intoxicated and is unable to judge or give consent to any act of sexual intercourse or where the woman is impaired with intelligence or social functioning skills, she is said to be intoxicated or unsound respectively.
- d) Under eighteen years of age, irrelevant of consent: The consent of a woman is irrelevant and in fact, immaterial if she is below the prescribed age.
- e) Unable to communicate consent
Section 376 goes ahead to define the punishment for rape as under Section 375 which is a minimum of seven years extending to life plus fine. Sub-section 2 prescribes a stringent punishment (10 years to life) for

certain special circumstances like a police officer committing rape in the premises of a police station or on a woman in his protective custody, a public servant who takes advantage of his position to rape a woman in his custody, an official in service within a jail or remand home who commits rape etc.

In India, most cases of rape either go unreported because of the inevitable social stigma that gets attached to the victim or are dismissed where the accused are acquitted due to lack of evidence or proof. This is largely because here, a case of rape includes the careful dissecting of a woman's character and chastity. Perhaps it is the only crime in which the victim becomes the accused and, in reality, it is she who must prove her good reputation, her mental soundness, and her impeccable propriety (Adler Freda, 1975).

4.3.1 Intercourse by a man with his wife during separation (Section 376A)

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.

4.3.2 Intercourse by public servant with woman in his custody (Section 376B)

Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

4.3.3 Intercourse by superintendent of jail, remand home, etc. (Section 376C)

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation 1.—

"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates. Explanation 2.—The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

4.3.4 Gang Rape (Section 376D)

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine; Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim; Provided further that any fine imposed under this section shall be paid to the victim. A landmark case under this section is the Shakti Mills gang rape case.

4.3.5 Unnatural offences (Section 377)

Whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

4.4 Offences relating to marriage (Section 493 – Section 498)

Chapter XX (section 493- 498), IPC, deals with offences relating to marriage. All these offences deal with infidelity within the institution of marriage in one way or another.

4.4.1 Cohabitation caused by a man deceitfully inducing a belief of lawful marriage (Section 493)

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.

4.4.2 Marrying again during lifetime of husband or wife (Section 494)

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 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 or wife has been declared void by a 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.

The important ingredients are deceit or fraudulent intention, causing of false belief and cohabit or have sexual intercourse.

4.4.3 Same offence with concealment of former marriage from person with whom subsequent marriage is contracted (Section 495)

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The essential ingredients are existence of a previous marriage, second marriage to be valid and second marriage to be void by reason of first husband or wife living.

4.4.4 Marriage ceremony fraudulently gone through without lawful marriage (Section 496)

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.

The essential elements of both the sections i.e. 493 and 496, is that the accused should have practiced deception on the woman, as a consequence of which she is led to believe that she is lawfully married to him, though in reality she is not. In s 493, the word used is

'deceit' and in s 496, the words 'dishonestly' and 'fraudulent intention' have been used. Basically both the sections denote the fact that the woman is cheated by the man into believing that she is legally wedded to him, whereas the man is fully aware that the same is not true. The deceit and fraudulent intention should exist at the time of the marriage(KAN, Subrahmanyam, 1971). Thus mensrea is an essential element of an offence under this section.

4.4.5 Adultery (Section 497)

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.

Before the IPC was enacted, adultery was not an offence in India either for men or women. It was also not included in the first draft of the penal code. However, the second Law Commission it. The Law Commissioner noted that the then prevalent social infrastructure and the secondary and economically dependent position of women were not conducive to punish adulterous men. Further, they noted, that a wife was socially conditioned to accept her husband's adulterous relationship as polygamy was an everyday affair. Thus they incorporated adultery as an offence punishing only adulterous men.

In *Kashuri v. Ramaswamy*(1979 CrLJ 741), it was held that the proof of sexual intercourse has to be inferred from the facts and circumstance of a case as direct evidence can rarely be proved.

The essential ingredients are sexual intercourse, woman must be married, knowledge, consent or connivance of husband and the act should not constitute rape.

4.4.5 Enticing or taking away or detaining with criminal intent a married woman (Section 498)

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of

either description for a term which may extend to two years, or with fine, or with both.

The essential ingredients are takes or entices away, woman to be a married woman, knowledge, taken from control of husband or person having care of her on behalf of her husband, intention to have illicit intercourse and concealment or detainment of such women.

4.4.6 Cruelty (Section 498A)

Matrimonial Cruelty in India is a cognizable, non bailable and non-compoundable offence. Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine.

Explanation – for the purpose of this section, "cruelty" means: (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause 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 demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

5. Conclusion

Though we have IPC and a strong Judiciary then also crimes against women are not under control. This means that IPC and Judiciaries are not sufficient. Important thing is that 'ignorance of law of the land is not excusable', so we are obliged to know the laws of our country. A great campaign regarding these crimes is necessary. Here each and every educated person, media, national, state, district legal services authority, legal institutions, advocates and lawyers have a great role to play. Every women should be trained in such a way that they can combat the crimes. Again education is a process through which we can create awareness among the women of our society.

It is observed that crime against women is a major area of concern for our developing nation. In fact, to assume that the country would develop when its mothers and daughters are not safe is absurd. There is an immediate need to eradicate this menace. In this regard, creating awareness, increasing literacy rate, conducting counselling sessions, etc. are some of the major areas of thrust. This article is a very minor step in creating awareness about the various constitutional

and legal provisions relating to crime against women. It is hereby requested that the reader circulates this article among their friends, relatives and neighbours to make a little contribution in the nation building process.

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