

Domestic Violence Protection of Women Rights

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ABSTRACT

Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

Violence against women is present in every country, cutting across boundaries of culture, class, education, income, ethnicity and age. Since time immemorial India is a particularly a male dominated society and prevalence of illiteracy among women has resulted in wide spread violence against women. Therefore, Indian women like women world over have suffered from domestic violence like purdah system, satipratha, Female feicide, Female infanticide, different kinds of physical, emotional and mental abuse, dowry death, cruelty, polygamy etc.

1. Introduction

In India, family is considered to be a sacred institution and it acts as a source of furtherance of mental, social and spiritual well being of its members. Family creates bonds and a sense of belonging and stability of relation among its members which is now weakening because today domestic violence has been identified as a major cause of injuries to women in India.

The majority of persons aggrieved by domestic violence are women and domestic violence ranges from dowry abuse leading to death, verbal assault, marital rape etc. Many victims of domestic violence in India are unable to leave this abusive situations due to psychological and socio-economic factors and continue to be victims of such violence, putting their lives and health in jeopardy. Still domestic violence is an issue that can be sorted out within the four walls of the house and some amount of violence is considered as a part of normal wear and tear of marital life.

In 21st century Indian women are increasingly being educated and joining more and more working lives but still they are subjected to different kinds of domestic violence like wife beating, bride burning, mental and physical abuse, cruelty by husband and inlaws, marital rape, dowry death etc. All these are widespread in our society and women are facing unequal treatments in every field of their social lives.

According to Article 14 of the Constitution of India, All persons including women are equal in the eyes of the law and they are also entitled to enjoy equal protection of laws within the territorial jurisdiction of India. It signifies that all persons irrespective of sex should be treated equally in similar circumstances. In other words, the State should not make any discrimination between one person and another, and amongst equals the law should be administered equally.

Article 15 of the Constitution of India deals with prohibition against discrimination. It prohibits the state to make any discrimination against any citizen including women on grounds

of race, caste, sex, religion, place of birth etc. It states that all citizens irrespective of race, caste, sex etc. are entitled to enjoy equal rights in regard to access to shops, hotels, bathing ghats etc. But the state has the right to make any special provisions for women and children and also for the scheduled castes and the scheduled tribes.

According to Article 16 of the Constitution of India, all citizens including women will enjoy equality of opportunity in matters of public employment irrespective of their sex, races, castes, religions etc.

As per Article 17 of the Constitution of India, System of untouchability is abolished and Untouchability (offence) Act of 1955 was enacted by the parliament. This Act was amended by Untouchability (offence) Amendment Act 1976 in order to make the law more stringent to remove untouchability from the society.

But these freedom of rights can never be absolute. A democratic State like India cannot grant absolute freedom to her citizens including women. These are reasonably restricted on the ground of security, integrity and sovereignty of India, friendly relations with foreign states, public order, decency or morality, contempt of court etc. by the authority of the state in the interest of the community.

2. Domestic violence protection of women rights

As per Article 20 of the Constitution of India - No person including women shall be convicted of any offence except for violation of a law enforce and no person shall be prosecuted and punished for the same offence more than once and no person accused of any offence shall be compelled to be a witness against himself or herself.

The incidents of domestic violence against women have been increasing over the years. Women are subjected to violences like cruelty by husband and his relatives,

dowry death, grievous hurt, murder, marital rape by husband etc.

The criminal law in India is contained primarily in the Indian penal code, 1860 (I.P.C). The I.P.C is supplemented by special laws, which define and punish specific offences. There are some sections in Indian penal code, 1860 which deals with different domestic violences.

In India often women are murdered by their husbands and in-laws for flimsy reasons. In this context it is stated that under section 209 of the I.P.C, "culpable homicide" is defined as causing death by doing an act - a) With the intention of causing death. b) · with the intention of causing such bodily injury as is likely to cause death. c) With the knowledge that it is likely to cause death.

In the case of domestic violence, 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.

Therefore, culpable homicide is murder, if any act of the husband by which the death of a victim woman is caused is done with the intention of causing death, or, if it is done with the intention of causing such bodily injury as the husband of the victim woman knows that it might cause death of his wife. As for example - If any husband shoots his wife with the intention of killing her and the woman dies in consequence. Then the husband of that woman commits murder.

Whenever the court is confronted with the question whether the offence is murder, or culpable homicide not amounting to murder on the facts of a case, it will be convenient for the court to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death leads to the-second stage of consideration, whether that act of the accused amount to culpable homicide as defined in sec. 299.

3. Discussion

Today these type of bride burning cases are alarmingly on the increase. The Court has to take a pragmatic view of such cases on the evidence produced. The court relied upon the dying declaration of the deceased wife that the grandmother... in-law caught hold of her and her mother-in-law poured kerosene oil on her sari and lighted a match stick on her. body and held the case to be one of murder even though, before the sub-inspector of police and before the doctor at the time of her treatment she told otherwise.

In another case, where a newly married and highly educated wife died from burning during midnight in dark kitchen, the husband was licentious in character and his conduct was found unnatural on knowing about the burning of his wife and he absconded for about a month - The Court held it was a case of murder and not of suicide.

The dowry deaths occur within the four walls of the house, therefore the concept of deemed "dowry death" was introduced by the 1983 amendment. In order to invoke the legal presumption under section U 3B of Evidence Act, it is necessary to prove that the deceased was subjected to cruelty or harassment. Further, the presumption also apply if the offence takes place within seven years of marriage. The sections 113B&304B read in conjunction shift the burden of proof from the prosecution to the husband or his relatives, accused of the offence. This is a departure from the normal rule of evidence and was introduced to strengthen the hands of the prosecution. The provision of section 113B is mandatory in nature.

In one case the court opined that Section 113B could be applied retrospectively as it is- procedural in nature.¹⁶ There has to be proximity between the incident of cruelty or harassment and the offence for the presumption of section 113B to apply.

In a case the point arose whether the deceased wife who sustained 80% burn injuries on her body, committed suicide or died by accidental fire caused by bursting of a stove? Medical evidence ruled out the possibility of accidental fire in view of the burns. The circumstantial evidence emerging from the conduct of the deceased after sustaining burn injuries and correspondence of the deceased revealing a tell-tale story of continuous ill-treatment at the hands of the mother-in-law, established a case of abetment of suicide.

Accused husband constantly pestering the deceased wife for bringing him a sum of Rs 10,000/-. Being in utter despair, the deceased, on the fateful day, gave out that she preferred death to life. The accused reacted by saying that she could provide him quicker relief by dying on the very same day. Following this the deceased set fire to herself. Held, in the circumstances, that the accused had instigated the deceased to commit suicide and, as such, was guilty under sec. 306 ²⁴ In another case, where the husband has been responsible for creating circumstances provoking or forcing the wife thereby into taking the only alternative left open to her, namely, suicide, it was held that his conviction under sec 306, I.P.C was just and proper.

4. Significance of the study

According Sec 315 of IPC If the husband before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth shall, if such act be not caused in good faith for the purpose of saving the life of the mother (wife of the person) be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

According to section 316 of I.P.C, Whoever does any act under such circumstances, that if he thereby causes death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and he shall also be liable to fine. ·If the husband

knowing that he is likely to cause the death of his pregnant wife, does an act i.e. kick in her stomach and if it caused the death of the wife, the offence of the husband would amount to culpable homicide. But if the wife is injured, but does not die, but the death of an unborn quick child with which she is pregnant is thereby caused, the husband is guilty of the offence defined in this section.

5. Conclusion

According to section 313 of I.P.C whoever commits the offence of female foeticide without the consent of the woman, whether the woman is quick with child or not, 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.

According to section 314 of I.P.C, whoever with the intention to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment.

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