

Quadrant Notes

Programme	: B.A .LL.B
Subject	: Law
Semester	: LL. B DEGREE Semester II/B.A.LL.B Semester X
Paper Code	:WAL0217Semester II / WAL1020 Semester X
Paper Title	: WOMEN AND LAW
Unit III	:Uniform Civil Code , Gender Justice, Women and Criminal Law
Module Name	: Offences Relating to Marriage Cruelty by husbands or relatives for dowry

Offences Relating to Marriage

Found in the Indian Penal Code, 1860 chapter XX- Section 493 to Section 498 .Section 498 A added Chapter XXA by the Criminal Law (Second Amendment) Act, 1983. Also added Section 113 A to Indian Evidence Act, 1872 to raise presumption regarding abetment of suicide by married woman. Offence defined in Section 40

The Validity of the Marriage governed by Family Laws of India. Section 198 Criminal Procedure Code, 1973 deals with prosecution of Offences against marriage - Offence must be complaint by aggrieved person.

Section 493- Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

Man deceits a woman to have a false belief that she is lawfully married to that man.The women must have cohabited or had sexual intercourse with such men.

Aggrieved Person – Woman who was deceived into cohabitation or sexual intercourse

Punishment - ten years, and shall also be liable to fine.

Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty 1966 AIR 922

Section 496 - Marriage ceremony fraudulently gone through without lawful marriage

Ingredients

1. Dishonesty or with a fraudulent intention going through the ceremony of marriage.

2. Knowledge on the part of the person going through the ceremony that he is not lawfully married.

Misuse of marriage ceremony dishonestly or fraudulently. The Abbetor could be a male or female. Offence is non cognizable and bailable.

Punishment – Seven years and also liable for fine.

BIGAMY

The act of marrying one person while being legally married to another. In Hindu Law Marriage is a sacrament. Hindu Marriage Act, 1955 Section 5 - neither party has a spouse living at the time of the marriage.

Hindu Marriage Act, 1955 Section 11 – Second marriage is null and void.

Hindu Marriage Act, 1955 Section 17 – Punishment for Bigamy under Section 494 and Section 495 IPC.

Muslim man cannot be held guilty for Bigamy.

Section 494 – Marrying again during lifetime of husband or wife

Essentials

1. Existence of a first marriage when second marriage is celebrated.
 2. The second marriage is void due to the existence of the spouse from the first marriage.
- **Punishment - seven years, and shall also be liable to fine.**

Exception – When a person is not guilty of Adultery?

1. Marriage with such husband or wife has been declared void by a Court.
2. The first marriage has been dissolved by divorce.
3. The husband or wife is dead.

4. Husband or wife, has been continually absent from such person for the space of seven years, and has not been heard of.

Religious conversion for contracting second marriage is Bigamy.

Sarla Mudgal .v. Union of India 1995 AIR 1531 SC

Revanasiddappa & Anr .v. Mallikarjun & Ors 2011

Children from second marriage have rights to father's ancestral property.

Offence is Non cognizable, bailable offence. Compoundable offence.

Section 495 - Same offence with concealment of former marriage from person with whom subsequent marriage is contracted

Ingredients:

- 1.Existence of a previous marriage.
- 2.Offence of marrying during the lifetime.
- 3.Concealing the fact of the former marriage.
4. From the person married to second time.

Punishment - ten years, and shall also be liable to fine.

Section 497- Adultery

Ingredients

- 1.Sexual intercourse by a man with a woman whom he knows is the wife of another person.
- 2.Sexual intercourse must be without the consent or connivance of the husband.
3. Such sexual intercourse must not amount to rape.

Punishment – Imprisonment for five years with fine or both.

Old Law – Wife was not punished as an abettor.

Who may file a complaint?

Only husband of the woman with whom adultery is committed.

Section 198(2) Cr.P.C Wife of adulterer is not an aggrieved person.

Yusuf Aziz .V. State of Bombay AIR 1951 Bom 470

He argued it creates discrimination between man and woman on the basis of sex. Supreme Court held that discrimination was protected by Article 15(3) of the Constitution.

Josephine Shine .v. Union of India 2018 SCC OnLine SC 1676

Supreme Court Held 'Husband is not the master of the wife. The wife can't be treated like a chattel. Adultery is a ground for divorce. Adultery may be a criminal offence if it attracts the scope of Section 306 (abatement to suicide) of the IPC, and not on its own. The Supreme Court declared Section 497 'Arbitrary, Unconstitutional.' Hence Adultery Cannot be a Criminal Offence.'

Section 498-Enticing or taking away or detaining with criminal intent a married woman

Ingredients

1. Taking or enticing away or concealing or detaining the wife of another man from that man.
2. Such enticing, taking, concealing or detaining must be with intent that she may have illicit intercourse with any person.
3. Knowledge or reason to believe that the woman is the wife of another man.

Punishment - Two years, or with fine, or with both.

Protection for husband. Only a husband may institute proceedings.

Section 498 A husband or relative of husband subjecting her to cruelty

Husband or the relative of the woman subjects her to cruelty.

Punishment – Imprisonment for three years and also fine.

WHAT IS CRUELTY?

a. 'Willful conduct of such a nature

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'

Section 498-A Cruelty by husband or relative

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.'

Modinsab Kasimsab Kanchagar .v. State of Karnataka 4SCC 551

A demand of Rs. 10,000 towards payment of society loan though not dowry yet it is an unlawful demand. Punished under Section 498A of IPC.

Ingredients

1. Victim was a married lady.
2. She was subjected to cruelty by her husband or the relatives of her husband.
3. That the cruelty consisted of:
 - a. Harassment of the woman with the view to coerce the meeting of the demand for dowry.
 - b. A willful conduct by the husband or the relative of her husband of such nature as it likely to commit suicide or to cause grave injury to her life, limb, or health.
4. That the injury may be physical or mental.

Suvetha .v. State (2009)6 SCC 757

Relative by blood, marriage and adoption.