

Violence against women in India is going side by side to the technological improvement in modern world in the country. Violence to the women is of various types and can happen at any place like home, public place or office. It is the big issue related to the women which cannot be ignored as it is hindering almost one half growth of the country. Women in the Indian society have always been considered as the things of enjoyment from the ancient time. They have been victims of the humiliation, exploitation and torture by the men from the time of social organization and family life.

Although women may be victims of any of the general crimes such as 'murder', 'robbery', 'cheating', etc. only the crimes which are directed specifically against women are characterised as 'crimes against women'. Various new legislations have been brought and amendments have been made in existing laws with a view to handle these crimes effectively. These are broadly classified under two categories.

### **(1) The crimes under the Indian Penal Code**

1. Rape (Sec. 376 IPC)
2. Attempt to commit rape (Sec 376/511 IPC)
3. Kidnapping & abduction of women (Section 363,364,364A, 366 IPC)
4. Dowry deaths (Section 304B IPC)
5. Assault on woman with intent to outrage her modesty (Sec. 354 IPC)
6. Insult to the modesty of women (Sec. 509 IPC)
7. Cruelty by husband or his relatives, (Sec. 498A IPC)
8. Importation of girl from foreign country (up to 21 years of age) (Sec. 366 B IPC)
9. Abetment of suicide of women (Sec. 306 IPC)

## **(2) The crimes under the Special & Local Laws**

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. The gender specific laws for which crime statistics are recorded throughout the country are –

- (i) The Dowry Prohibition Act, 1961
- (ii) The Indecent Representation of Women (Prohibition) Act, 1986
- (iii) The Commission of Sati Prevention Act, 1987
- (iv) The Protection of women from domestic Violence Act, 2005
- (v) The Immoral Traffic (Prevention) Act, 1956

This module deals about IPC offences against women.

The following are the main offences committed against women.

- 1) Outraging the modesty of a woman [Sec. 354 of I.P.C]
- 2) Insulting to modesty of a woman.
- 3) Rape [Sec. 376 of I.P.C.]
- 4) Dowry death [Sec. 304-B of I.P.C.]
- 5) Abetment of suicide of a married woman
- 6) Causing miscarriage [Sec. 312 of the I.P.C.]
- 7) Causing miscarriage without woman's consent [Sec. 313 of I.P.C.]
- 8) Death of woman caused by act done to cause miscarriage without the woman's consent [Sec. 314 of the I.P.C.]
- 9) Preventing a child from being born alive or to cause its death after birth [Sec. 315 of the I.P.C.]
- 10) Kidnapping, abducting or inducing a woman to compel her marriage [Sec. 366 of the I.P.C.]
- 11) Procurement of minor girl [Sec. 366-A of the I.P.C.]
- 12) Importation of girl from foreign country [Sec. 366 of the I.P.C.]
- 13) Selling a minor for purpose of prostitution [Sec. 372 of the I.P.C.]
- 14) Buying a minor for purpose of prostitution [Sec. 373 of I.P.C.]

The above provisions have already been dealt in the previous modules of lawxperts, now let us venture on remaining provisions of IPC that talks about offence against women.

- 15) Bigamy [Sec. 394 of the I.P.C.] - **Watch Out! having two living spouse at same time is an offence- Gender neutral offence**
- 16) Cohabitation by deceitful means by making a woman believe that she is lawfully wedded to him. [Sec. 493 of the I.P.C.] **Beware ! Touch a girl only when you really**

**intend to wedlock her- Women centric offence**

**17)** Marriage ceremony fraudulently gone through without lawful marriage[ Sec. 496 of the I.P.C. **ATTENTION! Mock marriages not only a sin but also an offence ( @ offenders don't wait for hell / you will be punished on earth )- Gender neutral offence**

**18)** Adultery [Sec. 497 of the I.P.C.] **See it right ! never overlook your wedlock, IPC cautions you- Gender neutral offence.**

**[Now it is declared to be unconstitutional]**

**19)** Enticing or taking away or detaining with criminal intent a married woman [ Sec. 498 of the I.P.C.] **Warning ! if you steal other's wife, IPC will steal your life and personal liberty from you- Women specific offence**

**20)** Cruelty by husband or relative of husband [ Sec. 498-A of the I.P.C.'] **STAY CAUTIONED ! you make your daughter in law unhappy then IPC makes the whole family unhappy.**

**21)** Insulting the modesty of a woman by any word gesture of act [Sec. 509 of the I.P.C.] **MIND YOU ! you are in this world because of a women dare to insult her modesty.**

**INTRODUCTION:**

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. Chapter XX-A, containing only one section (s 498A) dealing with cruelty to a woman by

her husband or his relatives to coerce her and her parents to meet the material greed of dowry, was added to the IPC by the Criminal Law (Second Amendment) Act 1983.

## **BIGAMY**

**BIGAMY** simply means the offence of marrying someone while already married to another person.

IPC pronounce this offence as follows:

**SECTION 394: Marrying again during lifetime of husband or wife:** 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

**SECTION 394 has 3 major components :**

**COMPONENT 1: DEFINE BIGAMY** as follows:

A person commits bigamy when he/she:

- When husband or wife living,
- marries another person # **Lingari Obulamma vs L. Venkata Reddy .**

After defining the offence of bigamy it ventures to declare the result of such bigamous marriage

**COMPONENT 2: RESULT OF BIGAMOUS MARRIAGE:**

BIGAMOUS MARRIAGE = VOID , – by reason of its taking place during the life of husband or wife.

**COMPONENT 3: PUNISHMENT FOR COMMITTING BIGAMY:**

PUNISHMENT : imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

However there are few exceptions to the above provision which runs as follows:

**EXCEPTION-**

(1) When the previous marriage has been declared void by a competent court.

In **Gopal Lal Vs. State of Rajasthan** Supreme Court held that in order to attract the provisions of Section 494 IPC both the marriages of the accused must be valid in the sense that the necessary ceremonies required by the personal law governing the parties must have been duly performed

**TO ATTRACT BIGAMY BOTH MARRIAGES MUST BE VALID**

**VALIDITY OF MARRIAGE ? MARRIAGE MUST FULLFILL PERSONAL LAW REQUIREMENTS/ CEREMONIES**

(2) When the husband or wife has been continually absent or not heard of for seven years, provided that the fact is disclosed to the person with whom the second marriage is contracted.

(3) When the first marriage was dissolved by a decree of divorce by a court having the competent jurisdiction.

(4) Mohammedan males do not come within the purview of this section since a Mohammedan male may have four wives at a time according to his personal law.

#### **BIGAMY BY CONCEALING PRIOR MARRIAGE:**

Section 495 Indian Penal Code states that, “**Same offence with concealment of former marriage from person with whom subsequent marriage is contracted-** 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 be liable to fine”.

#### **LEGAL PARADOX:**

These sections apply to Mohammedan women but not to Mohammedan men, while they apply equally to men and women amongst Hindus, Christians and Parsis # See Hindu Marriage Act, 1955

Now everyone gets a question . **WHETHER OTHER RELIGION MALE CONVERTS TO ISLAM JUST TO REMARRY ?**

*This was answered by SC in famous **Sarla Mudgal, President, Kalyani v Union of India, AIR 1995 SC 1531** as under-*

1. One spouse, by changing his or her religious beliefs cannot forcefully enforce his or her newly acquired personal law on a party to whom it is entirely alien. Such a practice would be opposed to justice.
2. The first marriage under the Hindu Marriage Act subsists even after the conversion. It is only a ground for divorce(S 13(1)(ii)). It can be dissolved only by a decree of divorce granted under the Act.
3. The wholesome effect of S 11 Hindu Marriage Act and S 17 Hindu Marriage is such that the fact that a marriage is void for reason that the person has married during the lifetime of his or her spouse, then they are punishable under s 494 and 495, IPC, for bigamy.
4. A second marriage cannot be said to be void per se after a husband has embraced Islam, it would be void with respect to the first wife who married him under the Hindu Law and which marriage continues to be governed by Hindu Marriage Act.
5. In instances where one spouse remains a Hindu and the other converts to Islam, the court shall decide according to justice, equity and good conscience and there will not be any effect of personal laws. If the second marriage is held to be void, then it would attract the provisions of S 494 IPC.

RESULT: Mere conversion does not automatically dissolve the first marriage, and thereby does not absolve the person from criminal liability for committing the offence of bigamy.

#### **WHO CAN MAKE A COMPLAINT?**

**ONLY FIRST WIFE ?** Nope, even the second wife can make the complaint of offence of bigamy # **Subash Babu Vs. State of A.P. & ANR. On 21 July, 2011**

## COHABITATION CAUSED BY A MAN DECEITFULLY INDUCING A BELIEF OF LAWFUL MARRIAGE

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

### REQUIREMENTS OF SEC: 493

(1) the woman should believe that she *is* lawfully married to the man, and not that she *will be* married to the man; and

(2) that the cohabitation and sexual intercourse be in that belief.

(3) there is also an additional requirement that the conduct of the man be deceitful # ***Ram Chandra Bhagat v. State of Jharkhand 2010.***

### DECEIT AS MAJOR ELEMENT:

The section contemplates that the offender, a man, by deceit must cause any woman who is not lawfully married to him, and is thus not his lawful wife, to believe that she is lawfully married to him, and thus he is her lawful husband, and to cohabit or have sexual intercourse with him in that belief.

### OFFENCE IS COMMITTED WHEN DECEIT RESULT IN COHABITATION

#### CLASSIC OF DECEIT:

In **Subhransu Sekhar Samantray v. State of Orissa**, the Orissa High Court held that the statement of the prosecutrix that she had resisted establishment of sex relations by the accused with her but when he put vermilion on the parting of her hair and declared her as his wife with the assurance to accept her publicly after getting a job she submitted her to sexual intercourse thereafter, is sufficient to constitute an offence



under section 493 of cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

## MARRIAGE CEREMONY FRAUDULENTLY GONE THROUGH WITHOUT LAWFUL MARRIAGE

### **Section 496-Marriage ceremony fraudulently gone through without lawful marriage**

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.

In **Kailash Singh v. State of Rajasthan (1992 Cr LJ 1005 Raj)**, the accused was a married person. He induced a girl saying that he was unmarried. The parents of the girl also believed his words.

They gave dowry and arranged marriage between the accused and their daughter. At the time of the marriage ceremony the parents came to know the fraudulent act of the accused. The deceived girl complained the matter to the police. The court committed the accused under Section 496 # **DECEPTION EXISTED**

In **Prasanna Kumar v. Dhanalaxmi [1989 Cr LJ 1829 (Mad)]**, the accused married for the second time during the pendency of special appeal against decree of divorce in violation of Section 15 of the Hindu Marriage Act but without concealing the fact of pendency of the appeal from the girl or her parents, it was held that no conviction could be entered under Section 496 IPC as the act of the accused was neither dishonest nor fraudulent # **NO DECEPTION / SIMPLY BIGAMY**

From the above case laws one can infer the main essentials of the offence, which is as follows:

#### **ESSENTIAL:**

**The essential ingredients of Section 496 are:**

**i) The accused went through the form of marriage**

**ii) He knew that he was not lawfully married.**

**iii) He went through the form of marriage dishonestly or fraudulently**

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.

**WOMEN's BELIEF:** lawfully married to accused

**IN FACT:** Not lawfully married

**MAN :** Aware of the true fact ( do not believe the marriage to be true)

**MAIN INGREDIENT :** Above deception by accused

**DEGREE OF DECEIT:** In s 493, the word used is 'deceit' and in s 496, the words 'dishonestly' and 'fraudulent intention' have been used.

The deceit and fraudulent intention should exist at the time of the marriage. Thus *mens rea* is an essential element of an offence under this section.

## **ADULTERY**

**MEANING :** Adultery means voluntary sexual intercourse of a married person other than with spouse.

**CRUX:** voluntary extra marital sex.

**THE PARADOX:** Section 497 penalizes sexual intercourse of a man with a married woman without the consent of her husband when such sexual intercourse does not amount to rape.

Mr. Aman working as manager in RIAZ INFO TECH and Rita was his secretary. Their office hours extended, resulting in extension of their relationship too. They used to have sexual intercourse often.

**CONSIDER THE CIRCUMSTANCE:**

**CASE STUDY I: MR. Aman married and Rita not married/widow.**

**WHETHER AMAN HAD COMMITTED ADULTERY ?**

**ANS: NO**

**REASON: RITA IS UNMARRIED/WIDOW ( SEX WITH UNMARRIED WOMEN/WIDOW NO ADULTRY)**

**CASE STUDY II: Mr. Aman unmarried and Rita married.**

**WHETHER AMAN HAD COMMITTED ADULTERY ?**

**ANS: YES**

**REASON: RITA IS MARRIED ! now the next question comes into play**

**WHO CAN BE PUNISHED: MAN ? WOMEN?**

**ITS Mr. AMAN WHO IS GUILTY OF ADULTRY : WOMEN CANNOT BE PUNISHED FOR ADULTRY.**

**CASE STUDY III: Mr. Aman married and Rita married but husband of Rita gave consent for such relationship.**

**WHETHER AMNAN HAS COMMITTED ADULTERY?**

**ANS: NO**

**REASON: HUSBAND OF RITA HAS GIVEN CONSENT TO THEIR RELATIONSHIP .**

**PARADOX:** the paradox runs in two fold as below:

- 1) The wife of the man committing adultery is also aggrieved by this, even she being a victim she is legally disabled from prosecuting her husband for the charge of adultery if such illegal relationship is taking place with the consent of adulteress husband's consent.
- 2) Further the adulteress ( women ) is not punishable at any cost, this becomes gender bias offence.
- 3) Man is always a seducer and the married woman just an innocent and a submissive victim.

- 4) Wife is no more than a chattel to her husband and a third person had committed the crime of intruding upon his marital possession by establishing a physical relationship with his wife.
- 5) Only the husband of the treacherous woman (or a person who had care of the married woman) is a distressed party and he is liable to file a complaint against the third party.
- 6) There is no provision in the law for a woman to file a complaint against her adulterous husband. If a married man commits adultery with an unmarried woman or a widow or with a married woman with the consent of her husband, his wife is not regarded as an aggrieved party and she is not permitted to make any official grievance against her husband.

**CONCLUSION:** That is, it draws a distinction between consent given by a married woman without her husband's consent and a consent given by an unmarried woman.

It does not penalize the sexual intercourse of a married man with an unmarried woman or a widow or even a married woman when her husband consents to it. In case the offence of adultery is committed, the husband cannot prosecute his unfaithful wife but can only prosecute her adulterer.

What is interesting here is that the section itself expressly states that the unfaithful wife cannot be punished even as an abettor to the crime. The offence of adultery therefore is an offence committed against the husband of the wife and not against the wife.

#### **WHETHER OFFENCE OF ADULTERY UNDER IPC IS VIOLATING EQUALITY/ ART: 14?**

In **Alamgiri vs State of Bihar, 1958**, the Supreme Court found that "The gist of the offence under Section 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her." It also said, "The consent of the wife to deprive her husband of his proper control over her would not be material."

In **V Revathi vs Union of India, 1988**, as well, the Supreme Court held that the man is always the seducer.

The Constitutionality of Section 497 was challenged before the Supreme Court under Article 14 on the grounds that it makes an arbitrary discrimination based on sex in the cases of **Yusuf Aziz , Sowmithri Vishnu and V. Revathi**.

In the case of Yusuf Aziz the Court ruled that the immunity granted to women from being prosecuted under section 497 was not discriminatory but valid under Article 15 (3) of the Constitution.

In the cases of **Sowmithri and V.Revathi** it was held that it is the policy of the law to not to punish women for adultery and policies could not be questioned. Secondly, that it was not contemplated for a husband and a wife to strike each other with weapon of criminal law. And that adultery therefore was an offence against the matrimonial home and not either against the wife or the husband.

From the above given illustrations the following ingredients could be inferred:

#### **INGREDIENTS:**

The essential ingredients are:

- sexual intercourse
- woman must be married
- knowledge of women being married
- without consent or connivance of husband
- should not constitute rape

The above ingredients were conjoined as offence as adultery in following section of IPC:

#### **Section 497-Adultery**

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.

**CASE LAWS:**

The Hon'ble Supreme Court in *Smt. Chandra Mohini Srivastava v. Shri Avinash Prasad Srivastava and Ors.*, which was a case under Hindu Marriage Act and petition for divorce was filed on the ground of adultery, held that the fact that the husband cohabited with his wife even after knowledge that she had been guilty of cohabiting with another person would be sufficient to constitute condensation and once the acts of adultery had been condoned, the husband could not seek divorce on this ground.

In *Hukum Din v. Allachi* (1879) P.R. No. 27, the Court dismissed the husband's complaint when it appeared that he had, after the act complained of and before filing the complaint, had divorced his wife.

**ADULTERY – NOT A CRIME ANYMORE : JOSEPH SHINE VS UNION OF INDIA ON 27 SEPTEMBER, 2018**

SEPTEMBER 2018 : A five-judge Constitution Bench, led by Chief Justice of India Dipak Misra, in four separate but concurring opinions held that adultery is not a crime and struck it off the Indian Penal Code. Chief Justice Misra, in an opinion for himself and Justice A.M. Khanwilkar, observed that Section 497 (adultery) of the Code “commands” married couples to remain loyal to each other.

*A matter of choice* : Two individuals may part if one cheats, but to attach criminality to infidelity is going too far, the Chief Justice observed. Besides, there is no data to back claims that abolition of adultery as a crime would result in “chaos in sexual morality” or an increase of divorce. How married couples deal with adultery is “absolutely a matter of privacy at its pinnacle”, the Chief Justice wrote.

Loss of moral commitment in a marriage creates a dent in the relationship, but it is left to each individual to deal with the problem — some may forgive while others may seek divorce. Punishing each other or the wife's lover is unlikely to re-kindle commitment, the judgment said. Section 497 treats a married woman as the commodity of her husband, the Bench held. Adultery is not a crime if the cuckolded husband connives or consents to his wife's extra-marital affair. Section 497 treats a married woman as her

husband's "chattel".

The provision is a reflection of the social dominance of men prevalent 150 years ago, the judgment said.

### Section 497 archaic: Justice Nariman

Justice Rohinton Nariman, in his separate opinion but concurring judgment holding that adultery is not a crime, said Section 497 made a husband the "licensor" of his wife's sexual choices. Justice Nariman listed out countries which had repealed adultery as a crime, starting with the People's Republic of China. Justice Nariman, member of the five-judge Constitution Bench that delivered the judgment striking adultery of the Indian Penal Code, said Section 497 is archaic and based on the chauvinistic reason that the "third-party male" has seduced the woman, and she is his victim. Justice Nariman took the case of a woman who is on the verge of getting a decree of divorce. "If, she has sex with another man, Section 497 still makes the 'other man' guilty of adultery." "Husband is not the master... Obituaries should be written of these historic perceptions," Chief Justice Dipak Misra observed.

**'Codified patriarchy'** : Justice D.Y. Chandrachud, in his separate view, termed Section 497 as a "codified rule of patriarchy".

*The Supreme Court judgment referred to the list of countries where adultery is a crime and where it is not. India is now part of the second list*

#### Countries where adultery is a crime

Afghanistan | Bangladesh | Indonesia | Iran | Maldives |  
Nepal | Pakistan | The Philippines | United Arab Emirates |  
Some states of the United States of America | Algeria |  
Democratic Republic of Congo | Egypt | Morocco |  
Some parts of Nigeria

#### Where adultery has been done away with as a crime

People's Republic of China | Japan | Brazil | New Zealand |  
Australia | Scotland | Netherlands | Denmark | France |  
Germany | Austria | Republic of Ireland | Barbados |  
Bermuda | Jamaica | Trinidad and Tobago |  
Seychelles | South Korea | Guatemala



Justice Chandrachud's opinion transcended from a mere quashing of Section 497 to a judicial document on the centuries-old struggle of women against patriarchy. One of the headings in the judgment is titled 'The Good Wife' — a woman who should not complain

even if her husband has a relationship with another woman.

Though adultery is considered to be an offence relating to marriage, the wife of an adulterer has no voice of her own, no agency to complain. If the woman involved in the extra-marital affair happens to be single and has no husband who is wronged, the law treats the situation with total unconcern, Justice Chandrachud pointed out. The Bench also held Section 198 (2) of the CrPC, which gives the cuckolded husband the exclusive right to prosecute his wife's lover, manifestly arbitrary.

Justice Indu Malhotra, reading her opinion the last on the Bench, held that Section 497 is based on the Doctrine of Coverture. This doctrine, not recognised by the Constitution, holds that a woman loses her identity and legal right with marriage, is violative of her fundamental rights.

#### ENTICING OR TAKING AWAY OR DETAINING WITH CRIMINAL INTENT A MARRIED WOMAN

The offence of enticing or taking away a married woman requires the following act and intent:

##### **INGREDIENTS:**

- i) The woman must be married;
- ii) The accused knew or had reason to believe that she was the wife of another man;
- iii) She was at the commission of the offence living under the care of her husband or someone else on his behalf;
- iv) The accused took or enticed her away from her husband or that other person or concealed or detained her;

The above ingredients we put together to form sec: 498:



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

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.

**SUBJECT MATTER OF OFFENCE : MARRIED WOMEN**

Only a married woman is the subject-matter of this offence. There must be some influence, physical or moral, brought to bear by the accused to induce the wife to leave her husband in order that her leaving may amount to taking away by the accused within the meaning of Section 498. Section 498 is intended to protect the husband and is not intended for the benefit of the wife.

In *Alamgir v. State of Bihar*, it was observed that if a man knowingly goes away with the wife of another in such a way to deprive the husband of his control over her, with the intent to have illicit intercourse, then it would constitute an offence within the meaning of the section.

**CRUELTY**

**CRUELTY MEANING:** Behaviour which causes physical or mental harm to another, especially a spouse, whether intentionally or not.

CRUELTY = PHYSICAL + MENTAL TORTURE

In the case of *Surajmal Banthia & Anr. v. State of West Bengal*, the deceased was ill-treated and tortured for several days and not given food several times # **PHYSICAL TORTURE + MENTAL TORTURE**. The court held the husband and his father liable under 498A.

**CRUELTY AS CRIME:** The Indian Penal Code, 1860 was amended in 1983 and S.498A was inserted which deals with 'Matrimonial Cruelty' to a woman. It was introduced in

the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A was added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

When cruelty was introduced as crime its validity was challenged as follows:

### **CONSTITUTIONAL VALIDITY OF SECTION 498A**

IPC punishes cruelty, further there is the Dowry Prohibition Act, 1961 which also deals with similar types of cases; whether both statutes together create a situation commonly known as double jeopardy?

ANSWERED : In ***Inder Raj Malik and others vs. Sunita Malik***, each section constitute separate offence.

OFFENCE : 1: Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of the element of cruelty is not necessary.

OFFENCE: 2 :498-A deals with an aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her.

Thus no person is jeopardised for same offence twice.

Similarly, its constitutionality was challenged in the case of ***Polavarpu Satyanarayana v. Soundaravalli*** where it was again held that 498A is not *ultra vires* of constitution.

**Thus cruelty was upheld as valid crime and the same is defined under SECTION 498A.**

**DEFINITION: HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY:**

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

**CRUELTY = WILFUL CONDUCT – DRIVING WOMEN TO COMMIT GRAVE INJURY /SUICIDE # *Kaliyaperumal vs. State of Tamil Nadu***

(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.

**CRUELTY: HARRASSMENT OF WOMEN / RELATION FOR PROPERTY/VALUABLE SECURITY # *Inder Raj Malik vs. Sunita Malik***

Even though cruelty have been defined as above it was observed by the Supreme Court, in *Mohd.Hoshan vs. State of A.P* that what amounts to cruelty differs from case to case.

**The following are the main offences committed against women.**

Section 354 to 373 was already discussed. The rest are discussed herewith:

- 1) Bigamy [Sec. 394 of the I.P.C.] - **Watch Out! having two living spouse at same time is an offence.**
- 2) Cohabitation by deceitful means by making a woman believe that she is lawfully wedded to him. [Sec. 493 of the I.P.C.] **Beware ! Touch a girl only when you really intend to wedlock her.**
- 3) Marriage ceremony fraudulently gone through without lawful marriage [ Sec. 496 of the I.P.C. **ATTENTION! Mock marriages not only a sin but also an offence ( @ offenders don't wait for hell / you will be punished on earth ).**
- 4) Adultery [Sec. 497 of the I.P.C.] **See it right ! never overlook your wedlock, IPC cautions you. [declared to be unconstitutional – not a crime anymore]**
- 5) Enticing or taking away or detaining with criminal intent a married woman [ Sec. 498 of the I.P.C.] **Warning ! if you steal other's wife, IPC will steal your life and personal liberty from you.**
- 6) Cruelty by husband or relative of husband [ Sec. 498-A of the I.P.C. ] **STAY CAUTIONED ! you make your daughter in law unhappy then IPC makes the whole family unhappy.**
- 7) Insulting the modesty of a woman by any word gesture of act [Sec. 509 of the I.P.C.] **MIND YOU ! you are in this world because of a women dare to insult her modesty.**

## BIGAMY

**BIGAMY** simply means the offence of marrying someone while already married to another person.

**SECTION 394: Marrying again during lifetime of husband or wife:** 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

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- When husband or wife living,
- marries another person # **Lingari Obulamma vs L. Venkata Reddy .**

**COMPONENT 2: RESULT OF BIGAMOUS MARRIAGE:**

BIGAMOUS MARRIAGE = VOID , – by reason of its taking place during the life of husband or wife.

**COMPONENT 3: PUNISHMENT FOR COMMITTING BIGAMY:**

PUNISHMENT : imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

**EXCEPTION-**

(1) When the previous marriage has been declared void by a competent court # **Gopal Lal Vs. State of Rajasthan . TO ATTRACT BIGAMY BOTH MARRIAGES MUST BE VALID.VALIDITY OF MARRIAGE ? MARRIAGE MUST FULLFIL PERSONAL LAW REQUIREMENTS/ CEREMONIES**

(2) When the husband or wife has been continually absent or not heard of for seven years, provided that the fact is disclosed to the person with whom the second marriage is contracted.

(3) When the first marriage was dissolved by a decree of divorce by a court having the competent jurisdiction.

(4) Mohammedan males do not come within the purview of this section since a Mohammedan male may have four wives at a time according to his personal law.

**BIGAMY BY CONCEALING PRIOR MARRIAGE:**Section 495 Indian Penal Code states that, “**Same offence with concealment of former marriage from person with whom subsequent marriage is contracted**- 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 be liable to fine”.

**LEGAL PARADOX:** These sections apply to Mohammedan women but not to Mohammedan men, while they apply equally to men and women amongst Hindus, Christians and Parsis # See Hindu Marriage Act, 1955

**WHETHER OTHER RELIGION MALES CAN CONVERT TO ISLAM JUST TO REMARRY ?**

*This was answered by SC in famous **Sarla Mudgal, President, Kalyani v Union of India, AIR 1995 SC 1531** : Mere conversion does not automatically dissolve the first marriage, and thereby does not absolve the person from criminal liability for committing the offence of bigamy. One cannot convert for purpose of remarriage.*

**WHO CAN MAKE A COMPLAINT? ONLY FIRST WIFE ?** Nope, even the second wife can make the complaint of offence of bigamy # **Subash Babu Vs. State of A.P. & ANR. On 21 July, 2011**

#### COHABITATION CAUSED BY A MAN DECEITFULLY INDUCING A BELIEF OF LAWFUL MARRIAGE

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

#### REQUIREMENTS OF SEC: 493

(1) the woman should believe that she is lawfully married to the man, and not that she *will be* married to the man; and

(2) that the cohabitation and sexual intercourse be in that belief.

(3) there is also an additional requirement that the conduct of the man be deceitful # ***Ram Chandra Bhagat v. State of Jharkhand 2010.***

#### **OFFENCE IS COMMITTED WHEN DECEIT RESULT IN COHABITATION**

**CLASSIC OF DECEIT:** In **Subhransu Sekhar Samantray v. State of Orissa**, accused put vermilion on the parting of her hair and declared her as his wife, she submitted her to sexual intercourse it was held to be deceit.

#### **MARRIAGE CEREMONY FRAUDULENTLY GONE THROUGH WITHOUT LAWFUL MARRIAGE**

**Section 496-Marriage ceremony fraudulently gone through without lawful marriage:** 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.

**WOMEN's BELIEF:** lawfully married to accused

**IN FACT:** Not lawfully married

**MAN :** Aware of the true fact ( do not believe the marriage to be true)

**MAIN INGREDIENT :** Above deception by accused

In **Kailash Singh v. State of Rajasthan (1992 Cr LJ 1005 Raj)**, the accused was a married person. He induced a girl saying that he was unmarried. The parents of the girl also believed his words. They gave dowry and arranged marriage between the accused and their daughter # **DECEPTION EXISTED = PUNISHABLE U/S 496**

In **Prasanna Kumar v. Dhanalaxmi [1989 Cr LJ 1829 (Mad)]**, the accused married for the second time during the pendency of special appeal against decree of divorce, without concealing the fact of pendency of the appeal from the girl or her parents # **NO DECEPTION / SIMPLY BIGAMY= NOT PUNISHABLE U/S 496**

From the above case laws one can infer the main essentials of the offence, which is as follows:

**ESSENTIAL:**

**The essential ingredients of Section 496 are:**

- i) The accused went through the form of marriage
- ii) He knew that he was not lawfully married.
- iii) He went through the form of marriage dishonestly or fraudulently

**ADULTERY**

**CRUX:** voluntary extra marital sex.

**THE PARADOX:** Section 497 penalizes sexual intercourse of a man with a married woman without the consent of her husband when such sexual intercourse does not amount to rape.

**PARADOX:** the paradox runs in two fold as below:

- 1) The wife of the man committing adultery is also aggrieved by this, even she being a victim she is legally disabled from prosecuting her husband for the charge of adultery if such illegal relationship is taking place with the consent of adulteress husband's consent.
- 2) Further the adulteress ( women ) is not punishable at any cost, this becomes gender bias offence.
- 3) Man is always a seducer and the married woman just an innocent and a submissive victim.
- 4) Wife is no more than a chattel to her husband and a third person had committed the crime of intruding upon his marital possession by establishing a physical relationship with his wife.
- 5) Only the husband of the treacherous woman (or a person who had care of the married woman) is a distressed party and he is liable to file a complaint against the third party.
- 6) There is no provision in the law for a woman to file a complaint against her adulterous husband. If a married man commits adultery with an unmarried woman or a widow or with a married woman with the consent of her husband,



his wife is not regarded as an aggrieved party and she is not permitted to make any official grievance against her husband.

**CONCLUSION:**The offence of adultery therefore is an offence committed against the husband of the wife and not against the wife.

**WHETHER OFFENCE OF ADULTERY UNDER IPC IS VIOLATING EQUALITY/ ART: 14?**

In **V Revathi vs Union of India**, 1988, as well, the Supreme Court held that the man is always the seducer. The Constitutionality of Section 497 was challenged before the Supreme Court under Article 14 on the grounds that it makes an arbitrary discrimination based on sex in the cases of **Yusuf Aziz , Sowmithri Vishnu and V. Revathi. Held not violative of Art.14** same followed in **Sowmithri and V.Revathi .**

**INGREDIENTS:**

The essential ingredients are:

- sexual intercourse
- woman must be married
- knowledge of woman being married
- without consent or connivance of husband
- should not constitute rape

The above ingredients were conjoined as offence as adultery in following section of IPC:

**Section 497-Adultery**

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.

## **ADULTERY – NOT A CRIME ANYMORE : JOSEPH SHINE VS UNION OF INDIA ON 27 SEPTEMBER, 2018**

SEPTEMBER 2018 : A five-judge Constitution Bench, led by Chief Justice of India Dipak Misra, in four separate but concurring opinions held that adultery is not a crime and struck it off the Indian Penal Code. Chief Justice Misra, in an opinion for himself and Justice A.M. Khanwilkar, observed that Section 497 (adultery) of the Code “commands” married couples to remain loyal to each other.

*A matter of choice* : Two individuals may part if one cheats, but to attach criminality to infidelity is going too far, the Chief Justice observed. Besides, there is no data to back claims that abolition of adultery as a crime would result in “chaos in sexual morality” or an increase of divorce. How married couples deal with adultery is “absolutely a matter of privacy at its pinnacle”, the Chief Justice wrote.

Section 497 treats a married woman as the commodity of her husband, the Bench held. Adultery is not a crime if the cuckolded husband connives or consents to his wife’s extra-marital affair. Section 497 treats a married woman as her husband’s “chattel”.

The provision is a reflection of the social dominance of men prevalent 150 years ago, the judgment said.

### **Section 497 archaic: Justice Nariman**

Justice Rohinton Nariman, in his separate opinion but concurring judgment holding that adultery is not a crime, said Section 497 made a husband the “licensor” of his wife’s sexual choices. Justice Nariman listed out countries which had repealed adultery as a crime, starting with the People’s Republic of China. Justice Nariman, member of the five-judge Constitution Bench that delivered the judgment striking adultery of the Indian Penal Code, said Section 497 is archaic and based on the chauvinistic reason that the “third-party male” has seduced the woman, and she is his victim. Justice Nariman took the case of a woman who is on the verge of getting a decree of divorce. “If, she has sex with another man, Section 497 still makes the ‘other man’ guilty of adultery.” “Husband is not the master... Obituaries should be written of these historic perceptions,” Chief

Justice Dipak Misra observed.

**‘Codified patriarchy’** : Justice D.Y. Chandrachud, in his separate view, termed Section 497 as a “codified rule of patriarchy”.

Justice Chandrachud’s opinion transcended from a mere quashing of Section 497 to a judicial document on the centuries-old struggle of women against patriarchy. One of the headings in the judgment is titled ‘The Good Wife’ — a woman who should not complain even if her husband has a relationship with another woman.

Though adultery is considered to be an offence relating to marriage, the wife of an adulterer has no voice of her own, no agency to complain. If the woman involved in the extra-marital affair happens to be single and has no husband who is wronged, the law treats the situation with total unconcern, Justice Chandrachud pointed out. The Bench also held Section 198 (2) of the CrPC, which gives the cuckolded husband the exclusive right to prosecute his wife’s lover, manifestly arbitrary.

Justice Indu Malhotra, reading her opinion the last on the Bench, held that Section 497 is based on the Doctrine of Coverture. This doctrine, not recognised by the Constitution, holds that a woman loses her identity and legal right with marriage, is violative of her fundamental rights.

## ENTICING OR TAKING AWAY OR DETAINING WITH CRIMINAL INTENT A MARRIED WOMAN

### INGREDIENTS:

- i) The woman must be married;
- ii) The accused knew or had reason to believe that she was the wife of another man;
- iii) She was at the commission of the offence living under the care of her husband or someone else on his behalf;

iv) The accused took or enticed her away from her husband or that other person or concealed or detained her;

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

**SUBJECT MATTER OF OFFENCE : MARRIED WOMEN # *Alamgir v. State of Bihar***

## CRUELTY

**CRUELTY = PHYSICAL + MENTAL TORTURE**

In the case of *SurajmalBanthia&Anr.v. State of West Bengal*, the deceased was ill-treated and tortured for several days and not given food several times # **PHYSICAL TORTURE + MENTAL TORTURE**. The court held the husband and his father liable under 498A.

**CRUELTY AS CRIME:** The Indian Penal Code,1860 was amended in 1983 and S.498A was inserted which deals with 'Matrimonial Cruelty' to a woman.

**CONSTITUTION VALIDITY OF SECTION 498A :** IPC punishes cruelty, further there is the Dowry Prohibition Act, 1961 which also deals with similar types of cases; whether both statutes together create a situation commonly known as double jeopardy?

ANSWERED : In *Inder Raj Malik and others vs. Sunita Malik*, each section constitute separate offence. Thus no person is jeopardised for same offence twice. Similarly, its constitutionality was challenged in the case of *Polavarpu Satyanarayana v. Soundaravalli* where it was again held that 498A is not *ultra vires* of constitution.

**DEFINITION: HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY:** 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

**CRUELTY = WILFUL CONDUCT – DRIVING WOMEN TO COMMIT GRAVE INJURY /SUICIDE # *Kaliyaperumal vs. State of Tamil Nadu***

(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.

**CRUELTY: HARRASSMENT OF WOMEN / RELATION FOR PROPERTY/VALUABLE SECURITY # *Inder Raj Malik vs. Sunita Malik***

Even though cruelty have been defined as above it was observed by the Supreme Court, in *Mohd.Hoshan vs. State of A.P* that what amounts to cruelty differs from case to case.