

**DE JURE NEXUS LAW JOURNAL**

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**AN ANALYSIS OF OFFENCE RELATED TO MARRIAGE****ABSTRACT**

*The research paper aims at deeply analysing the causes of matrimonial offences, laws and remedies provided by the laws to victims of matrimonial offences. In this research paper the different reasons for the commission of matrimonial offences have been mentioned. The various sections of the Indian Penal Code that deal with these offences have been explained in detail along with the punishment to which the accused shall be subjected to. The landmark judgements and case laws have also been mentioned along with their related sections to provide a better understanding and insight into the orders of the court. The project is concluded with the present scenario, how have the laws affected matrimonial crimes and certain suggestions.*

**INTRODUCTION**

In India the institution of marriage is considered as a sacrosanct relationship and the tradition of marriage dates back to the fourth century and was governed by different customs, traditions and religions. However, various distorted versions of marriage have come into light over the years which had given rise to the need for laws governing offences related to marriages and to ensure no individual suffers.

In our country, the women are considered as goddess and are worshiped since the ancient times. Our culture has always taught us to respect women but it is heart-breaking to see the ever-increasing number of crimes being committed against them. Some of the common crimes are

adultery, fraud marriages, desertion and the list can go on and on. One of the reasons for these incidents to occur is the differences between the couples. Therefore, it extremely important to have a look at the provisions laid down in the Indian Penal Code to deal with such offences.

## **SECTIONS DEALING WITH MATRIMONIAL OFFENCES AND RELATED CASE LAWS**

To curb the marriage related offences Section 493 to 498 of the Indian Penal Code lay down certain provisions.

The following sections of the Indian Penal Code deal with marriage related offences-



- Mock or invalid marriages (section 493 and 496);

Section 493<sup>1</sup> prescribes a punishment which may extent to 10 years along with a fine to any man who deceitfully makes a woman who is not legally married to him believe that she is lawfully married to him and then make her cohabit or have sexual relations with him. And such marriage will be considered as Unlawful Marriage.

In the case of Subhransu Sekhar Samantray v The State<sup>2</sup>, the plaintiff agreed for sexual relations with the defendant only after he had put vermilion to declare her as his wife and alleged that he once he gets a job and settles, he would publicly accept her as his wife. The court contended that this was sufficient to constitute a mock marriage under Section- 493 of IPC.

Section 496<sup>3</sup>- as per this section any person who goes through a marriage ceremony with a fraudulent intention knowing that he would not be legally married after that shall be punished with imprisonment of up-to 7 years and fine.

Mock marriages are non-bailable and non-cognizable offences

- Bigamy (section 494 and 495);

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<sup>1</sup> Indian Penal Code, 1860, § 493, No.45, 1860 (India)

<sup>2</sup> Subhransu Sekhar Samantray v The State, (2002) CriLJ 4463

<sup>3</sup> Indian Penal Code, 1860, § 496, No.45, 1860 (India)

Section 494<sup>4</sup>- This section lays down a punishment of up-to seven years along with fine to any person who already has a wife or husband marries, in such cases the marriage is considered as void because they have taken place during the presence of a husband or wife.

However, this section is not applicable to any person who has formed a contract for marriage during the life of former spouse and the husband or wife has been away for a span of seven years and is not known to be alive or the persons whose marriage has already been declared void by court.

The case of Smt. Sarla Mudgal v Union of India & Ors.<sup>5</sup> laid down the several principles against the practice of solemnizing second marriage by conversion to Islam, with first marriage not being dissolved. The issue of bigamy was also taken into consideration while giving the judgement, the conflict between the personal laws existing on matters of marriage and invoked Article 44 of the Indian Constitution<sup>6</sup>. It was this landmark decision that highlighted the need for a Uniform Civil Code.

Section 495- any person who conceals his former marriage from the person with whom the next marriage is going to take place, shall be punished with imprisonment up-to seven years and also pay fine. It is a non-cognizable, bailable offence.

- Adultery (section 497<sup>7</sup>);

A person shall be subjected to imprisonment of up-to five years or fine or both for entering into sexual relationship without the permission of the husband of the woman who is already married. Such act would be considered as adultery and even though decriminalised, adultery is a valid ground for divorce.

The essential for adultery is that one of the spouse should be in sexual relationship with another person and if done by wife then it should be with the consent of her husband. Another important to be noted is that adultery does not lead to rape.

Sexual intercourse being an essential for adultery, the court in the case of Kashuri v Ramaswamy<sup>8</sup> it was stated that direct evidence of sexual intercourse can hardly ever be proved so, the circumstances and facts of the case should be referred to.

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<sup>4</sup> Indian Penal Code, 1860, § 494, No.45, 1860 (India)

<sup>5</sup> Smt. Sarla Mudgal v Union of India & Ors., (1995) AIR 1531, 1995 SCC (3) 635

<sup>6</sup> INDIA CONSTITUTION. art 44, 1950

<sup>7</sup> Indian Penal Code, 1860, § 497, No.45, 1860 (India)

<sup>8</sup> Kashuri v Ramaswamy, (1979) CriLJ 741

- Criminal elopement (section 498<sup>9</sup>);

A person who takes away a woman whom he knows to be married from her husband or anyone who takes care of her with the intention of having illicit relations with her shall be punished with imprisonment which can extend to a period of two years or fine or both.

The essential for criminal elopement is that the woman should be enticed, there should an intention to deceive the woman, and intention for intercourse forbidden by law and culture.

In the landmark case of *Alamgir v State of Bihar, 1958*<sup>10</sup> the court stated that to constitute an offence under this section, taking away of a woman from the control of her husband by a man with the intention of having sexual intercourse is enough.

- Cruelty by husband or relatives of husband (section 498A<sup>11</sup>)

If a husband or any relative of the husband subjects the wife to such cruelty which can make her commit suicide or cause any harm to herself or makes unlawful demand for property, security shall be punished with imprisonment which may extend to three years and shall also be liable to pay fine.

The growing cases of cruelty and domestic violence by husband and his relative made the introduction of this provision the need of the hour and so, this section was added to the IPC in the year 1983 through the Criminal Law (Second Amendment) Act 1983.

In the year 1986, the court in the case of *Inder Raj Malik vs. Sunita Malik*<sup>12</sup> held that “the word ‘cruelty’ is defined in the explanation which *inter alia* says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.”

Approximately a decade ago the court went on to lay down crisp guidelines for the police officers to follow relating to the arrests made under the section, due to increase in a number of seemingly false complaints in the case of *Arnesh Kumar v State of Bihar and Anr.*<sup>13</sup> to reduce immediate arrests made by the police where the offences are non-bailable and cognizable.

## CONCLUSION

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<sup>9</sup> Indian Penal Code, 1860, § 498, No.45, 1860 (India)

<sup>10</sup> *Alamgir v State of Bihar*, (1958) AIR 436, 1959 SCR Supl. (1) 464

<sup>11</sup> Indian Penal Code, 1860, § 498A, No.45, 1860 (India)

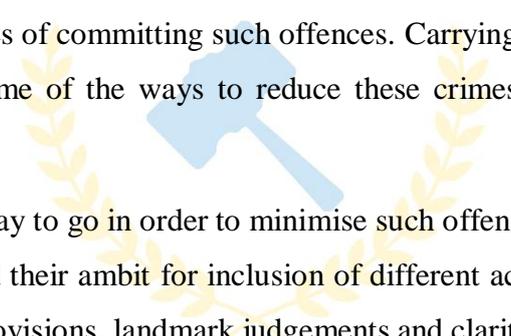
<sup>12</sup> *Inder Raj Malik vs. Sunita Malik* 1986 CriLJ 1510, 1986 (2) Crimes 435, 1986 RLR 220

<sup>13</sup> *Arnesh Kumar v. State of Bihar and another*, (2014) 8 SCC 273

The different cases filed so far related to matrimonial offences prove that these offences cannot be dealt with a straightjacket method. These offences arise from upbringing, mentality, cultural and social background.

Despite the presence of various provisions, regulations, punishments, there is hardly any decline in the number of cases of such crimes. This is due to the society, as the society blames the victim for the crimes and the social status of the victims also gets affected. Due to victim shaming, people are afraid to raise their voice against the crimes and a large number of cases go unreported due to social pressure. A lot of women choose to suffer over fighting and raising their voice. Lack of literacy also leads to such crimes as people are unaware of their rights and duties and the consequences of committing such offences. Carrying out awareness campaigns, ensuring education are some of the ways to reduce these crimes and to make people feel empowered.

There is still a very long way to go in order to minimise such offences in a patriarchal society. The courts have broadened their ambit for inclusion of different acts as offences. But there is still some room for new provisions, landmark judgements and clarity to eradicate ambiguity in the application of laws and to smoothen the process of attaining justice.



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