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Awareness about the Crimes related to Marriage and Extension of same Protection to Men

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Marriage is a sacred bond between two people. The institution of marriage is as old as modern history can record. Although the rules of marriage have changed from time to time the union between man and woman remains strong as ever. The institution of marriage is not away from the purview of Law. From personal laws to the Indian Penal Code itself, covers marriage as one of the subjects under its veil. My main focus would be on the crimes related to marriage, especially from sections 493 to 498A of the Indian Penal Code. Atrocities against women have existed since time immemorial. From ancient times husbands have always considered their wives to be their property. With no offence to women, it is a truth that women have always been denied education or the right to move shoulder to shoulder with men. In fact, until recent times women were also denied to drive in some Muslim nations. The main reason that these laws were made women-centric was that these offences were predominantly focused on women, women were the main and the only sect that was affected by these laws. I have set to achieve a complete understanding of the subject of crimes related to marriage, I also aim to achieve the reason behind making these laws women-centric, and whether the protection of these laws should be extended to men too. In order to explore the said issues. I have used a questionnaire, through which I tried to dig out what people know about the crimes related to marriage, and whether or not the laws should be made gender neutral.

Keywords: *personal laws, women-centric laws, gender-neutral laws, marriage.*

INTRODUCTION

The first recorded evidence of marriage ceremonies united one woman and one-man dates from about 2350 B.C., in Mesopotamia. Over the next several hundred years, marriage evolved into a widespread institution embraced by the ancient Hebrews, Greeks, and Romans. The earlier version of marriage is unlike the one we know about today; earlier marriages were consummated for the sole reason of procreating. Fathers used to give away their daughters saying 'I pledge my daughter for the purpose of producing legitimate off springs'. Apart from that in the ancient Hebrew society if a wife was not capable of procreating, the man could give back the wife to her father and remarry with a different girl. The institution of marriage went through a complete change once religion stepped into the domain of marriage, and started regulating the same. Roman Catholic Church was amongst the first to bring order to the chaos. Females received greater protection once the institution of marriage was regulated by religious organizations. But still, men were considered the head of the house and women did not achieve equality till the beginning of the mid-19th century when women were given the right to vote for the first time. Women have always been pestered upon by the likes of men. This inequality leads one class to pressure the other to show their superiority and, in the process, leads to crimes. Crime related to marriage till date makes up a large chunk of offences throughout the world. In India alone, the numbers run in lakhs. There have been multiple laws that deal with the crimes related to marriage. I got my inspiration to pursue this topic from the case of 493 *State of MP v Akash Bhushan*¹, I personally got to be a part of this case and I also attended a few of its hearings. This case also had some overshadow on 498A and 496 of the Indian Penal Code.

MAIN BODY

My main focus would be on the Indian Penal Code. The Indian Penal code section 493 to 498A covers the subject of crimes related to marriage.

Section 493 of the Indian Penal Code, 1860 - "Section 493 deals with cohabitation caused by a man deceitfully inducing a belief of lawful marriage, to establish the guilt of a person under this act,

¹ *State of MP v Akash Bhushan* (2022) MCRC No. 64373/2021

it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person.”²

The main ingredients of the section are

1. Deceit causing a false belief in the existence of a lawful marriage
2. Cohabitation or sexual intercourse with the person causing such belief.

“The case *Ram Chandra Bhagat v State of Jharkhand*³ cleared the picture even further in regard to section 493 of the Indian Penal Code 1860. The court commented that section 493 does not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by the customary ceremony. What has been clearly laid down and emphasized is that there should be an inducement of belief of a lawful marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual or under special marriage act.”

There should be false inducement of marriage by the accused to be found guilty under the section. “The court in *Amrit Gaditla v Trilochan Pradhan*⁴ held that where a man and woman exchanged garlands, the man promising to marry formally, and had sex as a result of which the woman becomes pregnant, it was held that the exchange of garland did not amount to falsely inducing the woman to believe that she was married to the man. Section 493 was not attracted.” “In *Moideenkutty Haji and Ors. v Kunhikoya and Ors.*, the court held that section 493 does not penalize mere cohabitation or sexual intercourse with a woman who is not lawfully married to him.”⁵

The second offence listed under the Indian Penal Code regarding marriage is the crime popularly known as Bigamy, meaning two marriages. The Indian laws along with the religious laws are very strict in this regard, except for Muslim men no one is allowed to have more than

² Indian Penal Code, 1860, s 493

³ *Ram Chandra Bhagat v State of Jharkhand* (2010) Criminal Appeal No. 439/2006

⁴ *Amrit Gaditla v Trilochan Pradhan* (1993) CriLJ 1022

⁵ *Moideenkutty Haji and Ors. v Kunhikoya and Ors.*, AIR 1987, Ker 184

one wife at a time. There are some exceptions to the rule of bigamy, firstly if the marriage is declared void by a court of competent jurisdiction. Secondly, if either of the spouses is not heard of for a time period of 7 years, the second marriage contracted will not fall under a bigamous relationship.

The main ingredients of this section are:

1. The accused must have contracted first marriage.
2. He must have married again.
3. The first marriage must be subsisting.
4. The spouse must be living.

“In Pashaura Singh v State of Punjab, wife’s unawareness of a divorce order obtained by the husband does not amount to a sufficient ground for a 494⁶, proceeding.”⁷

“In Abdul Ghani v Azizul Huq, the court held that although every Muslim woman could only remarry after the iddat period she could not be held guilty of bigamy if she does so.”⁸

Section 494, draws an interlink between the religious laws and the Indian Penal code, it is seen that for a marriage to be considered bigamy, it has to be proved that the marriage constituted is a valid marriage, and the first marriage was also valid. If either of the marriages were not valid the accused will not be guilty of bigamy.

The next two sections only enhance the degree of severality of the last two sections, 495⁹ is in regard to concealment of a former marriage, it focuses upon the fact that if in a bigamous relationship the accused does not talk about the previous spouse, this would increase the punishment by 3 years. 496¹⁰ is in regard to fraudulently going through with a marriage ceremony knowing it to be false. Where 495 is limited to 494, 496 extends to both 493 and 494¹¹.

⁶ Indian Penal Code, 1860, s 493

⁷ *Pashaura Singh v State of Punjab* (1993), AIR 1256

⁸ *Abdul Ghani v Azizul Huq* (1912) ILR 39 Cal 409

⁹ Indian Penal Code, 1860, s 495

¹⁰ Indian Penal Code, 1860, s 496

¹¹ Indian Penal Code, 1860, ss 493, 494, 495, and 496

In the case *Joseph Shine v Union of India*¹², the Supreme Court declared section 497¹³ as unconstitutional, and hence adultery that is 497 is no more a criminal offence. The next Section 498¹⁴ deals with enticing or taking away or detaining with criminal intent a married woman, this section is a special section for married women, dealing with abduction. The gist of the offence under this section 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.

The main attraction of offences related to marriage is the offence of 498A¹⁵, subjecting the wife to cruelty by the Husband or his relative. This section has been introduced in the code by the criminal law (amendment) act, 1983 (act 46 of 1983) to combat the menace of dowry deaths. The amendment also brought a change to the evidence act where in under section 113A was added which deals with the death of a married woman within seven years of marriage.

The section further also defines the term cruelty which covers, any wilful conduct which drives the woman to commit suicide or to cause grave injury or danger to life. Harassment for dowry is also covered under the purview of cruelty in this section. In *Gananath Patnaik v State of Orissa*, the Supreme Court held that cruelty for the purpose of the offence and the said section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case. ¹⁶The Supreme Court recorded similar reasoning adopted by the House of Lords in *Gollins v Gollins*¹⁷, in the case *Shobha Rani v Madhukar Reddi*¹⁸, the supreme upheld that malignity is an important element to establish cruelty. Like all the crimes enlisted under the Indian Penal Code Mens Rea and Actus rea are important to establish conviction under section 498A, the mere fact of being closely related to the husband and his family does not convict a person. The scope of 498A is only limited to the harassment that either force the wife to commit suicide or in order to extort property or in order to get valuable articles.

¹² *Joseph Shine v Union of India* (2018) Writ Petition (Criminal) No. 194/2007

¹³ Indian Penal Code, 1860, s 497

¹⁴ Indian Penal Code, 1860, s 498

¹⁵ Indian Penal Code, 1860, s 498A

¹⁶ *Gananath Patnaik v State of Orissa* (2002) Appeal (Crl.) No, 1/1995

¹⁷ *Gollins v Gollins* [1963] UKHL 5

¹⁸ *Shobha Rani v Madhukar Reddi* (1998), AIR 121

Apart from this, there have been other laws enacted to protect women from domestic violence. The protection of women from domestic violence act, of 2005 was enacted with a view to providing for more effective protection of the rights of women who are victims of violence of any kind occurring within the family. Those rights are essential for civil nature with a mix of penal provisions. Section 3 of the act defines domestic violence in very wide terms. It encompasses the situations set out in the definition of cruelty under section 498A. The act has devised a piece of elaborate machinery to safeguard the interests of women subjected to domestic violence.

I set out through this project to understand the understanding of the existing laws in regard to the offences related to marriage among urban people, between the age of 28 to 50, for this purpose I conducted a small survey and found that a majority has little knowledge about the existing laws, but still, the situation of offences against marriage shares a major chunk of offences committed in India. Through my project, I came to know that the knowledge among even educated people is pretty limited. I also observed that the knowledge about these laws was more among the men than the women. I also conducted a survey to find out if the general public was in favour of extending the protection of these laws to men also, I got yes in a majority but a few did give me a negative answer. The people who resorted to saying a no gave me the reasoning that these laws which are currently in place should remain the way they are until and unless the women folk can get justified knowledge of these laws and the authorities are able to bring these crimes under control.

CONCLUSION/RECOMMENDATIONS

I conclude that the government should be bringing in place a more comprehensive method to educate people about the crimes related to marriage and the various laws which are enacted to protect women from these crimes. More than half of the women do not rely upon that they are being harassed and the action of their husband and in-laws, is a crime until and unless they seek legal help. These cases only come into the limelight when the cases become extreme. These cases also bring a lot of social stigmas with them sometime. For the husband's family some time for the bride's family. For this purpose, the women should be given education about these laws

by the parents at the time of the wedding. An important step for a happy marriage is to treat each other with respect and with love. Over the year these laws have grossly been misused by women. Where on one hand a huge group of women is still suffering in society. Some are using these acts which are meant for their protection, as a weapon to create an undue advantage for themselves. Women use these acts to extort money from their husband and their family.

In *Preeti Gupta v State of Jharkhand*¹⁹, the Supreme Court held that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The criminal trials lead to immense suffering for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of the suffering of ignominy. A large number of these complaints have led to enormous social unrest. Pursuant to the direction of the Supreme Court, the law commission of India in its 243rd report gave these suggestions:

1. An offence under 498A shall be compoundable, with the court's permission, and would be subject to 3 months cooling period.
2. The offence should remain non-bailable. However, the safeguard against arbitrary and unwanted arrests lies in strictly observing the letter and spirit of the conditions laid down in sections 41 and 41A²⁰ of CrPc, 1973.
3. There should be a monitoring mechanism in the police department, to keep track of section 498A cases and observance of guidelines.
4. The need for expeditious disposal of cases under section 498A should be given special attention by the prosecution and judiciary.

The Supreme Court under the *Preeti Gupta v State of Jharkhand* and the law commission under the 243rd report, the government and judiciary have also come to believe that the laws are being misused by women, and believe that these laws are very hard and causing problems to both the women and men.

¹⁹ *Preeti Gupta v State of Jharkhand* (2010) Criminal Appeal No. 1512/2010

²⁰ Code of Criminal Procedure, 1973, ss 41 and 41A

It is high time that protection of these laws should also be provided to the men who are falsely accused under these sections and also to those who are being harassed at the hand of their wives. The domestic violence act has already extended its per view to violence against the husband, even the Indian Penal Code should be made a little more gender-neutral regard to crime related to marriage. Even in Joseph Shine vs Union of India, the Supreme Court came on to believe that women no longer hide behind the shadow of men, as now men and women are running the world shoulder to shoulder, and similar provisions should be enacted for the men.