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Detailed Study on Section 498 of IPC

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The whole Indian Penal Code, 1860 (IPC), is concerned with crimes, their justifications, and the punishments that go along with them. Section 498¹ of the IPC deals with induced adultery, which is when a married woman is seduced by another man. Under Chapter XX of the Indian Penal Code, 1860, offences against marriages include, among other things, marriages by fraud (S.493² & 496³), bigamy (S.494⁴ & 495⁵), adultery (S.497⁶), and criminal elopement (S.498⁷). Over time, courts have broadened the definition of these offences to include several current circumstances. This circumstance has also been covered by Article 51A (e)⁸ of the Indian Constitution according to which, all citizens of India must refrain from acts that are offensive to women's dignity. Broad legislative reforms are also required to protect a married woman's bodily and psychological integrity from her abusive spouse. Further, this Article would examine the idea of illegal elopement and several significant rulings concerning Section 498⁹ of the Indian Penal Code.

Keywords: *married woman, criminal elopement, illegal, offences, punishments.*

¹ Indian Penal Code 1860, s 498

² Indian Penal Code 1860, s 493

³ Indian Penal Code 1860, s 496

⁴ Indian Penal Code 1860, s 494

⁵ Indian Penal Code 1860, s 495

⁶ Indian Penal Code 1860, s 497

⁷ Indian Penal Code 1860, s 498

⁸ Constitution of India 1950, art. 51A(e)

⁹ Indian Penal Code 1860, s 498

INTRODUCTION: WHAT REFERS TO CRIMINAL ELOPEMENT UNDER SECTION 498 IPC?

“Using illicit means to entice, take away, or detain a married lady. Any person who persuades or seeks to entice a woman who is the wife of another man, whom he knows or has cause to think is, from that man or from anyone caring for her on behalf of that man with the intention that she may have illicit intercourse with any person, or conceals or detains any such woman with that intention, shall be punished with imprisonment of either description for a term that may extend to two years, with a fine, or with both.” A person who separates a married lady from her husband or entices her in order for her to engage in illegal sexual activity with any person is punished under Section 498¹⁰.

Enticement is the act of enticing, appealing to, or seducing someone. Enticement is the act of deceitfully soliciting, alluring, attracting, coaxing, persuading, or seducing someone to get them to do something.¹¹ Despite the Code's lack of a definition for the word "enticement," it is generally understood to imply taking something away by inciting lust, desire, or some similar kind of persuasion. According to the provisions of the Section, there must be solid proof to support the suspect's guilt.¹² P, the CEO of XYZ Co., would be held accountable for an offence under this provision if he lures S, a married lady, away with the promise of a promotion to engage in illegal sexual activity with her. As an example, X and Y are married. The wife of X is lured away by Z, a male, to engage in unlawful sexual activity with him. In this case, X is entitled to protection under Section 498¹³ IPC, and Z would be held accountable under this clause.

THE ESSENCE OF THE WORD 'DETAIN'

Although detaining someone against their will may be implied by the phrase 'detain', this understanding is unlikely given the context of the Section. Such a concept would have been clear

¹⁰ *Ibid*

¹¹ *United States v Joseph* [2008] 270 F. App'x 399

¹² *Norman O'Conner v Emperor* AIR (1935) Cal 345

¹³ Indian Penal Code 1860, s 498

if the Section's objective was to defend the wife. Although the husband has been deprived of his rights, the wife is ready to harm those rights, and as a result, the person responsible for her willingness has not arrested her, the Section cannot be used as a defence against the accusation since its goal is to safeguard the rights of the husband. Withholding a woman from her husband or any other person caring for her on her husband's behalf with the intention of illegal intercourse must be considered detention in this context. There is no requirement to use force in this restraining, although it is a choice. Persuasion, enticement, or blandishments may have contributed to the woman's inclination to leave her spouse or helped facilitate or facilitate her innate inclination to do so. The wife's willingness is irrelevant and inadmissible as a defence in the first three categories of detention described in Section 498, thus it is also inadmissible as a precondition about the fourth and final category of detention specified in the legislative provision.

SIGNIFICANCE OF CONSENT UNDER SECTION 498 IPC

The word "enticement" in this Section refers to a particular type of persuasion. A person's guilt under this clause must be established by evidence showing that the motive of enticing another person's wife was to free her from her husband's control. As a result, even if consent is a factor, consent is affected. Four concepts are required for this phase. It claims that a woman may be taken away, enticed, concealed, or imprisoned. The woman's permission is immaterial in the first three categories of situations, which are taken away, enticed away, and concealed. To do so, it must be demonstrated that the accused utilised words, another act, or a pretence of marrying her to elicit or promote the aforementioned consent.

PURPOSE OF THIS SECTION

The Indian Penal Code's Sections 498 and 497¹⁴ are aimed at safeguarding the husband from unauthorised interference with his marital life. Additionally, it is done to protect the husband's rights from such an unauthorised intrusion and to penalise anyone who is suspected of committing it. Depriving the husband of custody and power over his wife to establish a close

¹⁴ Indian Penal Code 1860, s 498

relationship with her constitutes a major offence. The Supreme Court remarked in *Alamgir v State of Bihar*¹⁵ that the policy behind the enactment of Section 498 of the Indian Penal Code may appear to be at odds with modern conceptions of women's standing and the reciprocal rights and duties of marriage. However, the courts are unconcerned with that policy matter.

MAIN INGREDIENTS OF THIS SECTION

1. The woman must be another person's wife - The lady who was enticed or taken away must be the wife of another person for Section 498 of the Indian Penal Code to hold someone accountable. For example, if X is a woman and Y is a man who persuades X to engage in unlawful sexual activity, Y would only be subject to legal liability under this clause if X is married to a man. Any individual who has seduced or taken such a lady away shall be accountable, providing that the marriage is indeed not voidable. As a result, in the case of *Emperor v Nazir Khan*,¹⁶ it was declared that there must be evidence of marriage.

2. The offender must be aware that she is married to someone else - The term "such women" as used in Section 498 of the IPC, 1860 refers to women whom the accused knows to be the wife of another or has reason to believe the same, rather than just a woman who has been enticed or taken away by the accused, it was stated in the case of *Emperor v Jagannath Gir and Ors*¹⁷ Knowing or having cause to suspect that the woman is the wife of another person is another criterion for penalising an accused for an offence under this Section. As an illustration, suppose X, a woman, is married to Y, and Z, another guy, intentionally and purposefully entices X and removes X from her husband's authority to engage in unlawful sexual activity with her. In this case, G would be held accountable for the violation of this clause.

3. The woman must have been enticed or taken away by the accused from her spouse - For the lady to be severed from her husband with a purpose, there must have been some form of influence on her or some action or aid that worked in concert with her predisposition at the time the last step was done. It does not necessarily entail a violent one. But it has to be done for the

¹⁵ *Alamgir v State of Bihar* (1959) SCR Supl. (1) 464

¹⁶ *Emperor v Nazir Khan* (1914) ILR 36 All 1

¹⁷ *Emperor v Jagannath Gir and Ors* AIR (1937) All 353

reasons listed in the Section. Additionally, "taking away" is different from "enticing." Whether the other man's wife was agreeable or not, when the accused takes her away with him, the act of taking is accomplished. The concept of enticement in the other via arousing expectations or wants is implied by the word "entice." When the wife refused to go with her husband, the Section 498 IPC offence was not established, and it was not possible to establish that the inducement was meant to engage in illicit intercourse. A woman has to be enticed so that she is freed from her husband's dominance. For instance, when X and Y are married, X's wife Y must be coerced into leaving X's authority, which would be illegal elopement by this clause.

When the brother of a married woman who had eloped with the accused lodged a complaint against the accused for an offence under this section, the Bombay High Court noted in *Emperor v Ramnarayan Baburao Kapor*¹⁸, a case that no action was taken by the Court because it was not established that he had the husband's authority to look after her. Therefore, any taking or luring must be done with the husband's or another person's permission if they are caring for her.

4. This taking or enticing must be done with the intention that she might engage in unlawful sexual activity with any individual - According to the ruling in *Prem Nath Laroiya v The State*¹⁹, it must be demonstrated that the woman was lured or taken from her husband's house and confined for illicit sexual activity to establish a conviction under Section 498. It is inadequate that she was only seen in front of the accused's home. According to the clause, the accused's purpose is crucial. Any sexual activity she engages in while her spouse is still alive is considered to be illegal intercourse. By Section 497, a woman cannot be punished for aiding and abetting this offence.

WHO IS ELIGIBLE TO MAKE A COMPLAINT UNDER SECTION 498 IPC?

The spouse or, in his absence, any other person who is caring for such a woman may submit a complaint for an offence under Section 498 of the Indian Penal Code. No individual other than

¹⁸ *Emperor v Ramnarayan Baburao Kapor* (1937) 39 BOMLR 61

¹⁹ *Prem Nath Laroiya v The State* (1973) CriLJ 1281

the woman's husband would be regarded to be harmed by any offence punishable under Section 497 or Section 498 of the Indian Penal Code, according to Section 198(2) of the Criminal Procedure Code, 1973: However, anybody who cared for the lady in the husband's absence at the time the crime was committed may, with the court's approval, file a complaint on the husband's behalf. The case of *BS Puttaswamy Sannaiah v MS Shamla Kumari Puttaswamy*²⁰ established the aforementioned observation in 2007.

Under Section 498, both men and women are capable of committing an offence. Undoubtedly, a crucial element of the crime is the possibility that such a woman may engage in an illegal intercourse with any guy. A woman may, however, draw in as well as take away. A woman who violates this clause may then face punishment. The wife's assent is irrelevant and cannot be used as a justification for avoiding liability under this provision. As an accomplice, a wife cannot be penalised.

THE IPC'S SECTION 498'S NATURE

Section 498's nature will be as follows:

Bailable or Non-Bailable Offenses: A bailable offence is one in which the accused is automatically given bail, whereas a non-bailable offence is one in which the court may choose not to issue bail. In contrast to Section 498A, which is not subject to bail, Section 498 is a criminal offence.

Cognizability or Non-Cognizability: Cognizable offences are those in which the police have the authority to initiate an arrest on their initiative and without the consent of the court. These crimes are severe in nature and include forgery, rape, and murder. On the other side, non-cognizable offences are those in which the police are not permitted to arrest without the consent of the court. These offences, which include crimes like stealing, are not as serious as cognizable offences. Section 498 is not cognizable, but Section 498A is since harming a wife physically or psychologically is a serious offence. It is important to note that an offence under Section 498 can

²⁰ *BS Puttaswamy Sannaiah v MS Shamla Kumari Puttaswamy* ILR (2007) Kar 5319

be prosecuted by any magistrate, as opposed to other offences involving marriage, which can only be tried by the Magistrate of the First Class.

IMPORTANT CASE LAWS

Alamgir v State of Bihar²¹: The woman disappeared from her husband's house. She was discovered in the brother's house of the appellant. The appellant informed the husband that he had married her wife when the husband arrived and asked for his wife to be returned; the appellant's brother then threatened the husband and told him to leave. The trial court ruled the appellants guilty, and they received a sentence of two months in simple detention. The punishment was reduced to a fine of Rs. 50 per person by the Session Court, which maintained the verdict. The High Court sentenced the appellants to six months of harsh imprisonment under Section 498 of the Indian Penal Code, 1860, following a later appeal. It was decided that a man would break the law under Section if he purposefully leaves with another man's wife in a way that denies the husband authority over her to engage in illicit sexual relations.

Singana Naga Nooka Chakrarao v State of UP²²: In the given scenario, the petitioner accused was tried for offences under sections 497 IPC (adultery) and 498 IPC (criminal elopement). The Trial Court found him guilty of both offences and sentenced him to a total of six months of simple imprisonment, a fine of Rs. 500, and one month of simple incarceration for the violation of Section 497 of the IPC and three months of simple imprisonment, a fine of Rs. 300, and one month of simple incarceration for the violation of Section 498 of the IPC. The Appellate Court acquitted him of the offence under Section 497 of the IPC while upholding the verdict and penalty under Section 498 of the IPC. This case demonstrates that the purpose of the accused – specifically, whether the accused enticed the married woman to engage in illegal sexual activity with her – is the most important element to show in a prosecution under this Section.

Emperor v Madan Gopal²³: By luring away Musammat Kharag Kumari, the complainant's wife, the applicant violated Section 498 of the Indian Penal Code, according to a magistrate of the

²¹ *Alamgir v State of Bihar* AIR (1959) SC 436

²² *Singana Naga Nooka Chakrarao v State of UP* (2007) CriLJ 3466

²³ *Emperor v Madan Gopal* (1912) ILR 34 All 589

second class in the Benares district. The applicant unsuccessfully appealed to the District Magistrate. He then filed a petition with the High Court asking for the conviction to be overturned because there is no evidence he used coercion to entice the woman away and that she is not the complainant's legally wed wife. However, the appeal was turned down because the petitioner was unable to disprove the assumption that the marriage was legitimate. As a result, it was decided in this case that only situations where a marriage is legally recognised and lawful would be covered by Section 498 IPC.

CONCLUSION

The IPC was passed in the 1860s when women's standing was different from what it is now. It was believed that a woman could not commit an offence like adultery as a result. If a woman has had extramarital relations with another man, that guy is responsible for coercing her into adultery by enticing her away with the prospect of having sex. Matrimonial offences have complex characters and many causes. A one-size-fits-all strategy makes it hard to deal with them fairly. Beyond "socio-economic levels and culture," it extends. But there are undoubtedly some fundamental components that are universal. The fact that these offences are gender-specific shows that apathy and negligence, which are the results of general acceptance of men's superiority over women, are at the heart of the growing incidence of marital offences against women. Therefore, there is still more work to be done before such laws are used to their full potential.