



An Analysis of Offence Relating to Marriage in India

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Abstract: Marriage is a wedlock which demonstrates as holy convent before god, it states a marriage is more than a physical relationship it's a emotional union but also a moral and legal commitment, it's a set of unconditional duties between the couple, but there has been tremendous increase in case of offence in such a scared relationship, women have been subjected to cruelty, marital rape, sexual harassment, dowry death etc. Dowry is a curse in our society and many innocent women have lost their life due to the illegitimate demands of dowry, there are provisions and also certain acts are enacted for protection of women with regarding to offence in marriage, however there are some loopholes that needs to be addressed.

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Introduction

A generally accepted definition of marriage is that of matrimony or wedlock, which is a culturally recognised social sanction of union between two people. This union helps in establishing rights and obligations between two people coming together in this union, along with their children, and the in-laws. The sacrosanct institution of marriage has been in existence from generations it has distorted versions of the same, Instances of matrimonial offences continue to rise incrementally and remain undisturbed despite the various protective laws made by the legislation, and steps taken by the law and order maintainers of the society. With each passing day, more and more women are added into the list of the victims of these legal offences. Most of the cases are unreported due to victim shaming, and fear of insecurity and uncertain future In this article, we shall be discussing several section and landmark case judgements which are with pertain to the offence against marriage in IPC.

Marriage is a sacred activity which is considered as a union of two souls into one. Husband and wife promise each other to support even seven births. A girl used to leave her house for her husband to commence a new life with the in-laws also. Even she considered her husband as her own god and used to do his worship as same. When both husband and wife are going to start new lives, rights and obligations arise on their parts towards their families, children and so on but when these obligations are not fulfilled either by the husband or the wife may lead to occurrence of differences between husband and wife and sometimes with the in-laws also. Differences might convert into something more big leading to divorce of the husband

and wife. To protect these things provisions have been provided by the legislature under the Indian Penal Code. Offences concerning marriage are enumerated in Section 493 to Section 498 of the IPC, 1860.

Matrimonial offences are multi-causal and multi-dimensional in nature. It is impossible to justly address them with a straitjacket method. The rising cases of matrimonial offences against women have their roots deeply ingrained in indifference, and negligence that is primarily the result of general acceptance of men's superiority over women, which is evident from the gender specificity of the nature of these offences.

Over time, courts have broadened the ambit of the definition to include within its different instances. The provisions dealing with matrimonial felonies have been framed in a way that raises a presumption against the accused if certain minimum requirements are met. Yet, there is still a long way to go for such laws to have optimal usage. There is still room for clarity in these laws, for clashing precedents to be done away with. There is also a need for general reform in the law to protect a woman's physical and personal dignity in the role of a wife, against violence by the husband.

Cohabitation by fraud and inducement

Section 493 of the Code imposes punishment upto ten years with fine upon a person who dishonestly fraudulently causes any woman to believe that she is lawfully married to him and cohabit or have sexual with her suppressing the facts that she is not lawfully married to him and keeps her as a conclusive.

Two essential ingredients of this offence are:

- Deceitfully creates a false belief in the existence of lawful marriage

- Cohabitation or sexual intercourse with the person causing such belief

Where both man and woman know that they are not husband and wife and there is only a promise to marry future, and later one of them deny to marry and the other still submit himself/herself to him/her regularly for liaison, then section 493 IPC will not apply. [1]

Further in the case of *Suman v. State of M.P* [2] the court opined that in case of deceitful marriages it is immaterial whether the woman so deceived is a major or not. A minor can be induced to believe, or deceived just as much as an adult can be induced to believe or deceived. As a matter of fact a minor can be deceived more easily than adult.

Bigamy

Section 494 of the Code provides for the offence of marrying again during lifetime of husband or wife. The section imposes punishment with imprisonment upto seven years along with fine upon a person who, having a living spouse, marries again and that such marriage is void by reason of its taking place during the life of such husband or wife.

However the section does not apply to the following

- Any person whose marriage has been declared void by a Court of competent jurisdiction
- Any person who contracts a marriage during the life of a former spouse, if such spouse, at the time of the subsequent marriage, shall have been continually absent from such person for the period of seven years, and shall not have been heard of by such person as being alive within that time. However the person contracting such subsequent marriage shall inform the person with whom the marriage is contracted of the facts so that the same are within his/her knowledge.

This section makes bigamy an offence for both husband and wife living in India irrespective of religion of either sex, namely, Hindus Christian, Parsis, except Muslim males. In the case of Muslims there is a distinction between a male and a female, as Muslim personal law permits polygamy for males (upto 4 wives) but insists on monogamy for females. Thus a Muslim male marrying a fifth wife during the continuous of for earlier marriage are punishable under section 494 of the IPC. However, if a Muslim man marries under special marriage Act, 1954 he would be guilty of bigamy under section 494, IPC, if he enters into another marriage under Muslim law as the provisions of the special Act would be applicable and not of the Muslim Law [3]

In case of conversion of religion, for instance in Islam which permits polygamy, does not permit a person to defeat the provisions of law under section 494 IPC and give license to commit bigamy [4]

Further section 494 of IPC applies only when both the first and the second marriage is a valid marriage in law. In case either of the marriage is not valid according to the law applicable to the parties, it will not be a marriage and will not attract section 494 of IPC. In *Gopal Lal v. State of Rajasthan* [5] the Supreme Court held that when a spouse contracts a second marriage while the first marriage is still subsisting, the spouse becomes bigamy under section 494 I.P.C. only if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed.

Section 495 imposes punishment with imprisonment upto ten years along with fine for the offence of bigamy when the person committing the offence concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage.

3. Fraudulent (Unlawful) marriage

Section 496 of the Code makes offence the act of any person who with fraudulent or dishonest intentions goes through the false ceremony of marriage and imposes punishment with imprisonment which may extend to seven years along with fine.

To constitute the offence under this section there must be a marriage ceremony which has been fraudulently gone through and that atleast one of the parties must have the knowledge that there is no lawful marriage. In other words this section applies to those situations where a fake marriage ceremony is gone through with fraudulent or ulterior motives pretending it to be a valid marriage. [6]

Section 496 and Section 493 which deals with cohabitation by fraud and inducement of IPC are somewhat alike as both deals with mock or fraudulent marriages. The difference between the two is that Section 493 IPC makes cohabitation or sexual intercourse by deceitfully making the woman believes that the accused was lawfully married to her and make her live with him as wife. On the other hand section 496 IPC deals with cases where a marriage ceremony is fraudulently performed with no intent of lawful marriage. Also that Section 493 affects the man, while section 496 IPC affects a person of either sex i.e. both a man and a woman.

4. Adultery

Section 497 of the Indian Penal Code deals with the offence of adultery. It provides that any person who had sexual intercourse with a person which he knows is the wife of another man, without the consent or consent of that man, then such person shall be guilty of the offence of rape but of adultery, which shall be punished with imprisonment upto five years, or with fine, or with both.

Thus adultery can be defined as a voluntary extra marital sexual intercourse by a man with a woman whom he knows or has reason to believe, to be the wife

of another, without the consent or connivance of her husband. In other words, adultery is an invasion on the right of the husband over his wife. It is an offence which committed by a third person against the sanctity of the matrimonial home by having carnal knowledge of a married woman with knowledge of that fact without the consent or connivance of her husband. [7]

Essential ingredients to constitute an offence under this section are:

- sexual intercourse
- woman must be married
- knowledge
- without the consent or connivance of husband should not constitute tape
- Adultery under section 497 IPC is limited in scope as the section applies only to man and the wife is not punishable for being an adultress, or even as abettor of the offence, despite being a consenting party to the crime.

In the case of *YaafAbdad Aziz v State of Bombay* [8], the constitutional validity of the section 497 was challenged under Article 14 on the ground that the law with regard to adultery operates unequally as a between man and a woman. The Supreme Court in this case held that section 497 is not ultra vires of the constitution and that does not offend articles 14 and 15 of the constitution on the ground that the wife with whom adultery committed is saved from the purview of the section and is not punished as an abettor and also that sex sound classification accepted under article 15 (3) of the Constitution.

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.

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. In s 493, the word used is 'deceit' and in s 496, the words 'dishonestly' and 'fraudulent intention' have been used. Basically both the sections denote the fact that the woman is cheated by the man into believing that she is legally wedded to him, whereas the man is fully aware that the same is not true. 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.

Section 494-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.

Exception.-This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

The important ingredients are:

- deceit or fraudulent intention
- causing of false belief
- cohabit or have sexual intercourse

Section 495-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 also be liable to fine.

The essential ingredients are:

- existence of a previous marriage
- second marriage to be valid
- second marriage to be void by reason of first husband or wife living

Conclusion

Among the various kind of offences against women prevalent today are the marital offences including bigamy, adultery, criminal elopement among others and the one that is probably the most common offence is cruelty. Over time, courts have broadened the ambit of the definition to include within it different instances. The provisions dealing with matrimonial felonies have been framed in a way that raises a presumption against the accused if certain minimum requirements are met. Yet, there is still a long way to go for such laws to have optimal usage. The time is ripe for women to start raising voice against such

injustices. The Constitution under Article 51A(e) demands that every citizen of India renounce practices that are derogatory to the dignity of women. There is also a need for general reform in the law to protect a woman's physical and personal dignity in the role of a wife, against violence by the husband. Marriage is considered to be an institution in India, it is a 'Sanskara' or pure ceremony. Because in earlier time marriage was not only between two individuals but also between two families. If any dispute and misunderstanding arose between individuals there family acted as mediator between them to resolve their problem because according to them marriage is like "Bone to bone and flesh to flesh of each other." In ancient time, marriage was a bond of love but now it has become a noose of hanging because a number of offences attach with it. Marriage has become a game for the people, due to which not only the lives of the parties have been spoiled but the child also suffered. Marriage gain a form of contract hence it is easily dissolve and reunite.

Reference

- [1]. Dr. Paras Diwan, Modern Hindu law, Allahabad Law Agency (Edition 2019-2020)
- [2]. K D Gaur , Textbook on Indian Penal Code, Universal Lexis Nexis (7th Edition)
- [3]. N.V.Paranjape, Indian Penal Code, Central Law Publication (2017)
- [4]. P.K.Das, Protection of women from Domestic violence, Universal Law Publishing Co. (4 th Edition 2011)
- [5]. Prof. (Dr.) SamiyaTabasum, Women and Law, Central Law Publication (1 st Edition 2018)ttar Pradesh.' (2020) 183(2) JRSS

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