

**EVALUATION OF OFFENCE RELATING TO  
MARRIAGE IN INDEPENDENT INDIA**

KHUSHBOO AGARWAL

(Student at BBA. LLB, ICAI UNIVERSITY, DEHRADUN)

**Best Citation** - KHUSHBOO AGARWAL, *EVALUATION OF OFFENCE RELATING TO MARRIAGE IN INDEPENDENT INDIA*, 2 (2) LIU & 77 (2021)**ABSTRACT**

This paper is an informative piece which throws lights on the offences related to marriage in India after independence. Offences can be categorized in two categories one for which criminal charges can be faced and the one for which the civil remedy (ground to take divorce) is available. Keeping in view the diverse Indian Culture few offences are religiously categorized too such as Triple Talaq. There are many offences which do not directly penalizes the offender as a specific proviso have not come into force yet, but the offender can be charged under some other proviso of which the essential conditions are fulfilled. The offences enumerated (Invalid marriage, Bigamy, Elopement, etc) in this paper are in one way or another related to infraction in a wedlock. Further this article focuses on many other offenses which need to be address and brought into focus and bring direct laws related to them such as marital rape, forceful abortion, marital rape, bereave wife's streedhan right, Infringement of Maintenance right and many more. Article 51A (e) of the Indian Constitution also states that every citizen of India renounces practices that are derogatory to the dignity of women. Thus, this reflects that in no way the legislation intent to hamper the right of women. But from time and ages the institution of marriage has taken multiple form and offenses related to it is one of its kind. For the more detailed analysis of the work go through this article to know the different facet of the offenses related to the marriage in the independent India.

**Keywords:** Marriage, Law, India, Divorce.**INTRODUCTION**

India is a country with plethora of religions, great cultural and social diversity, along with a heterogeneous population. Marriage is great deal in country like India, as it is always considered as an integral part of mankind. Arrange marriage is a centuries old tradition, and then marriages were solemnized between the bride and groom in their adolescence age. Polygamy and polyandry was acceptable concept in the ancient history of India. The marriage tradition has gone through a range of momentous changes from time to time. The rapacious toward dowry have ultimately leads making women a commodity of exchange rather than a soulmate. The endorsement toward such materialistic things has also paved way to the offenses in marriages.

Under Hindu ideologies marriage are always considered as sacramental in nature, a never-ending bond, whereas under Muslim personnel law marriage is considered as a mere contract between two people with an intention of procreation. Changing time has weight up the offences in a marriage. The misdeed under the wedlock along with their in-laws have resulted a radical increase in the number of cases of abuses both physically and mentally. The offenses such as adultery, desertion, mock marriage, fraud marriage, forceful abortion, etc are the few of the sub-headings under such offenses.

Although Indian statutes have provided the public with many rules, regulations, laws and punishments the cases of such incidents are not dropping its number. Chapter XX of Indian Penal Code provides provision dealing with the offenses related to marriage. Many people under the pressure of society do not even report cases of the wrong they are going through in their marriage. In case the victim is women they do get afraid from the legal procedure and leave the situation unchanged. In case of such offenses burden of proof lies upon the plaintiff. In this article we will be discussing different offenses related to marriage under the penal code and other legal statute which have been framed to curb this social wrong.

**1. MOCK MARRIAGE OR INVALID MARRIAGE**

Mock marriage is defined under Section 493 of the Indian Penal Code 1860.<sup>181</sup> It says that if a man deceives a woman for intercourse (canal) and marries her on the pretext of intercourse only will be punishable in the court. This section penalizes only the man for carrying out the a marriage with ultimately turns invalid and for inducing a women for having sexual favors under the apprehension that marriage is a valid wedlock.

In the case of Raghunath Padhy v. State<sup>182</sup>, the court held that mere fact of deception by the man to the women making her believe that a invalid marriage is a valid one is not a sufficient ground for punishing the men under the said act. Together with this the man should have induced the women for the sexual intercourse then only every essential will be considered as fulfilled and the person can be penalized under section 493.

According to the Indian Penal Code the punishment for such marriage would be a ten-years of imprisonment or imprisonment with fine as the punishment of this offence.<sup>183</sup>

## 2. BIGAMY

Bigamy is illegal in India, except for Muslim who is permitted to have four wife at a time. In ancient India bigamy was not prohibited, the men were allowed to marry and number of wife they wish to marry. In the year 1956 it became illegal to make more than one wife, after the enactment of Hindu Marriage Act, 1955. The insertion of clause (A) in section 17, thus making the second marriage void, unless the first marriage is dissolved. Thus this resulted to a new treachery, as people started converting to Islam with an apprehension that this would made their second marriage valid without making the first dissolve. But the same was interdicted by the apex court in the case of Sarla Mudgal<sup>184</sup> and Lily Thomas<sup>185</sup>.

Section 494 of Indian Penal Code, 1860<sup>186</sup> imposes punishment for the act of bigamy, punishment included imprisonment extending to seven years and it may include some amount of fine too. The said provision have some exception to its applicability as it doesn't apply in the scenario where the court have declared the first marriage invalid and also when the either of the spouse is left unheard for the period of seven year or more, condition applied that the second wife should be well aware about the first wife.

## 3. FRAUD MARRIAGE

Section 496 of the Indian Penal Code 1860<sup>187</sup> defines the offence of marriage ceremony fraudulently gone through without lawful marriage. Fraud marriage includes marriage when a person marries dishonestly and with fraudulent intention with the other person. 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 point to be noted here is that in this offence cohabitation or sexual intercourse is an necessary element to complete the offense under the said act. In the case of Shiekh Altmuddin v. Emperor<sup>188</sup>, it was held that in circumstances where the marriage ceremony which is gone through is invalid by the reason of existence of the previous marriage, then applicability of the section 496 will be valid, it would be an offence of bigamy under Section 494 of the IPC.<sup>189</sup>

## 4. ADULTERY

The word "adultery" was derived from the French word "avoutr", which has evolved from the Latin verb "adulterium" which means "to corrupt". In general sense it means that when a party to a marriage after the solemnization of marriage had

<sup>181</sup> Indian Penal Code, Section 493 (2020)

<sup>182</sup> AIR 1957 Ori 198

<sup>183</sup> S.N. Misra, offenses realted to marriage, Indian Penal Code, (22<sup>nd</sup> Edition)

<sup>184</sup> Sarla Mudgal and Ors. v. Union of India and Ors. (1995)3SCC635

<sup>185</sup> Lily Thomas v. Union of India and Ors. (2013)7SCC(LS)811

<sup>186</sup> Indian Penal Code, Section 494 (2020)

<sup>187</sup> Indian Penal Code, Section 496 (2020)

<sup>188</sup> 4 Cri. LJ 152

<sup>189</sup> Supra 5

sexual intercourse with the person other than the spouse. It is also commonly known as extra marital affairs, and is considered as sinful conduct in our society. Section 497 of Indian Penal Code defines the same. Until 27 September, 2018 adultery was a criminal offence, but later in the landmark case of *Joseph Shine v Union of India*<sup>190</sup> was revoked by the honorable Supreme Court as unconstitutional. Before the verdict of the Supreme Court, Section 497 punishes the man with up to 5 years imprisonment, a fine or both if was found to have sexual intercourse with married women (other than his own wife) without the consent of her husband. The impugned section was not pertinent as when the man had sexual intercourse with unmarried women this was not an offence.<sup>191</sup> This law was found violative of many constitutional principles such as equality, non-discrimination, right to live with dignity and so on.

Chief Justice Dipak Misra during the proceeding of the case said, "it (adultery) cannot be a criminal offence," however it can be a ground for civil issues like divorce.

Even after declaring adultery as unconstitutional, it is considered as a valid ground for divorce under Hindu Marriage Act, 1955 and Special Marriage Act, 1954. Today's changing society doesn't found the 158 year old law relevant with the changing morals and increasing individual liberty.

## 5. CRIMINAL ELOPEMENT

Section 498 of the Indian Penal Code 1860<sup>192</sup> defines criminal elopement as 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.<sup>193</sup> The object behind this provision is to protect the right of the husband.

## 6. CRUELTY

Cruelty is a matrimonial act which caused suffering (Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste) to the spouse by his/her partner. Cruelty doesn't mean only physical abuse but also the mental and economical abuse. The only difference between the physical and mental cruelty is that the physical cruelty is more perceptible as compare to the other forms of cruelty. In the landmark case of *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan*<sup>194</sup> the court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living.

Major Indian statutes that deal with the marriage law i.e. The Indian Marriage Act, The Hindu Marriage Act, 1955, the Dissolution of Muslim Marriage Act, 1939, the Parsi Marriage and divorce act, 1936, The Indian divorce act, 1869 all have looked upon cruelty as one of the major ground for divorce. *Dastane v. Dastane*<sup>195</sup> was a landmark case, before the verdict of this case cruelty was only a ground for judicial separation not divorce but later was made a valid ground for divorce too.

Section 498-A of Indian penal Code<sup>196</sup> & Domestic Violence Act, 2005 is the Indian laws under which it is penalized. Hindu Marriage Act, 1955 & Special Marriage Act, 1954 both have contemplated cruelty as a valid ground for dissolution of marriage. As per Section 498-A, "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a

<sup>190</sup> (2019)3SCC39

<sup>191</sup> *Krishnadas Rajagopal, Adultery no longer a criminal offence as SC scraps Section 497 of IPC, The Hindu, Sept 27, 2018*

<sup>192</sup> Indian Penal Code, Section 498 (2020)

<sup>193</sup> *Supra 12*

<sup>194</sup> (1981)SCC(Cri)829

<sup>195</sup> (1975)2SCC326

<sup>196</sup> *Supra 10*

term which may extend to 3 years and shall also be liable to fine.”

Dowry Death is the most brutal form of matrimonial cruelty. It means the women death is caused by suicide or murdered after the chronic harassment and torture by the husband or his relatives for intemperate desire for dowry. Indian Constitution furnished us with our fundamental rights which include the basic right of dignity and liberty which ultimately impart a responsibility also, that no person either husband or wife should not tolerate any kind of cruelty and doesn't let anyone infringe your basic rights.

### 7. MARITAL RAPE

Marital Rape is a forced sexual intercourse by the spouse to the other spouse in wedlock. In Indian penal Code, under section 375 the involuntary and forced sex is penalized only in case when the wife is below the age of 15 years. The catastrophic reality of the Indian code is reflected in the exception 2 of the section 375<sup>197</sup> where it is been clearly stated that a sexual intercourse without the consent of the female will be considered as rape, still the exception exempt the husband and wife sexual intercourse even if done unwillingly. When the penal code was brought into force in the year 1860 women were not having such legal individuality, but the present scenario is totally upside down thus making it more obvious to bring an amendment to the year old clause. The non-consensual sexual intercourse should not be justified.

The Domestic Violence act which came into force in 2006 has partially step ahead in the way to outlaw marital rape. Protection of Women from Domestic Violence Act, 2005, was brought into force for protecting women from physical and mental cruelties of all forms, including sexual abuses.

However this act offers only a civil remedy in the offense of marital rape, as the magistrate has no power to criminalise the husband for raping his wife. If a man proves to be so

incorrigible even after counseling the only way forward for a harried woman is divorce.<sup>198</sup>

### 8. DESERTION

Hindu Marriage Act, 1955 and Special marriage Act, 1954 defines desertion when without the consent of the one party, the other party to the marriage, without reasonable cause and against the wish. Desertion can come to an end in the following ways:

- A. Resumption of cohabitation
- B. Resumption of marital intercourse
- C. Supervening animus revertendi or offer of reconciliation.

Desertion though not penalizes the offender but a person for such a conduct has the option for civil remedy (taking divorce), in case the party to the marriage doesn't return to the matrimonial home within 2 years. The point that must be taken into consideration is that the desertion for 2 year from matrimonial home must be continuous. Intention to leave the matrimonial home and obligation is an essential element which makes desertion a different concept than willful separation.

Desertion is different from adultery and cruelty when it comes to filing a cause of action, as in desertion the action is incomplete unless the petition with regards to seeking relief is filed.

### 9. TALAAQ-I-BIDDAT

It is a form of divorce which is accepted under Muslim Personnel Law in which the husbands are allowed to give instant divorce to wife just by saying talaaq for three times in a same occasion. In the year 2017, a landmark verdict was come into force after the Supreme Court of India, declared triple talaaq as unconstitutional.<sup>199</sup> In 2019, the parliament enacted the Muslim Women (Protection of Rights on Marriage) Bill<sup>200</sup> which made talaaq-i-biddat a criminal offence. This form of divorce was only followed by Muslims

<sup>197</sup> Indian Penal code, Section 375 (2020)

<sup>198</sup> Abhinaya Saikumar, Matrimonial Cruelty in India, <https://racolblegal.com/matrimonial-cruelty-in-india/>, 7<sup>th</sup> July, 2019

<sup>199</sup> Shayara Bano vs Union of India And Ors

<sup>200</sup> The Muslim Women (Protection of Rights on Marriage) Act, 2019

and not any other religions in India. The new enactment ceases any form of triple talaq, whether in any form (written, spoken or by any electronic means such as messages and mails).

Section 4 of the enacted act provides punishment for the pronouncing triple talaq which have the scope to remove the instant talaq and give Muslim women her rights and equality in the society. It created sense of fear as it provides it penalizes the offender with an imprisonment for term of three years which is also a cognizable and non-bailable offence.<sup>201</sup>

#### 10. CHILD MARRIAGE

In Ancient India the child marriage was a common practice as the children were married before their physical and mental maturity due to the oppressive tradition and norms, financial stability and male protection for their daughter pushed the parents for early marriage. The first initiative to save child marriage in India was taken in British Raj, The Child Marriage Restraint Act, 1929 also called the Sarda Act was passed by the government to restrict the practice of child marriage. The act provides that the minimum age of marriage of male and female is 18 & 14 respectively. It was opposed by Muslims and as under Muslim Personal Law (Shariat) Application Act of 1937 it was stated no minimum age of marriage just consent of guardian was the requirement. After independence major changes in the act were done thrice, the minimum age was increased for female to 18 and 21 for males in 1978. In 2021 amendment took place for appointment of Marriage Registration Officers and the duty of parties to a marriage to submit the memorandum for registration. The prohibition of child marriage act, 2006 provides that the child marriage before the legal age of maturity is void the person at the time of marriage before completion of two years of completion of maturity. The punishment for the offence according to law are as follow: -

- A. If a male adult above 18 years contracts a child marriage shall be punishable upto two years imprisonment and/or

a fine with may extend to Rs. 1 lakh. The same punishment will be given to person who performs, conducts, or directs a child marriage. Unless proved otherwise, the parents or guardian of the child are considered to have failed to prevent the child marriage and hence are also held accountable.

- B. Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.
- C. A marriage in which either the girl is below 18 years of age, or the boy is below 21 years of age is child marriage to be a cognizable and non-bailable offence.

#### 11. RELATED WITH MAINTENANCE:

Maintenance is the amount paid by the one spouse to other spouse who is unable to maintain themselves during the subsistence of wedlock & upon divorce to maintain them. Right to claim maintenance is a right which cannot be taken away by the contract to the contrary, as it is been granted statutorily. Section 18 of the Hindu Adoptions and Maintenance Act, 1956 is an example of codified law on the subject. Under sub-section (1) of that section, subject to the provisions of the section, a Hindu wife, whether married before or after the commencement of the Act, shall be entitled to be maintained by her husband during her lifetime.

If the spouse neglects or refuses to maintain his wife without any lawful cause, the wife may sue him for demanding maintenance. In case when wife have a specified agreement with regards to past maintenance then only the same could be granted otherwise not. The legal proviso under which the wife can apply for the same is Section 488 of the Code of Criminal Procedure. In such case the court may order the husband to pay a monthly allowance in the whole for her maintenance which should not exceed five hundred rupees". A Christian wife can

<sup>201</sup> Shrutika Pandey, without reasonable cause, it amounts to constructive desertion: Kerla HC, <https://www.livelaw.in/news-updates/when-spouse-refuses->

[offer-to-cohabit-it-amounts-to-constructive-desertion-kerala-high-court-178717](https://www.livelaw.in/news-updates/when-spouse-refuses-offer-to-cohabit-it-amounts-to-constructive-desertion-kerala-high-court-178717), 3<sup>rd</sup> August, 2021



also sue her husband for maintenance. The right to such maintenance is based on justice, equity and good conscience.

*Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Anr.*<sup>202</sup> held that "Where partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock."

Such an act by either spouse is the violation of the marital obligation, still there exists no criminal sanction attached for the disobedience of such obligations. There is high need to bring such act of the spouse under the ambit of penalization. Law Commission of India in its 73<sup>rd</sup> Report on Criminal liability for failure by husband to pay maintenance or permanent alimony granted to the wife by the court have emphasized on the pressing need for enacting the law regarding the same. The commission also recommended that the impending provision should be inserted under the heading of offences relating to marriage (Section 493- Section 498) Indian Penal Code.<sup>203</sup>

## 12. FORCEFUL ABORTION AND MISCARRIAGE

In India socially it is taboo to abort a child in mother's womb; even though from the last 50 years through the enactment of Medical Termination of Pregnancy Act, 1971 has made abortion legal under certain circumstances if the pregnancy is less than 24 weeks of gestation (was 20 weeks, increased after MTP Amendment Act 2021). The distorted reality of the many member of this Indian society is the desire for male child with leads to forceful abortion after illegal sex determination test. A number of cases are been seen related with marital disputes in which the husband and his in-laws have been accused for forced abortion besides making dowry demand.<sup>204</sup> The Indian Statutes though not directly penalizes husband for such illicit

act, but under Indian Penal Code can be charged under Section 313<sup>205</sup> causing miscarriage without woman's consent.

In case of *Shri Bhagwan Katariya and Others v. State of M.P.*<sup>206</sup> the court held abortion by the husband or any other husband's relative without the woman's consent in such a situation the doctor would also be held liable. Section 3 of the Medical Termination of Pregnancy Act, 1971<sup>207</sup> made the doctor entitled to abortion only under some particular circumstances. Thus making it clear that the consent of the women is principal essential in case of abortion and if done contrary will leads to moral and legal consequences.

## 13. OFFENSES WITH REGARDS TO WIFE'S STREEDHAN RIGHT

Every women has the right to "Streedhan" and the husband doesn't possess any right in it. The bride gets the property from her parents and relative to make her financially independent, secure and also as a token of gratitude. The properties which a woman is given in the course of her marriage ceremony, widowhood and subsistence becomes her streedhan. The gift made by husband during or before their marriage is not considered to be Streedhan.

The streedhan and dowry are often misinterpreted, according to Indian statutes dowry is the property or valuable goods, securities given by the bride or her family to the bridegroom family after the demand from groom's family whereas streedhan is the properties willfully given to the bride by the family and her relatives before during or after marriage.

The wife has the right to ask from the husband her streedhan back at any point of time and if the husband denies then there are laws under which strict action would be taken against him. The husband could be charged under Sec 405 & 406 of Indian Penal Code, 1860 for Criminal Breach of Trust. A woman's

<sup>202</sup> (2011)1SCC141

<sup>203</sup> 73<sup>rd</sup> Report of Law Commission of India, <https://indiankanoon.org/doc/179666979/>

<sup>204</sup> Law of abortion, <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/policies-and-acts-1/law-on-abortion>

<sup>205</sup> Indian Penal Code, Section 313 (2020)

<sup>206</sup> MANU/CG/0060/2001

<sup>207</sup> Medical termination of Pregnancy, Section 3, (2021)

right to her Streedhan is protected under few more Indian legal provisions such as section 14 of the Hindu Succession Act, 1956, Section 27 of the Hindu Marriage Act<sup>208</sup>, 1955 make a female Hindu an absolute owner of such property. If a woman is a victim of domestic violence then her rights to recover streedhan is stated under Section 12 of the Domestic Violence Act, 2005 and under Section 18.

The point to be taken into consideration is that often women approach court under section 498 of Indian Penal Code in cases related to misappropriation of streedhan by the husband or his relatives which is invalid. The section 498 is meant for protection of wives from physical and mental harassment the reason could be anything.

In the case of *Rashmi Kumar v Mahesh Kumar Bhada*<sup>209</sup>, the SC held that if the husband or any other family member dishonestly converts the wife's streedhan property on his own name, or make the same to be done by someone else commits criminal breach of trust.

In the case of *Pratibha Rani Vs. Suraj Kumar*<sup>210</sup> it was held that there can be no ambiguity with regard to the sole ownership of wife in her streedhan. Her right is absolute with this regard and the husband is duty bound for protecting it. The husband cannot obtain benefit from wife's streedhan against the will of her wife.

## CONCLUSION

The rising cases of matrimonial offenses is matter of great concern, in the past it was seen that women were the only party against whom the marital offenses are done but now the situation have been changed the male or female both turning victims of such offenses. The Indian Penal Code though has codified a separation part for the offenses related to marriage, with covers five offenses and their punishment but there are a lot more that needs to be added. After independence it was an

apprehension that the situation will be upside down but the expectations failed.

The courts through various landmark verdicts have tried to widen up the ambit of the penal provisions to impart the majority with true justice. Time and again the court has made the legislature bring amendment in the laws and also enact new laws with the intention to curb the raising issues of matrimonial offenses. Yet, a long way to go, there is scope to shed light on some provision to remove the existing vagueness.

## REFERENCES

### Acts and Statutes Referred

1. The Constitution of India
2. Indian Penal Code, 1860
3. Domestic Violence Act, 2005
4. Hindu Marriage Act, 1955
5. Hindu Succession Act, 1956
6. Muslim Women (Protection of Rights on Marriage) Act, 2019
7. Code of Criminal Procedure, 1974
8. Medical Termination Of Pregnancy Act, 1971

### Books Referred

1. S.N. Misra, Indian Penal Code 21<sup>st</sup> Edition

### News Publications Referred

1. Live Law
2. The Hindu

### Other Sources

1. [www.vikaspedia.in](http://www.vikaspedia.in)
2. [www.Indiankanoon.com](http://www.Indiankanoon.com)
3. [www.racolblegal.com](http://www.racolblegal.com)

<sup>208</sup> Hindu Marriage Act, Section 27 (2020)

<sup>209</sup> (1997) 2 SCC 397

<sup>210</sup> (1985) 2 SCC 307