



ABHIDHVAJ LAW JOURNAL

[www.abhidhvajlawjournal.com]

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

Editor In chief – Assistant professor Dr. Taru Mishra

Publisher & Founder – Vaibhav Sangam Mishra

Frequency – Quarterly (4 Issue Per year)

Copyright © 2022

An Analysis of offences relating to marriage in India.

AUTHOR'S NAME –Nisha, BBA,LL.B (Hons.), Second Year.
CO-AUTHOR NAME – Shivam Pandey, BBA,LL.B (Hons.), Second Year.
INSTITUTION NAME – Army Law Collage, Pune.

ABSTRACT :

This article tells about the offences relating to marriage in India, for long. In this article, we will discuss those different offences of marriage in India, which are happening for a long back, and are affecting the families and society in India.

Marriage is a bond as a holy covenant before God, between two genders, which is generally accepted by society and legally bound. Marriage is not just a relationship between two people, there are some duties and responsibilities for the couple. This is not just a relationship between two people, rather it connects two families. But, since the ancient period, offences related to marriage is being practised in India and they are still being continued in the present era.

There are different Laws which are made to prevent the offences which are taking place on a large scale.

These offences can be classified as Marital Rape, Dowry, Bigamy, Adultery, cruelty to the bride, Sexual Harassment, Fraud Marriage, Mock Marriage, and Criminal elopement. In our society, both men and women are victims of these offences but mainly women are suffering the most in our society. These offences are increasing due to the loopholes in the Laws made for citizens.

INTRODUCTION :

The definition of marriage differs from religion to religion, culture to culture, marriage can also be a civil one. so universally the definition of marriage can not be found out. But it can be called a bond between couples, their in-laws, and after marriage with their children. Legally marriage is a permanent social agreement between two genders, as they have to perform life-long journeys together.

Prior women were considered as GOD but nowadays in some families, they face so many challenges during their married life. Not only women are victims of these offences but also men are too. Dowry death, sexual harassment, adultery, bigamy, void marriages, and marital rape, are some of the major challenges which are being faced by people. One-fourth of the population is a victim of these challenges, which are increasing daily. There are many laws which provide remedies to the victims but people hesitate in believing that they will get remedies for their problems or not. It majorly rises in the case of women when their family, society even their husbands don't support them due to which they end up their lives. India is a meta-diverse, multi-linguistics country where people belong from different cultures, different religions, and different places and they have different perspectives, and different thoughts

sometimes these thoughts proved beneficial for society but sometimes everything ends because of them. Section 493-498 of the Indian Penal Code defines offences relating to marriage in India other than these Dowry which is a serious offence is defined in The Dowry Prohibition Act, 1961. Marital Rape; - It is not criminalized now in India as well as in 60 different countries across the world, but section 375 of the Indian Penal Code, states that forceful sexual intercourse in marriage is a crime if the spouse is below the age of 15, but the marital rape victim can appeal to the Protection of Women from Domestic Violence Act 2005 (PWDVA).

History of Offences Relating to Marriage :

Different Types of Offences

- **Dowry** - Dowry is a very shameful activity which takes place all over the globe, but very less people talk about this just because they also want to be part of this heinous activity, this activity is so toxic that it can easily kill a person rather than it is a bride or bride's family member. Dowry can be in any form whether in the form of property or valuable security. Earlier dowry system was started so that bride's family can give some amount of money or currency so that the bride can be independent at her in-law's house. But after the colonial period, this became mandatory and become more lethal as the parents of the groom started demanding more and more money, usable items etc. If the bride's family couldn't fulfil the demand, then they use to kill the bride or make her burnt alive and later on it became a major social problem. After the enactment of the Dowry Prohibition Act, 1961 this practice reduces to some extent. Under this act, if any person is demanding a dowry or taking a dowry from another party, he/she should be punished with imprisonment or a fine.
- **Child Marriage** – Child Marriage is an illegal practice happening all over India. It is a marriage of a girl or a boy before their legal age of wedding. In this type of marriage usually, the girl belongs to a poor family. Child marriage causes a violation of Human Rights and harms the life of the bride due to domestic violence where she is deprived of her basic rights and independence. The child bride usually gives up their education because of the early age of marriage as a result of which our economy is losing capable assets. The reasons behind child marriage are the lack of awareness among family members, lack of education, and parents thin thinking there is less burden of dowry on them. One reason is the patriarchal mindset of our society.
India contributes nearly 33% of child marriages globally and the common occurrence of child marriage highly takes place in SCs and STs.
Prior, we have the Child Marriage Restraint Act, of 1929 which was enacted by the Britishers but it doesn't affect the people much because there were fewer punishments in this Act. Later, The Prohibition of Child Marriage Act, of 2006 was enacted which replaces the previous act and in this act, there are severe punishments for the wrongdoers which eventually reduces child marriage in India.

- **Bigamy** – It is the practice of entering into a marriage with another person while being legally married to another person. Section 494 of the Indian Penal Code, 1860 and section 17 of the Hindu Marriage Act deal with bigamy. In Section 17 of the Hindu Marriage Act, it is mentioned that if any person (whether male or female) commences a marriage even though their husband or wife is alive then the subsequent marriage will be declared void. It is punishable under sections 494 and 495 of IPC, under section 494, if any person did this then he/she will be punished with imprisonment which may extend to seven years and shall be liable to a fine.

There is an exception, if the first marriage of the person is declared void by law or if the person is continuously absent for a period of seven years and has not heard about that person from anyone, then the person can commence second marriage.¹ For bigamy to be proved there must be several ingredients which are- the accused person had already legally married, both the marriage shall be valid by law.

In the famous case of Gopal Lal Vs. State of Rajasthan, Hon'ble Supreme Court declared that if a person contracts into a second marriage while his/her first marriage continues then if the spouse becomes guilty of bigamy, then it must be proved that the second marriage was a valid marriage which is commenced in considering all necessary ceremonies.

In another case of Godavari Vs. The state of Maharashtra, 1985 stated that if a husband/wife files a case regarding the second marriage then they are unable to prove that the second marriage is valid by law. Then section 494 of IPC will not be attracted in this case.

- **Marital Rape**: - It is the act of forceful sexual intercourse with a spouse without her consent. The lack of consent is an essential ingredient. In 1900 BCE, a man could be sentenced to death if he touches or does a sexual act to someone else's wife or daughter. But it was okay if he forcefully does sex with his wife and it continues in today's era. Marital rape is widely experienced by wives. It is considered that after marriage the wife must fulfil her husband's sexual desires whether she wants to do it by her will or not. After so many petitions filed in Supreme Court regarding whether marital rape should be criminalized, they are continuously dismissed.

On average, 30% of women are victims of marital rape in India but then also they are unable to file any complaint against their husbands because of this the number of marital rapes is increasing day by day and women are not getting remedies.

More than 100 countries criminalized marital rape but in India marital rape is still not criminalized. Marital rape is excluded from all the sections which involved rape such as section 375 of the IPC. Exception 2 of section 375 of IPC states that forceful sex by a man with any other woman is a crime but if a husband does so, then it is not punishable by any law which violates article 14 of The Indian Constitution of India.

¹ <https://www.lawtendo.com/blogs/is-second-marriage-without-divorce-legal-in-india>

- **Adultery** - Adultery came from the Latin word adulterium meaning 'to corrupt'. It is the notion of cheating a wife on her husband and having sexual intercourse with another person. Section 497 of the Indian Penal Code defines Adultery as any male person's sexual intercourse with a married woman knowing that she is the wife of another man, without consent of the husband of that woman then such offence shall not be considered as rape, it would be amount to adultery where only the male will be punished and the wife would not be guilty of this crime as an abettor. For this crime, a person can be punished with Imprisonment for 10 years and a Fine. This is a non-cognizable, non-bailable and non-compoundable offence. A bench of five judges of the Supreme Court of India on 27th September 2018 with one mind repealed Section 497 of the Indian Penal Code, and hence adultery is not an offence in India.
- **Fraud Marriage** – If a person intentionally hides facts about him/her and dishonestly commences marriage with another person then he/she should be liable under section 496 of the Indian Penal Code, 1860 and will be punished with imprisonment for a period of seven years and for fine. In *Madhusudan Vs Chandrika* at the High Court of Madhya Pradesh, in this, the husband alleged that his wife was suffering from syphilis for more than three years and this was hidden by the wife and her family at the time of marriage.
- **Criminal elopement**:-When a person whether male or female takes away a married woman with the intention of sexual intercourse. Working women are facing criminal elopement on a large scale. They are enticed by their boss and colleagues for promotions, increments in salaries and for completing various projects. If a person commits this then he/she will be liable to imprisonment of two years.
- **Cruelty to the bride**:-Women face abuse from their husband and in-laws is very common in India. Here cruelty includes both physical as well as mental torture is done to a woman by her family and husband. Most of the women face this without any objection and remain silent. The violence against women takes a serious form and the woman then thinks to end her life. Section 498A defines cruelty to women. Section 498A defines cruelty to women and if the husband and family members of the wife perform cruelty to the woman then they are liable to imprisonment of three years and shall be liable to a fine.

CONCLUSION :

India is a diverse country with different cultures, values, religions, and languages which increases the rate of offences such as offences relating to marriage which are rising in a very speedy manner in India. We are having rights which protect us from various offences and for offences relating to marriage section 493-498 of IPC provides us with remedy. Majorly, if the laws are in favour of women, then also, they are not completely protected by law. Offences towards women are increasing because our society accepts men as superior to women. Women are victims of many offences, offences which are prevailing today including bigamy, adultery, dowry, sexual harassment etc. Our law tries to provide a remedy for all these offences but unfortunately fails to do so. In many cases, marital rape which is a serious crime is not

criminalized to date. These matrimonial offences will remain to continue in our society until and unless our law strictly enforced these rules and regulations for every citizen of India.

Suggestions :

We have covered various offences in this article and we saw that for various offences there is a specified punishment and a fine. But "marital rape" which is a serious issue nowadays is not criminalised today. It should be criminalised so that women will be protected after their marriage. A high penalty should be charged to the offender. Adultery should not be criminalised for only a man, as in the Indian Penal Code, the maximum number of offences and punishments are inclined towards men, some crimes like adultery should be criminalised for both men and women.

