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LAW RELATING TO MATRIMONIAL OFFENCES

IN INDIA - A CRITICAL STUDY

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ABSTRACT

The notions of matrimonial duties and obligations of husband and wife in the present generation of Indian societies have changed much since the time of 'Manu'. Therefore the concept of matrimonial offences is required to be studied in a new light and according to various legislation and judicial trends developed in the present time, which is the object of the present research. So, the main object of the study is to evaluate the role of legislation in reference to matrimonial offences, to recognize the defects of the laws related to matrimonial offences and indicate various factors that are not tending to give desirable success. In order to achieve the aim legal provisions need critical scrutiny. The present research work requires a Doctrinal method of study of the topic.

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Keywords: matrimonial offences, duties, obligations, legal provisions

INTRODUCTION

It is not a modern or recent thing to insult women. Throughout the centuries, in all countries, nations, regions and religious communities of the nation, women have been the victims of abuse and brutality. Cruelty and abuse against women should be understood from a historical point of view since it is connected to its 'place' in culture to a significant degree.¹

With each passing day, the rise of marriage offences is growing exponentially, and we are all mindful that not only women but even men experience these offences equally against themselves in today's period. Matrimonial crimes are acts that are performed against each other by either partner. However, multiple marriage rights are given by different clauses of the Indian Penal Code and several of them refer to both partners.

¹Spectrum : A Book of Essay, Ed. Kalpana Rajaram 1997.

Matrimonial crimes of nature are multi-causal and multi-dimensional. For a straitjacket strategy, it is difficult to handle them equally. This goes beyond culture, as well as social status. Nevertheless, there are clearly fundamental common variables. Increasing instances of marital crimes against women are profoundly embedded in ignorance and neglect, which are mainly the product of the widespread recognition of the supremacy of men over women, which is apparent from the gender specifics of the essence of these crimes.

CONCEPT OF MATRIMONIAL OFFENCES

- **Concept of marriage**

A widely agreed concept of marriage is out of wedlock or matrimonial, a social sanction of a partnership between 2 persons that is traditionally recognised. This union aims to define rights and responsibilities between two persons, together with their children and in-laws, who come together in this union.²

- **Laws against marriage**

However, over centuries, the sacrosanct practice of marriage has persisted and absorbed numerous skewed representations of the same in itself. To rectify them, and then guarantee that no innocent life dies. Different rules and precedents were adopted by different courts, with the Hon'ble Supreme Court providing the most illuminating ones. Such wrongdoing, such as adultery, desertion, or cruelty, among others, is considered to be marriage crimes or marital offences.

Despite the different security rules enacted made by the government, and actions taken by the executive, incidents of marital crimes appear to escalate steadily and stay undisturbed. More and more women are introduced to the list of victims of these civil crimes with each passing day.

What is worse is that owing to the inability of culture to recognise its morbid components and victim-shaming, several of these incidents go unreported. When it's clubbed with fear and an unknown future, the scenario heads farther south. Societies are caused to have little to no confidence in the law, particularly among women. Typically, they get terrified of the lengthy, boring court proceedings and are frightened of the immense amount of money required to support them.³

²Nambi S. Marriage, mental health and the Indian Legislation. Presidential address. Indian J Psychiatry. 2005;47:3–14.

³J. Duncan M. Derrett: Critique of Modern Hindu Law, (1970).

The presumption of evidence (BoP) falls with the prosecutor who calls for the crimes. Proving those marital violations contributes to grounds for divorce and tends to be relevant in claims for financial relief before and after marriage in magistrates' courts. We will address some of these rules and landmark case decisions in this post.

- **Marital rape**

Marriage is a social contract between a man and a woman that is legitimately sanctioned. It is legal to have intercourse between a husband and a woman. The spouse has right over the wife regardless of the legality of intercourse, which becomes the sole justification for marital rape. Although the legal meaning differs, any forced sexual contact or intrusion gained through coercion, the threat of force, or when the wife is unwilling to consent, may be described as marital rape. The spouse should not be found guilty of abusing his wife regardless of the implied marital agreement to cohabit, in proper perception. However, in view of the growing number of instances of marital rape in our society, no legislation or rule determines marital rape. Article 14⁴ of the Indian Constitution speaks of the right to freedom, but women suffer violations of their privileges in marital rape situations. De facto, though not de jure, marital abuse occurs throughout India.

- **Types of marital rape**

Force Just Rape- A husband who uses intimidation and aggression only to the extent required to coerce sex is defined in the word. In relationships where aggression is mainly verbal, and/or in relationships where violence happens only/primarily in sexual encounters, this form of rape typically happens.

Battering Rape- It is referred to as 'battering rape' when beatings and rape are mixed. Sexual harassment is part of the broader psychological, verbal, social, financial and physical violence trend.

Obsessive Abuse- 'Obsessive Rape' is the most blatantly sadistic form of rape. The attacker is fascinated with sex, and he is aggressive in the act itself.

Exception 2 to Section 375, therefore, exempts unwilling sexual contact between a husband and wife over the age of fifteen from the concept of rape in Section 375 and thus immunizes those actions from punishment. Punishment for rape is given in IPC section 376⁵.

⁴ Article 14, **Constitution of India.**

⁵Section 376, Indian Penal Code, 1860.

According to this Clause, for a term not less than 7 years but which may be expanded to life or for a term lasting up to 10 years, the rapist should be prosecuted with imprisonment of any description and shall also be liable to a fine.

- The cases where a spouse may be criminally charged for a marital rape crime are as follows, according to the Indian Penal Code:
- If the wife is between the ages of 12-15 years, the crime is punished by incarceration of up to 2 years or both.

If the wife is under 12 years, it is punished by incarceration for a period of not less than 7 years.

- Abuse of a divorced wife, a felony punished by incarceration of up to 2 years and a fine.
- Abuse of a wife above the age of 15 is not punishable.

The Justice Verma Committee Study (2013) suggested that the marital rape exception be eliminated. Fortunately, in November 2017, in the case of *Critical Thinking v. Union of India*⁶, a divisional bench of SCI struck down exception 2 to Section 375, IPC as breaching Articles 14 and 21 of the Indian Constitution.

In the 42nd opinion of the Law Council, it was proposed that a man's sex with his minor wife could be liable to criminal responsibility. The committee, however, dismissed the suggestion saying that the husband should not be accused of raping his wife of any age because sex is a marital parcel.

The Sexual Abuse Safety of Women Act, 2005, is a reasonable legal recourse for violence against women, which also involves marital rape. It is possible to declare sexual activity without permission as a breach of integrity and should thus be treated as a criminal offence. The act considering this breach as a civil offence has given few civil redresses, such as penalties, immunity, etc.

- **Child marriage**

It is a girl or boy's marriage below 18 years and applies to all formal and informal unions wherein children reside with a spouse. Child marriage affects both girls and boys, but it overwhelmingly affects girls, especially in South Asia.

With the approval of the judge, several states in the US approve child marriages. Since 2015, the legal age of marriage in Canada has been set at 16 years old. Juveniles under the age of 18 or 19 are subject to further restrictions in Canada, where the majority age is established at 18 or 19 by

⁶ Joseph Shine V. Union Of India 2018 SCC Online SC 1676.

province/territory (i.e. parental and court consent). It is an indictable offence to participate in a marriage ceremony if one of the parties is under 16 years old, and those who do so face a sentence of up to five years' jail. ' An indictable offense punishable by up to five years in jail is committed by anybody who participates in, promotes, or celebrates a marriage ritual or ceremony with the knowledge that one of the married individuals is under the age of 16 years. Anyone under the age of five who commits an offense is ineligible for punishment. Matrimonial Causes Act 1973 states that a marriage performed by a person under the age of 16 is void. Child marriage rates are not directly correlated with a lower legal age of marriage. Legislative restrictions and the average time between first and second marriages do have a correlation. According to the 1960 Census, 3.5 percent of females in the United States married before the age of 16, while another 11.9 percent married between the ages of 16 and 18. Higher percentages of infant marriages have been seen in states with lower marriage age restrictions.

- **Cohabitation by Fraud and Inducement**

It is the Cohabitation through Deception and Induction under section 493⁷ of IPC when a man performs the crime of Mock Marriage. Under Section 493, in a mock marriage, a man misleads a woman into having intercourse under the preconception of marriage. IPC provides for a 10-year prison term along with a fine. For a considerable amount of time, this section has been a subject of heated debate.

It must be conclusively proven that the men either fraudulently or dishonestly made a false statement purposely to prove this crime, or withhold such evidence from a child. IPC 493 punishes men who induce women to become concubines, but who allow their wife dream about themselves. This crime is perpetrated by a person who wrongly assumes that a woman is of the same ethnicity or faith as her and even after understanding explicitly that such marriage is unlawful in the eyes of law allows major or minor women to marry him (as a matter of reality minor may be more easily fooled than adult) and often makes her feel that it would be a legitimate marriage. The Calcutta High Court ruled that the offence performed under this provision could also be punishable by section 375⁸ as rape.

- **Bigamy**

Whoever marries while having a surviving husband or wife in any case then the marriage is invalid due to the existence of such husband or wife. such an act punishable under incarceration and

⁷Section 493, Indian Penal Code, 1860.

⁸Section 375, Indian Penal Code, 1860.

also penalized by imprisonment for up to seven years and a fine.

Apart from that there are few situations where a person can marry again, if the court pronounces his/her previous marriage void then those wife and husbands doesn't fall under this ambit. Adding to it the spouse is absent for a period of more than seven years then the other spouse need to obtain a degree from the court of competent jurisdiction stating the constant absence of such a person.

In order to prove a bigamy there are certain requirement that need to be fulfilled as of, the accused must be married and the wife/husband must be alive. Second the accused must marry second time during the subsist of his first marriage. Finally, both the marriage's must have completed necessary ceremonies.

Legally second marriage is considered itself void under section 494⁹ of the IPC itself. Even then the sections hold few exceptions cases where in the second marriage is considered.

- a. First marriage being invalid
- b. Spouse missing for more than 7 years

Along with the IPC bigamy is also prohibited under personal laws. For instance, under Hindu Marriage act section 1 subsection (a) (b) (c) speaks about the religion and the persons falling under the act. The act specifically mentions under section 17¹⁰ that, whosoever falls under the ambit of section 1 of the HMA are not allowed to marry another person during the existence of their spouse. This can be understood from the following case

Under Christian marriage act, there is generally no specific rule mentioning that bigamy is prohibited. But section 60 subsection (2)¹¹ specifically mentions that during the time of marriage/oath neither the person intending to marry nor get married should either have a living spouse or continuing marriage. This provision makes it clear that bigamy is neither encouraged in Christian marriage act also. The same rule applies to parsi marriage and divorce act.

The law is quite different for Muslims since, under Muslim Marriage law, a man can have more than two or three wife's and they need to be treated equally along with all the other wife's. Hence, they are an exception for the rule under IPC

A person who conceals their previous marriage with someone to whom they are getting married

⁹Section 494, Indian Penal Code, 1860.

¹⁰The Hindu Marriage Act, 1955.

¹¹Indian Christian Marriage Act, 1872.

faces a ten-year prison sentence plus a fine under Section 495. It's a non-cognizable, bailable offence that'll be heard by a first-degree judge. The conduct of a wedding ceremony without a valid legal agreement. Anyone who enters the wedding service dishonestly, clubbed with a false motive, although knowing that he is not lawfully married, faces a punishment of up to seven years in prison and a fine under Section 496.

- **Fraudulent marriage or Unlawful marriage**

Whoever goes through the marriage ceremony with the purpose of committing fraud, recognising that he is not legitimately marrying thus, shall be punishable with incarceration that may last up to seven years and be liable to a fine under I.P.C. Section 496¹².

Where the parties to the marriage or some individual to the marriage having the information that no legitimate marriage is constituted is the nature of the marriage alluded to in section 496 of the IPC, where the prosecutor could show that it was in the knowledge of the accused that no lawful marriage had been organized and that he had gone through the marriage for the corresponding purposes.

Under section 496 of the IPC, a simple verbal representation that a woman is married is adequate and does not include any sort of symbolising marriage. However this provision does not include any cohabitation or sexual activity as a prerequisite, although it is necessary to come under section 496 of the IPC for a fake or deceptive marriage ceremony.

Section 496 occurs if a fake marriage wedding has taken place for the intent of pretending to be a legitimate marriage and such a marriage does not constitute a valid marriage if the result is sought for certain collateral dishonest reasons by the proceedings. If any side is tricked into thinking that it does not constitute a legal marriage.

- **Adultery**

Marriage is considered as the most prestigious institution in the Indian society and the sanctity of the marriage should always be protected. One such activity that defeats the sanctity of marriage is adultery. Adultery is a consensual extramarital sexual affair. From the last 158 years, adultery was considered as a crime as it is a delinquent act that violets the social norms. But after the supreme court judgment on Joseph Shine Vs Union of India, adultery is considered as a civil wrong than a crime.

¹²Section 496, Indian Penal Code, 1860.

The word adultery is derived from the French word “adulterium” which means to corrupt. In layman terms adultery means when a married man come under a sexual relationship with a woman without entering into a wedlock with her.

Section 497 of the Indian Penal Code defines adultery as,

When a man consensually with all the reasons to believe involves in a sexual relationship with a wife of another man, without the consent or connivance of that man, such an act doesn't amount to rape but the man is made guilty of the offence of adultery. In such case he might undergo a punishment of 5 years of imprisonment or fine and in some cases both. Generally, in such situations wife is not considered as an abettor.

In the year 2018, there was a remarkable judgement made in the case of Joseph Shine Vs. Union of India, where in the facts of the case are petitioner being a hotelier filed a PIL that the law deprives the women's fundamental right to sexual autonomy. The PIL is considered with the objective of social welfare of the society. His petition was accepted in view of locus standi.

It's after this judgment the section has been decriminalized, but adultery is still a ground for divorce. Previously there were allegations made up that by criminalizing adultery, women's right to sexual autonomy, sexual expression under article 21 of the of the constitution is violated along with right to equality under article 14 of the constitution

In the case of Smt. Sowmithri Vishnu v. UOI¹³ is a quite discussion that adultery only makes a man liable for having an extra marital affair with the married women, and this can be filed by the husband of that women. But this is not a case where a woman can charge another woman for having a marital affair with her husband, thus making it gender discriminative. Adding to it this section only speaks of married women which mean the sections doesn't hold up any offense if such extra marital affair happens with some unmarried women there by seeing women as a chattel or a property of the man.

Adultery continues to be a ground for divorce

There should be no shadow of uncertainty that adultery, even breakdown of marriage, can be a reason for some sort of civil wrong, Joseph Shine v. Union of India.¹⁴ The ideology underlying the framework of the provisions of s. 497¹⁵, from I.P.C. It is the common good is promoted between the husband and the wife by encouraging them to "make up" or "break up" the marital tie rather than

¹³Smt. Sowmithri Vishnu v. UOI, AIR 1985 SC 1618.

¹⁴ Ibid.

¹⁵Section 497, Indian Penal Code, 1860.

drag each other for the crime of adultery to the criminal court. By entering a marital court and snapping the marriage tie by obtaining divorce, they will then condone the offense with a 'forgive and forget' spirit and remain together or separately. It is not allowed for them to take each other to prison. Maybe the children (if any) are often spared from the pain of one of their parents being incarcerated in the case of the other parents.¹⁶

- **Enticing a married woman for illicit sexual relations**

In order to have unlawful sexual intercourse with anyone, any person who takes away or hides or detains any woman he knows to be another man's wife in order to do so, or both men who have sexual intercourse with any other man's wife, knowing she is, shall be punished with two years in prison or a fine. Under the Indian Penal Code (IPC), anybody caught seducing a woman who is, or has reason to believe, the wife of another man in order to engage in illicit sexual relations with that person faces up to two years in jail and a \$2,000 fine.

Hypocrisy and a lack of sincerity are expected at the time of the marriage. Accordingly, the fundamental elements of Sections 493 and 496 are as follows.

There is no doubt that the woman was duped by the accused."

Thus, even though it's not true, he's made her feel she's legally married to him.

In other words, each of these sections is incomplete without a discussion of mens rea. Deception, dishonesty, and deceptive purpose are all employed in Sections 493 and 496. As a result, while the guy is aware that they are not together, the woman is misled by the male in both sections to believe that the same is true.

- **Key Source of Cruelty for Dowry Demand**

Domestic abuse and violence against women are however a widespread occurrence in the world. Married women are not only viewed with brutality, but with little more than wearing clothing, they are turned away from marriage homes some time. Different ways of cruelty have arisen in India in the past, with the passage of several modern forms of cruelty. Any types of cruelty include suicide, foeticide, polygamy, Bride Burning and Bigamy.

Dowry became an acknowledged universal wrong, a real burden that vitiated and destroyed the unity, prosperity and development of the family. Efforts have been made to counter this bad, but it gets out of control against the best efforts. Dowry requirement is one of the main triggers of the

¹⁶ Nagpal RC. In: Modern Hindu Law. Lucknow (India): Eastern Book Company; Ed.2011.

cruelty of marriage. If we trace history, we notice that marriage was considered a 'Kanyadan' among Hindus. The Dharmshastra founded that unless a 'Dakshina' was granted to the bridegroom, the meritorious act of Kanyadan was not complete. The vardakshina was granted out of love and affection and varied in conjunction with the bride's father's financial status. For this reason, it was voluntary and no coercion was practised. However, two facets of Hindu Marriage (i.e. Kanyadan and Vardakshina) gift to bride and bridegroom get embroiled with the passing of time and late on assumed the terrifying name of dowry for the procurement of which compulsion, coercion and, rarely, abuse started to be used and gradually became a bargain for most Hindu marriages. Dowry has been a common threat in the span of time, which now has reached threatening dimensions. Surprisingly, it has expanded to other cultures that have historically been non-dowry communities.¹⁷

CONCLUSION

There is no way around the fact that there are various marital norms that apply to individuals, which is an inescapable result of the diverse and diverse social environment in which we find ourselves. This complicated structure is often a source of misunderstanding for the general public and may result in significant legal consequences. When it comes to marriage, the union between two people must be recognized as legal and legitimate in the eyes of the law. Most marriage laws also require that weddings are registered for the status of the husband and wife to be established and for them to assert their legal remedies in the courts when necessary. The proliferation of legal provisions is often cited as a source of concern since it complicates compliance and the other difficulties described above.¹⁸ On the road ahead, we must accomplish the constitutional aim of implementing uniform civil laws founded on gender equity values and ensuring that standard marital rules are in place for all faiths while also recognizing our cultural and religious diversity.

Even though marriage is regarded as a sacred sacrament, marital infractions have tainted the integrity of the pious institution of marriage. The number of crimes against women is numerous, and the number of crimes against women in marriage circumstances is rising daily. Provisions dealing with charges linked to marriage offenses have been designed so that if just specific essential prerequisites are completed, presumptions are raised against the accused. There is still a lack of clarity about these regulations, which undoubtedly need more attention and be modified and written appropriately while considering all of the shifting effects. The moment has come for

¹⁷ Ashwin N. Karia, *Laws Relating to the Welfare & Protection of Women & Children* (2006).

¹⁸ Dr. Paras Diwan, *Law Relating to Dowry, Dowry Deaths*, Allahabad Law Agency (publication). ed 2019.

women to begin speaking up against the injustices that have been perpetrated on them. According to Article 51A(e) of the Indian Constitution, every citizen of the country renounces acts that insult the dignity of women and girls. General reform of the law is also required to safeguard a woman's bodily and personal satisfaction while performing a wife's duty from abuse perpetrated by her husband.

