

40. *Babu Ram Saini v State Of Uttaranchal*, [2013 Cr LJ 1896](#) (Utt); *A Subhash Babu v State of AP*, [AIR 2011 SC 3031](#) [[LNIND 2011 SC 679](#)] : [2011 \(7\) SCC 616](#) [[LNIND 2011 SC 679](#)] .
41. *Mahesh Kumar Dhawan v State of MP*, [2012 Cr LJ 1639](#) .

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 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.

State Amendment

Andhra Pradesh.— *The offence is cognizable, non-bailable, triable by the Magistrate of the first class and non-compoundable vide A.P. Act No. 3 of 1992, Section 2 (w.e.f. 15-2-1992), in A.P.*

COMMENT.—

This section punishes fraudulent or mock marriages.

It applies to cases in which a ceremony is gone through which would in no case constitute a marriage, and in which one of the parties is deceived by the other into the belief that it does constitute a marriage, or in which effect is sought to be given by the proceeding to some collateral fraudulent purpose. Where the ceremony gone through does, but for the previous marriage, constitutes a valid marriage, and both parties are aware of the circumstances of the previous marriage, s. 494 applies.^{42.}

[s 496.1] Ingredients.—

The section requires two essentials:—

1. Dishonestly or with a fraudulent intention going through the ceremony of marriage.
2. Knowledge on the part of the person going through the ceremony that he is not thereby lawfully married.

[s 496.2] Sections 493 and 496.—

The two sections are somewhat alike: the difference appears to be that under section 493, deception is requisite on the part of the man, and cohabitation or sexual intercourse consequent on such deception. The offence under section 496 requires no deception, cohabitation, or sexual intercourse as a *sine qua non*, but a dishonest or fraudulent abuse of the marriage ceremony. In the latter case the offence can be committed by a man or woman, in the former, only by a man.

[s 496.3] Sections 494 and 496.—

An offence under section 494 is different from an offence under [section 496, IPC, 1860](#). If the accused intends that there should be valid marriage and honestly goes through the necessary ceremonies during the lifetime of the other spouse, then it may be a case under [section 494, IPC, 1860](#), but if the accused only intends that there should only be a show of marriage and dishonestly and fraudulently goes through the marriage ceremony knowing fully well that he is not legally married thereby, then it is an offence under [section 496, IPC, 1860](#).^{43.}

[s 496.4] CASE.—

Where the accused married for the second time during the pendency of special appeal against decree of divorce in violation of [section 15 of the Hindu Marriage Act, 1955](#) but without concealing the fact of pendency of the appeal from the girl or her parents, no conviction could be entered under [section 496, IPC, 1860](#) as the act of the accused was neither dishonest nor fraudulent.^{44.}

^{42.} *Rama Sona*, (1873) Unrep Cr C 77.

^{43.} *Kailash Singh*, [1982 Cr LJ 1005](#) (Raj).

^{44.} *Ibid.* Where the second marriage is performed fraudulently, complaint can be made by the person so deceived, and not by the first regular wife. *Prasanna Kumar v Dhanalaxmi*, [1989 Cr LJ 1829](#) (Mad).

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 497] Adultery.

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

State Amendment

Andhra Pradesh.— *Punishment—Imprisonment for 5 years, or fine, or both—Non-cognizable, bailable triable by 1st class Magistrate and non-compoundable vide A.P. Act 3 of 1992, w.e.f. 15-2-1992.*

COMMENT.—

In *Joseph Shine v UOI*,⁴⁵ a [Constitution](#) bench of the Supreme Court decriminalised adultery and held [section 497 of the IPC, 1860](#) unconstitutional as violative of [Articles 14 and 21](#) of the [Constitution](#). Under section 397 a man who had sex with a married woman without getting her husband's permission could be charged and face punishment with imprisonment for a term up to five years, or with fine, or with both, if convicted. Before, it was struck down, the cognizance of the offence was limited to adultery committed with a married woman, and the male offender alone was made liable to punishment. Thus, under the Code, adultery was an offence committed by a third person against a husband in respect of his wife. A married man was not liable if had sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consented to it.

Prior to the judgment in *Joseph Shine* case, the Supreme Court in *Sowmithri Vishnu's* case⁴⁶ had upheld the constitutional validity of [section 497, IPC, 1860](#). In *Joseph Shine v UOI*, [AIR 2018 SC 4898](#), the Supreme Court observed that: Adultery is different from an offence committed under Section 498-A or any violation of the [Protection of Women from Domestic Violence Act, 2005](#) or, for that matter, the protection conceived of under [Section 125 of the Code of Criminal Procedure](#) or Sections 306 or 304B or 494 [IPC](#). These offences are meant to sub-serve various other purposes relating to a matrimonial relationship and extinction of life of a married woman during subsistence of marriage. Treating adultery an offence would tantamount to the State entering into a real private realm. The act, i.e., adultery does not fit into the concept of a crime. If it is treated as a crime, there would be immense intrusion into the extreme privacy of the matrimonial sphere. *It is better to be left as a ground for divorce.* For any other purpose as the Parliament has perceived or may, at any time, perceive, to treat it as a criminal offence will offend the two facets of [Article 21 of the Constitution](#), namely, dignity of husband and wife, as the case may be, and the privacy attached to a relationship between the two.

⁴⁵. *Joseph Shine v UOI*, [AIR 2018 SC 4898](#).

46. *Sowmithri Vishnu v UOI*, 1985 Cr LJ 1302 (SC) : AIR 1985 SC 1618 [LNIND 1985 SC 202] : (1985) Supp SCC 137 . Again **emphasised** in *V Revathi v UOI*, (1988) 2 SCC 72 [LNIND 1988 SC 20] : AIR 1988 SC 835 [LNIND 1988 SC 144] : (1988) 1 Ker LT 771 : (1988) 2 HLR 39 : (1988) 1 Punj LR 649 .

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 498] 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,¹ shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

Under [section 498, IPC, 1860](#) enticing or taking away a married woman with criminal intent is an offence. Entering or taking away somebody's wife for the purpose other than mentioned in [section 498, IPC, 1860](#) does not constitute an offence. Therefore, in order to bring home guilt of a person under [section 498, IPC, 1860](#), the prosecution has to prove that a married woman was enticed or taken away with an intention that she might have illicit intercourse with any person.^{47.}

Sections 361 and 366 may be compared with this section, which may come into operation when the two former sections fail to apply, but only in respect of a married woman. This and the preceding sections are evidently intended for the protection of husbands, who alone can institute prosecutions for offences under them.

The gist of the offence under this section appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her.^{48.}

[s 498.1] Ingredients.—

The section requires three things:—

1. Taking or enticing away or concealing or detaining the wife of another man from that man or from any person having the care of her on behalf of that man.
2. Such taking, enticing, concealing or detaining, must be with intent that she may have illicit intercourse with any person.
3. Knowledge or reason to believe that the woman is the wife of another man.

[s 498.2] Sections 366 and 498.—

A comparison of the ingredients constituting an offence under sections 366 and 498 shows that though there are some ingredients which are common, but the ingredients for the offence under section 498 constitute of some of the very important particulars which are not in an offence under [section 366, IPC, 1860](#). The additional ingredients of

[section 498, IPC, 1860](#) namely, (i) that the woman said to have been taken away is the married wife of another man, and (ii) that the accused has taken her away with the knowledge that she is the wife of that person are not at all in the offence under [section 366, IPC, 1860](#). Therefore, the offence under section 498 cannot be said to be a minor offence or an offence under section 366 within the meaning of the term used in [section 222\(2\) of the Cr PC, 1973](#).^{49.}

1. 'Detains with that intent any such woman'.—The word "detains" means "keeps back". The keeping back need not necessarily be by physical force, it may be by persuasion or by allurement and blandishment. The use of the word requires that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman. To constitute detention proof of some kind of persuasion is necessary. It cannot properly be said that a man detains a woman if she has no desire to leave and on the contrary wishes to stay with him.^{50.} The Supreme Court has held that the keeping back may be by force, but it need not be by force. It can be the result of persuasion, allurement or blandishment, which may either have caused the willingness of the woman, or may have encouraged, or co-operated with, her initial inclination to leave her husband.^{51.}

^{47.} *Singana Naga Nooka Chakrarao v State of AP*, [2007 Cr LJ 3466](#) .

^{48.} *Alamgir v State of Bihar*, (1959) Pat 334 : [AIR 1959 SC 436](#) [[LNIND 1958 SC 145](#)] : [1959 Cr LJ 527](#) : [\(1959\) 2 SCA 116](#) [[LNIND 1958 SC 145](#)] . *Natarajan v Ramanujam*, [1977 Cr LJ 389](#) (Mad), the main ingredient is enticing away married woman from her husband. Criminal intent on the part of the accused has to be proved. The consequence of not examining the material witness, the wife, led to acquittal of accused. No interference.

^{49.} *Satya Narain v State of Bihar*, [1985 Cr LJ 747](#) (Pat).

^{50.} *Prithi Missir v Harak Nath*, [\(1937\) 1 Cal 166](#) .

^{51.} *Alamgir*, (1959) Pat 334 : [AIR 1959 SC 436](#) [[LNIND 1958 SC 145](#)] .

THE INDIAN PENAL CODE

¹[CHAPTER XX-A OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

[s 498A] Husband or relative of husband of a woman subjecting her to cruelty.

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

Explanation.—For the purpose of this section, "cruelty" means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

State Amendment

Andhra Pradesh.—In Andhra Pradesh, offence is compoundable.

COMMENT.—

This section has been introduced in the Code by the [Criminal Law \(Amendment\) Act, 1983](#) (Act 46 of 1983) to combat the menace of dowry deaths. By the same Act section 113A has been added to the [Indian Evidence Act, 1872](#) to raise a presumption regarding abetment of suicide by a married woman.

[s 498A.1] Ingredients.—

Ingredients of 498A of the [Indian Penal Code \(IPC\)](#), 1860 are:

- a) The woman must be married;
- b) She must be subjected to cruelty or harassment; and
- c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.²

If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognisable.³

Concept of cruelty under [section 498A IPC, 1860](#) and its effect under [section 306 IPC, 1860](#) varies from individual to individual also depending upon the social and economic status to which such person belongs. The Supreme Court held that cruelty for the

purpose of offence and the said Section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.⁴ Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life.⁵

The usual and common domestic discord in any matrimonial home cannot amount to 'cruelty' within the meaning of [section 498A of IPC, 1860](#).⁶ Assault on a woman offends her dignity. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. What effect it will have on a woman depends on facts and circumstances of each case. There cannot be any generalisation on this issue.⁷

In a case before the Supreme Court⁸ involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus the in-laws escaped the jaws of sections 300 and 306, but they were caught in the web of this newly-enacted section for prevention of harassment for dowry. Not to speak of the things they were persistently demanding from the girl's side, the fact that a large number of articles were taken back by her father after her death from her matrimonial abode, showed that there was pressure being exerted on in-laws and continued to be exerted till death for more money and articles. The Supreme Court observed in another case that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.⁹ It is no impediment to a conviction under the section that the accused has been acquitted of the larger offence of murder under section 302. Where the charge was that of murdering wife for dowry and no evidence was available except this that the accused projected the theory of intruders killing her (which the Court did not believe) and did not immediately make police report or to get medical help for his injured wife, this was held to be not sufficient to convict him for murder. The harassment for dowry was established from his own conduct in deserting her and also through the mouth of the witnesses. That was held to be sufficient to convict him under section 498A.¹⁰

Where after a spell of cruelty, the husband and wife reconciled and resumed joint life and it was found that the husband left the wife back with her parents for a short spell and then took her back and within two days informed her parents of her death, the wife made no complaint of cruelty, etc., during her short stay with parents, the section could not come into play because there was no complaint after reconciliation.¹¹ The Court also added that sections 498A and 304B create distinct offences. "Cruelty" is common element to both. A person charged under section 304B can be convicted under section 498A without any charge under that section.

A married woman committed suicide by burning herself after pouring kerosene. In her dying declaration she said that her husband used to beat her after taking liquor and he used to borrow money from the villagers for the purpose. The Court said that this amounted to cruelty within the meaning of the section making the accused liable to be punished.¹² When the accused mother-in-law, the husband and his brother harassed the married woman and did not permit her to go to her parents. The husband and his brother disposed her of by fire after pouring kerosene. They were punished under section 302. Their mother was punished under this section (section 498A).¹³

Consequences of cruelty which was likely to drive a woman to commit suicide or to cause grave injury danger to life or limb or health, whether mental or physical, have to be shown for attracting the section.¹⁴

[s 498A.2] **Mens rea.**—

The requirement of proving that soon before her death the woman was subjected to cruelty or harassment by her husband or any relation of her husband for or in connection with any demand of dowry clearly shows that the legislation has imbibed the necessary *mens rea* for the offence of dowry death.¹⁵

[s 498A.3] **Actus reus.**—

The Supreme Court has observed that in-laws of a deceased cannot be roped in only on the ground of being the close relatives of the husband of the deceased. Some *overt act* must be attributed to them in the incident and the same should also be proved beyond reasonable doubt.¹⁶

[s 498A.4] **Suicide note.**—

The suicide note of the deceased wife made serious castigation against her husband for being an addict to some kind of narcotic drug. Serious allegations were also made against the mother-in-law. Allegations against the accused sister-in-law were not grave. But in no case there was reference to any concrete instance which could be termed to be cruelty. Hence, no case was made out against the accused persons.¹⁷

[s 498A.5] **Constitutional validity of section 498A.**—

The husband and relatives of the husband of a married woman form a class apart by themselves and it amounts to reasonable classification especially when a married woman is treated with cruelty within the four walls of the house of her husband and there is no likelihood of any evidence available. Consequently, this section cannot be said to be violative of [Article 14 of the Constitution](#).¹⁸

The mere possibility of abuse of a provision of law does not *per se* invalidate a legislation. The plea that section 498-A has no legal or constitutional foundation was held to be not tenable.¹⁹ Mere possibility of abuse of power in a given case would not make it objectionable, *ultra vires* or unconstitutional. In such case, 'action' and not the 'section' may be vulnerable.²⁰

Where the wife coming from respectable orthodox family was subjected by her husband, who was of highly suspicious nature, to humiliation by demeaning and insulting her, calling her a prostitute, denying her family life and comfort and not permitting anybody to meet her, all this was held to be sufficient to justify the husband's conviction under the section.²¹ The Court said:²²

The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperamental state of life, state of health and their inter-action in daily life.

[s 498A.6] **Cruelty by vexatious litigation.**—

Where out of a sense of vindictiveness, the husband instituted vexatious litigation against his wife and she was feeling humiliated and tortured by reason of execution of search warrants and seizure of personal property, it was held that the section was wide enough to encompass a cruelty committed through an abuse of the litigative process.

[s 498A.7] **Cruelty by deprivation and wasteful habits.**—

The husband disregarded his duty to provide his wife and infant child the elementary means of sustenance. He deliberately and irresponsibly squandered his earnings on