Interpretation of the section in any other manner including an assertion that the marriage should have been performed by customary rituals or in similar manner only in order to establish that a belief of marriage had been induced, is bound to frustrate the very object and purpose of the provision for which it has been incorporated in the IPC, 1860 which is clearly to prevent the deceitful act of a man inducing the belief of a lawful marriage for the purpose of cohabitation merely to satisfy his lust for sexual pleasure.[3.]

Where a man and woman exchanged garlands, the man promising to marry formally, and had sex as a result of which the woman became pregnant, it was held that the exchange of garlands did not amount to falsely inducing the woman to believe that she was married to the man. Section 493 was not attracted.[4.] Where a woman married a man with full knowledge that he was already a married man and there was no proof that the man falsely induced her to believe anything, it was held that the ingredients of the offence under section 493 were not made out.[5.]

### [s 493.3] Rape and section 493.—

In a case, the complainant made the allegation of fraud played by the petitioner by suppressing the fact of earlier marriage and the alleged physical relationship were under a belief that she was a legally wedded wife of the petitioner. The Court held that a bare perusal of provision of sections 493 and 495 of IPC, 1860 shows that the bodily relationship or sexual intercourse by a husband with his second wife falls under the category of offence under sections 493 and 495 of IPC, 1860 and it cannot be treated as rape as defined in section 375 of IPC, 1860. It is an independent offence, the cognizance of which can be taken by the Court on the basis of complaint filed by the complainant herself, therefore, the offence punishable under section 376 of IPC, 1860 is not made out as the alleged act of sexual intercourse by the petitioner with the complainant may fall within the category of sections 493 and 495 of IPC, 1860 but not in the category of rape as defined in section 375 of IPC, 1860 and made punishable under section 376 of IPC; therefore, the cognizance of section 376 of IPC, 1860 is against the settled principles of law.[6.]

### [s 493.4] Cohabitation during the operation of divorce decree, set aside later.—

The fact that the marriage between the appellant and the respondent was dissolved by an *ex parte* decree and while that order was in force, the respondent husband continued sexual relationship with the appellant, until he married another woman. Subsequently the *ex parte* decree was set aside by the Court. The Supreme Court held that the allegation that there was deception on the part of the husband for having sexual relationship and that constituted an offence under section 493 of IPC, 1860 would not arise for the reason that there was subsistence of valid marriage during this period as the *ex parte* decree was set aside later.[7.]

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1. *Ram Chandra Bhagat v State of Jharkhand,* 2013 (1) SCC 562 [LNIND 2010 SC 1138] .

2. *Kartick Kundu,* 1967 Cr LJ 1411 (Cal). *Sammun v State of MP,* 1988 Cr LJ 498 (MP) where the court added that the accused promising to marry the woman and passing her to others as his wife does not come under this section. *Moideenkutty Haji v Kunhikoya,* 1987 Cr LJ 1106 (Ker—FB), a woman, who knows that the man whom she is permitting sex is not married to him, cannot have recourse to this section to punish him.

3. *Ram Chandra Bhagat v State of Jharkhand,* 2013 (1) SCC 562 [LNIND 2010 SC 1138] . The three-Judge Bench accepted the view of Gyan Sudha Mishra J, in the referral order.

4. *Amruta Gadtia v Trilochan Pradhan,* 1993 Cr LJ 1022 (Ori).

5. *Saurava Barik v Gouri Kaudi,* 1994 Cr LJ 440 . The court **referred** to *Raghunath Padhy v State,* AIR 1954 Ori. 198 [LNIND 1954 ORI 28] . *Akhaya Kumar v State or Orissa,* 1998 Cr LJ 1757 (Ori), the accused and prosecutrix were in love with each other for several years. The accused married another and still continued to cohabit with the prosecutrix on false pretences of marrying her. The prosecutrix was aware of this fact. Hence, there was no deception. Framing of charge against the accused was not proper. *Mana Begum v Jula Mohd,* 1998 Cr LJ 3244 (Ori), evidence of the victim that the accused on promise to marry her had sex with her. The court said that ingredients of the offence under s 493 were not made out.

6. *Mahesh Kumar Dhawan v State of MP,* 2012 Cr LJ 1639 .

7. *Ravinder Kaur v Anil Kumar,* AIR 2015 SC 2447 [LNIND 2015 SC 268] : (2015) 8 SCC 286 [LNIND 2015 SC 268] .

## THE INDIAN PENAL CODE

## CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

### [s 494] Marrying again during lifetime of husband or wife.

**Whoever, having a husband or wife living, marries [1] in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, [2] 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[3].—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.**

**State Amendment**

**Andhra Pradesh.**—*In A.P. 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).*

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### COMMENT.—

This section punishes the offence known to the English law as bigamy.

### [s 494.1] Scope.—

The section does not apply to Mohammedan males, who are allowed to marry more than one wife, but it applies to Mohammedan females, and to Hindus, Christians[8.] and Parsis[9.] of either sex.

### [s 494.2] Ingredients.—

Section 494, IPC, 1860, *inter alia*, requires the following ingredients to be satisfied, namely,

(i) the accused must have contracted first marriage;

(ii) he must have married again;

(iii) the first marriage must be subsisting; and

(iv) the spouse must be living.[10.]

**1. 'Having a husband or wife living, marries, etc'.—**The validity of a marriage in the case of Mohammedans and Jews will be determined in accordance with their religious usages: in the case of Native Christians, by Act XV of 1872, in the case of Parsis, by Act III of 1936; and in the case of Hindus, Buddhists, Sikhs and Jains, by Act XXV of 1955. The validity of a marriage solemnised under the Special Marriage Act, 1954 will be determined by its provisions.[11.]

There must be at the time of the second marriage a previous valid and subsisting marriage.[12.] If the first marriage is not a valid marriage, no offence is committed by contracting a second marriage.[13.]

Divorce dissolves a valid marriage, and the parties obtaining such dissolution can re-marry.[14.]

A Mohammedan woman marrying within the period of her *iddat* (the period of four months which a divorced wife was to observe after divorce before re-marrying) is not guilty of bigamy.[15.]

### [s 494.3] Second marriage under Special Marriage Act, 1954.—

*SI Jafri J,* of the Allahabad High Court observed:[16.]

> Notwithstanding the fact that the personal law permits a muslim male to contract four marriages, if a second marriage is contracted under the Special Marriage Act 1954 *vis-a-vis* the fact that he has a legally wedded wife who has been married to him under the Mohammedan law, s. 494 has to claw at the erring male … Mohammedan law does not take preference over Special Marriage Act 1954 … There being no saving clause for the applicant to purge him of the charges u/s. 494 …, the applicant is liable to be punished under [this section].

**2. 'Marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife'.—**The Supreme Court has observed that *prima facie*, the expression "whoever marries" must mean "whoever marries validly" or "whoever … marries and whose marriage is a valid one". If the marriage is not a valid one according to the law applicable to the parties no question of its being void by reason of its taking place during the life of the wife or the husband of the person arises. If the marriage is not a valid marriage, it is no marriage in the eyes of the law.[17.] The Supreme Court in another case had held that in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved.[18.] Admission of marriage by the accused is not evidence of it for the purposes of proving marriage in an adultery or bigamy case.[19.] Thus, where the second Hindu marriage was not proved by showing *saptapadi* and *homam*, the mere production of a marriage certificate under section 16 of the Special Marriage Act, 1954 would not be sufficient to prove that the second marriage was performed validly by performing all the essential ceremonies of a valid marriage. The mere fact of subsequent registration of the second marriage does not prove the validity of second marriage.[20.] Merely because the second marriage even if performed by performing all the essential ceremonies turns out to be void by virtue of section 17 of the Hindu Marriage Act, 1955, it cannot be said that section 494, IPC, 1860 will not be attracted.[21.] If the second marriage was not proved to have been validly performed by observing essential ceremonies and customs in the community, the conviction under section 494, IPC, 1860 could not be maintained.[22.] Perhaps the Courts in India were obliged to take the view they have taken because of the word "solemnised" occurring in section 17 of the Hindu Marriage Act, 1955 and the inhibition contained in the proviso to section 50 of the Indian Evidence Act, 1972 which forbids taking into consideration even the opinion of a person with special means of

knowledge to show that the two persons were always received and treated as husband and wife by their friends and relatives so far offences under sections 494, 495, etc., IPC, 1860 are concerned.[23.]

> Thus, if one deliberately keeps a small lacuna, e.g., instead of taking the seven steps (*saptapadi*), takes only six steps while celebrating the second marriage, one can easily avoid the penalty prescribed by these sections even though one virtually ruins the lives of two girls. If we are to effectively root out polygamy from this country, we must amend s. 494, IPC, and s. 17 of the Hindu Marriage Act, in such a way that anyone who goes through a form of marriage during the lifetime of his or her spouse will come within the mischief of the offence of bigamy. At the same time we should also delete from the proviso to s. 50 of the Indian Evidence Act, the last portion which says 'or in prosecutions u/s. 494, 495, 497 or 498 of the Indian Penal Code'. The National Committee on the Status of Women too made, more or less, similar recommendations in its report. It is also felt that ss. 493, 494, 495 and 496, IPC, which have an element of cheating in them and affect unsophisticated rural women more than women in urban areas should be made cognizable so that these poor women could get justice without being required to engage lawyers at their own cost.[24.]

The Courts are also changing their viewpoint. In *Indu Bhagya Natekar v Bhagya Pandurang Natekar*,[25.] it was held that it is not correct to say that in every case of bigamy, unless the second marriage can be proved by bringing in the evidence of the performance of ceremonies itself, a conviction under section 494 is virtually impossible. The accused can be convicted even if there is other reliable evidence to establish the charge.

Where in a particular community 'saptapadi' was not an essential ceremony, the provisions of section 7-A of the Hindu Marriage Act, 1955 applied and, therefore, the performance of other ceremonies prevalent in the community constituted a valid marriage.[26.]

Under the provisions of the Indian Christian Marriage Act (XV of 1872), the first accused, who was a Roman Catholic Indian Christian, married the complainant, who was a Protestant, in a Protestant Church, the ceremony being performed by a Protestant Pastor, and subsequently, after obtaining a release deed from her, he married the second accused in a Roman Catholic Church, the ceremony being performed by a Roman Catholic priest. It was held that the first accused had committed the offence of bigamy punishable under this section. The release deed executed by the complainant did not operate as a dissolution of the marriage between the first accused and herself. The marriage between the first accused and the complainant was a legal and valid marriage and, as it was subsisting when the first accused married the second accused, the marriage of the first accused with the second accused was void by reason of its taking place during the life of the complainant.[27.]

Good faith and mistake of law are no defences to a charge of bigamy.[28.]

### [s 494.4] Conversion from Hinduism.—

A married Hindu person contracted second marriage after embracing Islam. The Supreme Court said that despite his conversion he was guilty of the offence under section 17 of the Hindu Marriage Act, 1955 read with section 494, IPC, 1860 since mere conversion did not automatically dissolve his first marriage.[29.] The Court followed its own decision in *Sarla Mudgal v UOI*,[30.] which was to the effect that a Hindu husband who had, after conversion to Islam, contracted a second marriage without dissolving his first marriage was guilty of the offence under section 494.

**[s 494.5] *Ex parte* divorce.—**

The accused husband entered into second marriage after obtaining *ex parte* divorce against his first wife. The Court said that he could not possibly be convicted under the section, even if the *ex parte* divorce is subsequently set aside. Criminal proceeding against the husband was quashed, it being only an exercise in futility.[31.]

**[s 494.6] Custom of second marriage in the community.—**

A person was not allowed to be prosecuted under the section because of a custom in the community. The parties belonged to a scheduled tribe. Their marriage was governed by the customs and usages applicable to the tribe. There was no allegation in the complaint nor a proof of it that there was a custom of monogamy in the community.[32.]

**3. Exception.—**The Exception lays down three conditions:—

1. Continual absence of one of the parties for the space of seven years;

2. The absent spouse not having been heard of by the other party as being alive within that time; and

3. The party marrying must inform the person with whom he or she marries of the above fact.

**[s 494.7] *Locus standi* to file complaint.—**

According to section 198 of Cr PC, 1973, no Court shall take cognizance of an offence punishable under Chapter XX of the IPC (45 of 1860) except upon a complaint made by some person aggrieved by the offence. Where the person aggrieved by an offence punishable under sections 494 or 495 of the IPC (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, (with the leave of the Court) or by any other person related to her by blood, marriage or adoption.

**[s 494.8] Complaint by Second wife.—**

Section 494 is intended to achieve laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person". Having regard to the scope, purpose, context and object of enacting section 494 IPC, 1860 and also the prevailing practices in the society sought to be curbed by section 494 IPC, 1860 there is no manner of doubt that the second wife should be an aggrieved person. Until the declaration contemplated by section 11 of the Hindu Marriage Act, 1955 is made by a competent Court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of s 494 IPC and would be entitled to maintain a complaint against her husband.[33.]

**[s 494.9] Police report.—**

In the case of *Ushaben v Kishorbhai Chunilal Talpada*[34.],[35.] taking note of sub-section (4) of section 155, Cr PC, 1973 the Apex Court held that if a complaint contains the allegation about commission of offences both under section 498-A of the IPC, 1860 as well as section 494 of the IPC, 1860 the Court can take cognizance thereof even on a police report. The bar under section 198 would not be applicable as complaint lodged before police for offence under section 494 IPC, 1860 also related to other cognizable offences and if police files a charge-sheet, the Court can take cognizance also of offence under section 494 along with other cognizable offences by virtue of section 155(4) of the Cr PC, 1973.[36.]

### [s 494.10] Jurisdiction.—

According to section 182(2) of the Cr PC, 1973 any offence punishable under sections 494 or 495 of the IPC (45 of 1860), may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage or the wife by the first marriage has taken up permanent residence after the commission of the offence.[37.]

### [s 494.11] Divorce in foreign country.—

The marriage of the accused with the complainant was dissolved by a decree of divorce granted by a District Court in Sweden. The marriage of the accused with another lady after expiry of the period of appeal was held to be not an offence under the section.[38.]

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8. Act XV of 1872.
9. Act III of 1936.
10. *Pashaura Singh v State of Punjab,* AIR 2010 SC 922 [LNIND 2009 SC 1988] : 2010 Cr LJ 875 (SC).
11. Act XLIII of 1954.
12. *Padi v State*, AIR 1963 HP 16 [LNIND 1962 HP 8] .
13. *Chadwick*, (1847) 11 QB 173 , 205.
14. Where without granting divorce the court passed orders relieving the physically weak wife from the burden of the husband's sex demands and at the request of the wife permitted him to take another wife; that was held to be wrong. *Santosh Kumari v Surjit Singh,* AIR 1990 HP 77 [LNIND 1989 HP 19] : 1990 Cr LJ 1012 .
15. *Abdul Ghani v Azizul Huq,* (1911) 39 Cal 409 .
16. *Anwar Ahmed v State of UP,* 1991 Cr LJ 717 at 719. *Radhika Sameena v SHO Habeebnagar PS,* 1997 Cr LJ 1655 (AP), a Muslim entered into second marriage under the Special Marriage Act, 1954. He was liable to be prosecuted for the offence of bigamy.

17. *Bhaurao,* (1965) 67 Bom LR 423 (SC). For a critical examination of such cases, see MP Singh, *Bigamy* : *A Conjecture for Deconstruction*, (1988) 30 J ILI 225.

18. Proof must be by cogent evidence. The mere fact of living together as husband and wife or of some letters on the point would not do. Religious ceremony of *saptapadi* also not proved. *Revanasiddaswamy HM v State of Karnataka,* 1990 Cr LJ 1001 (Kant), no specific allegation that saptapadi was not required in the community. Second marriage not proved. *Santi Deb Berma v Kanchan Prava Devi,* AIR 1991 SC 816 : 1991 Cr LJ 660 .

19. *Kanwal Ram,* AIR 1966 SC 614 [LNIND 1965 SC 198] .

20. *Baby Kar v Ram Rati,* 1975 Cr LJ 836 (Cal); see also *Chandra Bahadur,* 1978 Cr LJ 942 (Sikkim).

21. *Gopal Lal v State of Rajasthan*, 1979 Cr LJ 652 (SC).

22. *L Obulamma,* 1979 Cr LJ 849 (SC). Acting upon these cases in *Kashiram v Somvati,* 1992 Cr LJ 760 , the MP High Court found evidence of second formally valid marriage, but the earlier one was performed while the accused was a child, lesser sentence was awarded and the parents who arranged the second marriage were not awarded jail term **citing**, *Bhunda Sukru v Chetram,* 1976 MPLJ 600 [LNIND 1975 MP 112] : 1977 Cr LJ 134 ; and *Priya Bala v Suresh Chandra,* AIR 1971 SC 1153 [LNIND 1971 SC 163] : 1971 Cr LJ 939 . Where the second marriage was performed according to the Arya Samaj Custom and it was pleaded that accordingly only three and a half-rounds of sacred fire were enough to complete the marriage, it was held that without *saptapadi* the marriage was not complete; *Urmila v State of UP,* 1994 Cr LJ 2910 (All). Where there was no proof of performance of necessary ceremonies in the second marriage, it was held that conviction for bigamy was not permissible and the accused could not be punished for attempt to commit bigamy, *Subir Kumar Kundu v State of WB,* 1992 Cr LJ 1502 (Cal). *D Vijyalakhsmi v D Sanjeeva Reddy,* 2001 Cr LJ 1583 , the first and second marriages should be proved to have been performed according to the legal or customary requirements applicable to the caste or community. The Andhra Pradesh State Amendment which has been approved by the President and which makes the offence cognizable would prevail over the Central Legislation in case of conflict. *P Satyanarayana v P Mallaiah,* 1997 Cr LJ 211 : (1996) 6 SCC 122 , the husband admitted second marriage after 10 years of desertion by his wife. The court said that the prosecution was not absolved of its burden of proving that the second wife was taken after solemnising due ceremonies of Hindu marriage. *Manju Ram Kalita v State of Assam,* (2009) 13 SCC 330 [LNIND 2009 SC 1363] , concurrent finding of three courts below of the existence of second marriage, the Supreme Court refused to interfere in such finding at the fourth place, and also not in the punishment awarded. *Purandar Sahoo v Golapi Sahoo,* (2007) 15 SCC 696 , disputes between man and wife, the latter left and lived with parents for 14 years, complaint of second marriage by the husband about four years ago from the date of complaint, prosecution not successful because neither there was any good proof of a second marriage, nor any explanation of four years' silence. *Manju Ram Kalita v State of Assam,* (2009) 13 SCC 330 [LNIND 2009 SC 1363] , petty quarrels could not be termed as "cruelty".

23. R Deb, *Offences Against Women*, 1985 Cr LJ, Journal portion, pp 9–16 (at p 11).

24. *Ibid*.

25. *Indu Bhagya Natekar v Bhagya Pandurang Natekar*, 1992 Cr LJ 601 (Bom).

26. *S Nagalingam v Sivagami,* AIR 2001 SC 3576 [LNIND 2001 SC 1898] , the accused being already a married man at the time he was convicted of the offence under the section. The matter was **remanded** to the trial court for proper punishment. *Manju Devi v State of Bihar,* 2000 Cr LJ 3382 (Pat), mere exchange of garlands could not take the place of a ceremony unless there was a custom to that effect. *Manjula v Mani,* 1998 Cr LJ 3244 (Ori), first marriage subsisting, second marriage proved by witnesses and entries in the marriage register under the

Hindu Marriage Act, 1955. Those who came to bless the second marriage were not held to be guilty of abetment. The court also said that solemnisation of second marriage in accordance with applicable ceremonies is not necessary for conviction, viz., section 7A of the Hindu Marriage Act, 1955. *Yelamanchali Nageswari v Venkata Prasada Rao,* 1998 Cr LJ 4128 (AP), admission of second marriage by the accused in the application for mutual divorce was not considered to be sufficient unless there was evidence of ceremonies or some other legally sanctioned form. See also, *Bhagwan Swaroop Srivastava v Asha Srivastava,* 1998 Cr LJ 265 (Raj); *Sutesh Kurnat v State of Rajasthan,* 1998 Cr LJ 601 (Raj); *Elango S v S Ravindran,* 1998 Cr LJ 3095 (Mad); *Sham Singh v Satabjit Kaur,* Cr LJ 4788 (P&H).

27. *Gnanasoundari v Nallathambi,* (1946) Mad 367. *Prasanna Kumar v Dhanalaxmi,* 1989 Cr LJ 1829 (Mad), where the date, place and form of second marriage were not given, nor witnesses indicated, complaint not good. *B Chandra Manikyamma v B Sudarasna Rao,* 1988 Cr LJ 1849 (AP), second marriage must be strictly proved. Converting into another faith for show off and solemnising a marriage under that faith, no second marriage is valid in law.

28. *Narantakath v Parakkal,* (1922) 45 Mad 986; *Abdul Ghani v Azizul Hiq,* (1911) 39 Cal 409 , dissented from. *Gomathi v Vijayaraghavan,* (1995) 1 Cr LJ 81 (Mad), the court did not order blood test of a child alleged to be from second wife for the purpose of proving a bigamous marriage. The mere birth of a child does not bring about a ceremonised marriage.

29. *Lily Thomas v UOI,* AIR 2000 SC 1650 [LNIND 2000 SC 827] : 2000 Cr LJ 2433 .

30. *Sarla Mudgal v UOI,* AIR 1995 SC 1531 [LNIND 1995 SC 661] : 1995 AIR SCW 2326 : 1995 Cr LJ 2926 : (1995) 3 SCC 635 [LNIND 1995 SC 661] .

31. *Krishna Gopal Divedi v Prabha Divedi,* AIR 2002 SC 389 [LNIND 2002 SC 142] .

32. *Surajmani Stella Kujur (Dr) v Durga Charan Hansdah,* AIR 2001 SC 938 [LNIND 2001 SC 412] .

33. *A Subhash Babu v State of AP,* AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] ; *Babu Ram Saini v State of Uttaranchal,* 2013 Cr LJ 1896 (Utt).

34. *Also see Pintu Alias Sujit Kumar Giri v State Of Orissa,* 2013 Cr LJ 2099 (Ori).

35. *Ushaben v Kishorbhai Chunilal Talpada*, (2012) 6 SCC 353 [LNINDU 2012 SC 25] : 2012 Cr LJ 2234 .

36. *A Subhash Babu v State of AP,* AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] ; *Victor Auxilium v State,* 2008 Cr LJ 774 (Mad).

37. *Azad @Naresh Kr Azad v State of Bihar,* 2012 (2) Crimes 652 [LNIND 2012 PAT 329] (Pat).

38. *T Venkateswarlu v State of AP,* 1999 Cr LJ 39 (AP).

## THE INDIAN PENAL CODE

## CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

### [s 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.**

**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.—

The offence mentioned in section 495 IPC, 1860 is extension of section 494 IPC, 1860 and also is an aggravated form of bigamy provided in section 494 IPC, 1860. The complainant (second wife) has adduced enough evidence to prove that the accused had concealed the fact of the former marriage by assuring her that he had taken divorce from his first wife and subsequently married her by performing the essential Hindu rites and ceremonies in accordance with section 7 of the Hindu Marriage Act, 1955. It is undisputed that accused first got married to Smt. Vijay Saini and thereafter to the complainant, as admission to this effect has been made by the accused himself in his statement under section 313 Cr PC, 1973. Accused was rightly convicted under section 495 IPC, 1860.[39.]

### [s 495.1] Right to file complaint.—

Non-filing of the complaint under sections 494 or 495 IPC, 1860 by the first wife does not mean that the offence is wiped out. Even otherwise, the second wife suffers several legal wrongs and legal injuries and hence, complainant (second wife) was having every right to file the complaint under section 495 IPC, 1860.[40.]

A bare perusal of the provisions of sections 493 and 495 of IPC, 1860 shows that the bodily relationship or sexual intercourse by a husband with his second wife falls under the category of offence under sections 493 and 495 of IPC, 1860 and it cannot be treated as rape as defined in section 375 of IPC, 1860.[41.]

39. *Babu Ram Saini v State Of Uttaranchal,* 2013 Cr LJ 1896 (Utt).