

# LAW CAPSULE



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For Law Competitive Exams

## OFFENCES RELATING TO MARRIAGE

### Introduction

Section 493 to Section 498A of the Indian Penal Code, 1860 (hereinafter referred to as IPC) defines and provides for Offences relating to Marriage. Section 494 states that Marrying again during lifetime of husband or wife is Bigamy [Read with section 50 of the Evidence Act and Section 198(1)(c) of CrPC].

However, the IPC provides for Exceptions to Section 494 of IPC, which are as follows:-

- (a) First marriage has been declared void by a court of competent jurisdiction;
- (b) Former husband/wife has been continuously absent for a period of seven years and not heard of as being alive provided that these facts are disclosed to the person with whom second marriage is contracted.

(For better understanding of the above provision please refer to Section 17 of the Hindu Marriage Act and Section 108 of the Evidence Act along with the judgment of Supreme Court in the Landmark case of *Sarla Mudgal v. Union of India*).

### Adultery

The husband alone has the right to prosecute the man who had an adulterous relationship with the wife [Read with Section 198(2) CrPC and Section 50 of the Evidence Act].

Essential ingredients of Adultery are stated in Section 497. They are as follows: -

1. Sexual intercourse
2. Woman must be married
3. Knowledge
4. Consent or connivance of Husband
5. Should not constitute rape

Note: This section provides for Exception of woman from prosecution.

### Cruelty by Husband or Relatives of Husband

Section 498A of IPC provides for punishment for husband or relatives of husband of a woman subjecting her to cruelty. The said section is strengthened by following provisions of CrPC and Evidence Act :-

- Section 174 CrPC- inquest proceedings compulsory
- Section 113B of the Evidence Act – Presumption as to dowry death
- Section 198A CrPC – Prosecution of offence

It may be mentioned that the offence of Cruelty by Husband or relatives of the Husband is not compoundable offence.

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