

Bigamy

Section 494 in The Indian Penal Code

Is Bigamy an offence in India-

- In India, bigamy is an offence against marriage and it is also criminal offence under Indian Penal laws. The bigamy law applicable to Hindus, Jains, Buddhists, Sikhs, Parsis, Christians [except Muslims]. Bigamy is one of the ground to seek divorce under Hindu Marriage Act 1955. The second wife is entitlement for maintenance, she is not entitle for property rights. In August 2009, the Law Commission of India recommended that bigamy should be made a cognizable offence.

Exception

- This section does not extend to any person whose marriage with such husband or wife has been declare 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.

- 494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

What is Bigamy?

- A person commits bigamy when he/she:
- When husband or wife living,
- marries ,but such marriage is void,
- by reason of its taking place during the life of husband or wife.

When is Bigamy offence ?

- Bigamy is an offence provided first husband or wife is alive. Section 5 of the Hindu Marriage Act, 1955, clearly states that a marriage could be valid only if neither of the party has a living spouse at the time of marriage. Section 11 of the Act declares second marriage to be null and void.

Bigamy shall not apply if:

- the first husband or wife is dead, or
- the first marriage has been declared void by the Court of competent jurisdiction, or
- the first marriage has been dissolved by divorce, or
- the first spouse has been absent or not heard of continually for a space of seven years. The party marrying must inform the person with whom he or she marries of this fact.

Religious Conversion for contacting second is also bigamy?

- In *Sarla Mudgal v. Union of India* (1995 AIR 1531 SC), the Supreme Court held that a man who has adopted Islam and renounced Hindu religion, marries again without taking divorce from the first wife, then such marriage is not legal. The person shall be punished for committing bigamy under section 494 of Indian Penal Code (IPC).

Where to file complaint under Bigamy law-section 494?

- The person aggrieved can file a case of bigamy either in court or at the police station. The father of an aggrieved wife can also make a complaint under section 494/495 of the Indian Penal Code. A petition for declaring the second marriage as void can be filed by the parties of second marriage and not the first spouse.

Proof not required for for lodging complaints under Bigamy law

- The Supreme Court has held that while lodging a criminal complaint it is not necessary for the aggrieved party to prove that marriage ceremonies were performed as it is for the trial court to decide the veracity of the allegations

If person hides first marriage and contacts second marriage ?

- Complaint for cheating can be filed under section 415 of IPC in case the person hides the fact of first marriage.

What is Punishment under the Act?

- Bigamy is a non-cognizable offence. It is bailable and compoundable with the permission of court if the offence is committed under section 494 of the IPC.
- The punishment for bigamy is imprisonment, which may extend till 7 years or fine or both.
- In case the person charged of bigamy has performed the second marriage by hiding the fact of first marriage, then he shall be punished with imprisonment of up to 10 years or fine or both. Such offence under section 495 is not compoundable.

Attending 2nd marriage is abetting bigamy?

- "It is a settled law that mere participation in the second marriage would not ipso-facto make the relatives or the participants liable for abetment to bigamy since abetment connotes an active suggestion or support to the commission of the crime." ruled Delhi High Court.

In India ,Catholics could face bigamy charges after annulment, remarriage?

- Catholics in India who remarry after the Church annuls a prior union could still face bigamy charges under the country's laws.

Whether applicable to Schedule tribes?

- This penal provision will not apply if the offender is a member of the Schedule Tribes.

Registration of Marriage compulsory?

- In order to stop second marriages and child marriages ,the registration of marriages is made compulsory as directions of Supreme Court

Bigamy & Hindu Law of Succession ?

- As per Hindu code, only the first wife is a legal heir of the husband while the second wife is not entitled to any share in the ancestral estate and, if the husband has died without leaving a will, even in his self-acquired property. Once the second marriage is declared null and void, the wife concerned cannot even claim maintenance as a matter of right. The high court of Bombay at Goa has held that the first wife is entitled to half the share while the share of the second wife in the property of the husband is $\frac{1}{8}$ th. While ruling that a second wife marrying in good faith has a share in the estate of her husband. The court ruled that in such cases the first wife gets half the share, the second wife is entitled to $\frac{1}{8}$ th of the share and the remaining $\frac{3}{8}$ th is to be shared among the children from both marriages.

Can children born out of wedlock can inherit father ancestral property?

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The Supreme Court has ruled that children born out of wedlock have the right to inherit their father's ancestral property. In *Revanasiddappa vs Mallikarjun* case, Justices G.S. Singhvi and A.K. Ganguly ruled that children from a second wife had rights to their father's ancestral property.

What is an live in relationship & applicability of bigamy laws?

- The supreme court of India in Kushboo case virtually equated Live –in relationship to marital relationship. In another case ,the supreme court also said Children born out of live-in are not illegitimate. “The live-in-relationship if continued for such a long time, cannot be termed in as "walk in and walk out" relationship and there is a presumption of marriage between them ..”Supreme Court in 2004 in the *Rameshchandra Daga vs Rameshwari Dagacase* ,where the maintenance rights of women in “informal relationships or invalid marriages” were upheld.These cases virtually encourage relationship outside-marriage,this created confusion in the minds of people.

- The law of bigamy is not applicable to live-in relationship as there is no legally contracted marriage. In order to prove offence of bigamy, there should be ample evidence to prove they have contracted second marriage without nullifying the first marriage.

THE CHILD MARRIAGE RESTRAINT ACT, 1929 &

THE PROHIBITION OF CHILD
MARRIAGE ACT 2006

What is a child marriage?

- It is a marriage to which either of the contracting party is a child. Child or minor under this law is defined as 18 years in the case of girls and 21 years in the case of boys.

- Child marriage is an age-old practice that has both social and religious sanction and cuts across all sections of society.
- Recognizing child marriage as a social evil, the Child Marriage Restraint Act (CMRA) 1929, popularly known as the Sharda Act, prohibited child marriages of girls below the age of 15 years and of boys below the age 18.

This law applied to all citizens of India.

- In 1928, the law was amended to make it more effective and raise the minimum age of marriage by three years i.e. from 15 to 18 years in case of girls and from 18 to 21 years in case of boys. The amended law came to be known as the Child Marriage Restraint Act, 1929. However, despite the law, child marriages continued to take place.

Reasons Why Child Marriages Continue

- A girl child is generally considered to be a burden,
- Lower dowry when the bride and the groom are young.
- The demand for a younger bride.
- Safety of the girl child from sexual violence.
- Way to secure the girl's future socially and economically.
- poor implementation of the law

Consequences of Child Marriage

- **Human Rights Violation:** A violation of Child Rights to a free life devoid of exploitation, full care and protection.
- **Denial of basic right** to a respectful and decent childhood their basic rights to good health, nutrition, education, and freedom from violence, abuse and exploitation.
- **Subjection to Physical, mental and emotional trauma** and also life threatening circumstances to which the child is not prepared what awaits hi,
- **Marriage entails family and societal responsibilities** and also acts as license though illegal in context of child marriage to engage in sexual activity amounting to child sexual abuse and rape.
- **Exposure to high risk diseases** HIV/AIDS & STI; poor health and quality of life

Child Marriage Restraint Act, 1929

- Definitions In this Act, unless there is anything repugnant in the subject or context,
- (a) “child” means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age;
- (b) “child marriage” means a marriage to which either of the contracting parties is a child;
- (c) “contracting party” to a marriage means either of the parties whose marriage is or is about to be there by solemnized;
- (d) “minor” means person of either sex who is under eighteen years of age,
- (e) “Union Council” means the Union Council or the Town Committee constituted under the Law relating to Local Government for the time being in force.

PUNISHMENTS

- **Punishment for male adult**

above eighteen years of age marrying a child. Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with **simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees**, or with both.

- **Punishment for solemnizing a child marriage.**

Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Punishment for parent or guardian concerned in a child marriage.

- Where a minor contracts a child marriage any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:
- Provided that no woman shall be punishable with imprisonment. For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

Imprisonment not to be awarded for offence under section 3.

- Notwithstanding anything contained in section 25 of the General Clauses Act, 1897, or section 64 of the Pakistan Penal Code, Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo only term of imprisonment.
- **Jurisdiction under this Act.** Notwithstanding anything contained in section 90 of the Code of Criminal Procedure, 1898, no Court other than that of a Magistrate of the First Class shall take cognizance of or try any offence under this Act.
- **Mode of taking cognizance of offence.** No Court shall take cognizance of any offence under this Act except on a complaint made by the Union Council, or if there is no Union Council in the area, by such authority as the Provincial Government may in this behalf prescribe, and such cognizance shall in no case be taken after the expiry of one year from the date on which the offence is alleged to have been committed.

Power to issue injunction prohibiting marriage in contravention of this Act.

- Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 9 of this Act prohibiting such marriage.
- No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to showcause against the issue of the injunction.
- The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

- Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.
- Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:
- Provided that no woman shall be punishable with imprisonment.

The Prohibition of Child Marriage Act, 2006

- The Prohibition of Child Marriage Act, 2006 was notified on 10 January 2007.
- To effectively deal with the problem of child marriages in India and to put in place a comprehensive mechanism.

Whom Does it Apply to?

- It applies to all citizens of India irrespective of religion, without and beyond India.
- It however, does not apply to the State of Jammu and Kashmir.
- It excludes the Renoncants of the Union Territory of Pondicherry from its application. For them the French Civil Laws are applicable as they are treated as citizens of France.

What Does this Law Provide for?

- The basic premise of the law is: To make a child go through a marriage is an offence.
- Child or minor is a person up to 18 years in the case of girls and 21 years in the case of boys.
The provisions of this law can be classified into three broad categories:
 - A. Prevention
 - B. Protection
 - C. Prosecution of Offenders

Prevention

- The law seeks to prevent child marriages by making certain actions punishable and by appointing certain authorities responsible for the prevention and prohibition of child marriages.
- These persons are responsible for ensuring that the law is implemented. It is also the responsibility of the community to make use of the law.

Protection

- 1. The law makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage.
- 2. It provides for maintenance and residence of the female contracting party.
- 3. It gives a legal status to all children born from child marriages and makes provisions for their custody and maintenance.
- 4. The law provides for all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.

The Child Marriage Prohibition Officer has been empowered:

- To provide necessary aid to victims of child marriage.
- To provide legal aid.
- To produce children in need of care and protection before the Child Welfare Committee or a First Class Judicial Magistrate,
- Where there is no Child Welfare Committee

Prosecution of Offenders

- 1. The law provides for punishment for an adult male above 18 years of age marrying a child.
- 2. It also lays down punishment for those performing/conducting/ abetting a child marriage.
- 3. It prescribes punishment for promoting or permitting solemnisation of child marriage, including for parents, guardians or any other person/association/organisation.
- 4. The law clearly states that women offenders in any of the above categories cannot be punished with imprisonment. However, they can be penalized by way of imposition of a fine.

Mechanisms under the law

- The authorities identified for prohibiting child marriage under the present law are:
 - 1. Child Marriage Prohibition Officer
 - 2. District Magistrate
 - 3. First Class Judicial Magistrate or Metropolitan Magistrate
 - 4. Police
 - 5. Family Courts
 - 6. Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer. These could include a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organisation

Reporting Child Marriages

- Any person can report an incidence of child marriage before or after it has been solemnised. An immediate report needs to be
- made to:
- The Police
- The Child Marriage Prohibition Officer or such persons as may be appointed to assist him/her
- First Class Judicial Magistrate or Metropolitan Magistrate
- Child Welfare Committee or a member of the Child Welfare
- Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006
- Child Line
- District Magistrate

Where to File a Complaint?

- Police Station :The police must make a DD entry (an entry in the Daily Diary Register maintained at every police station) and register an FIR (First Information Report) based on such complaint.
- District Magistrate : A complaint can also be filed with a Judicial Magistrate of First Class or a Metropolitan Magistrate.
- Child Welfare Committee or a member of the Child Welfare Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006
- Child Line
- (A complaint can be filed by any person, including those who report an incidence of child marriage. Such persons may include)

Persons Who can be Punished Under the Law Include

- • Whoever performs, conducts or directs or abets any child marriage (Section 10, PCMA 2006)
- • A male adult above 18 years marrying a child (Section 9, PCMA 2006)
- • Any person having charge of the child, including
 - 1. parent or guardian
 - 2. any member of organisation or association, promoting, permitting, participating in a child marriage or failing to prevent it(Section 11, PCMA 2006).

Offenders could Include Amongst Others

- The guardians/parents of both parties
- Priests
- Relatives/friends of both parties
- Neighbours of both parties
- Community leaders who give patronage to such marriages
- Marriage bureaus/persons responsible for fixing marriages
- Traffickers
- The bridegroom if he is over 18 years of age
- Caterers and other service providers

IMPORTANT SECTIONS IN "CHILD MARRIAGE PROHIBITION ACT, 2006"

- **Section 2(a and b)** – marriage between a boy who has not completed 21 years of age and girl who has not completed 18 years of age is called child marriage.
Section 9, 10, 11 – male adult marrying a child, person who performs, conducts, directs or abets any child marriage, parents or guardians or any person in charge of child are punishable for child marriage.
Section 13 the person performing child marriage against court injunction order shall be punishable.
Section 14 – child marriage solemnised in contravention of an injunction order is a void abinitio.
Section 15 – offence punishable under this Act shall be cognizable and non-bailable.
Section 16(1) – Government of Karnataka has notified some officers and staff of Department of Women and Child Development, Police, Health and Family welfare, Revenue, Education, Rural development and Panchayath raj, Social welfare, Labour, Backward classes, Municipal administration, Tribal welfare as child marriage prohibition officers as per the provision of this section.

THE PROHIBITION OF CHILD MARRIAGE (KARNATAKA AMENDMENT) ACT, 2016

- It has come into force from 03-03-2018.
- **Substitution of section - 3** Every child marriage solemnized on or after 03-03-2018 shall be void abinitio.
- **Amendment of section 9 and 13** – male adult marrying a child, the persons violating injunction order are punishable with rigorous imprisonment of minimum one year extendable upto 2 years or fine upto 1 lakh rupees or both.
- **Amendment of section 10 and** – persons who have conducted, abetted a child marriage are punishable with imprisonment of minimum one year extendable upto 2 years and fine upto 1 lakh rupees.
- **Amendment of section 11 and 13** – Women are also punishable with imprisonment.
- **Insertion of new section 15A** – Every Police Officers shall take cognizance of an offence committed in his jurisdiction under this Act, suo motto.
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DOWRY DEATH

(Section 304B of Indian
Penal Code)

INTRODUCTION

- According to section 304B Dowry Death, where the death of a woman is caused by any **burns or bodily injury or occurs** otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to **cruelty or harassment by her husband or any relative** of her husband for, or in connection with, any demand for dowry, such death shall be called “Dowry Death”, and such husband or relative shall be deemed to have caused her death.
- Dowry is defined under Section 2 of the Dowry Prohibition Act, 1961 ‘dowry’ means any **property or valuable security** given or agreed to be given either directly or indirectly-
 - (a) by one party to a marriage to the other party to the marriage; or
 - (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;
- at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies

Dowry (Ancient Scenario)

- The ancient marriage rites in the vedic period are associated with “kanyadan”. It is laid down in Dharmashastra that the meritorious act of kanyadan is not complete till the bridegroom was given a dakshina. So when a bride is given over to the bridegroom, he has to be given something in cash or kind which constitute Varadakshina. [?] Thus kanyadan became associated with varadakshina i.e the cash or gifts in kind by the parents or guardian of the bride to the bridegroom. The varadakshina was offered out of affection and did not constitute any kind of compulsion or consideration for the marriage. It was a voluntary practice without any coercive overtones

Dowry (Present Scenario)

- Today dowry has become a widespread evil and social menace and biggest problem faced by women. Marriage is becoming a big source of exploitation and of getting rich overnight in some communities. The spread of education has not helped in curbing the social evil of dowry. The, more highly educated is the young man, higher are the demands for the dowry. The dowry system is one of the primary cause of female infanticide and foeticide in India. Domestic violence is another consequences of this evil. Indian Parliament enacted the Dowry Prohibition Act, 1961, to minimize the evil effects of dowry. The object of Act is to prohibit the giving and taking of dowry.

Essentials of Dowry Death (Sec 304B)

- The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
- Such a death should have occurred within seven years of her marriage.
- She must have been subjected to cruelty or harassment by her husband or by any relative of her husband.
- Such cruelty or harassment should be for, or in connection with the demand for dowry
- Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Dowry related offences under IPC

- There are four situations when a married woman is subjected to cruelty and harassment leading to the commission:
 - 1) Cruelty of woman by husband or relatives.
Sec 498A, IPC
 - 2) Dowry Death 304B, IPC-
 - 3) Intentional Death of woman- 302, IPC
 - 4) Abatement of suicide of woman- 306, IPC

Cruelty

- Section 498A of Indian Penal Code deals with the offence of cruelty.
- Cruelty means 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 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.

Pawan Kumar V State of Haryana (1998)

- It is proved when demand for scooter and fridge, made soon after the marriage by the husband and his relatives. The deceased's failure to meet the demand leading to repeated taunts and maltreatment. Quarrel taking place between husband and deceased, regretting that it would be difficult to see her face in future are clear proof of cruelty and maltreatment by her husband and family members. The accused was held liable under section 304B, IPC

Dowry offences and Trial Dowry offences are:

- Not cognizable; they are cognizable for the purpose of investigation.
- Non- compoundable offences
- Non- bailable Cognizance of a dowry is taken up by The magistrate himself or on the basis of FIR, OR Complained lodged by: 1. A parent 2. Other relation of such person 3. Recognized welfare institute or Organization.
- Complaint can be made at anytime after the commission of the offence, but if it is done after considerable delay the court may not entertain it if no reasonable explanation for the delay is given.

Ashok Kumar V State of Haryana (2010)

- In this case, the deceased and Ashok kumar (appellant) were married for 2 years. The father of the girl had given sufficient dowry at the time of her marriage according to his mean, desire and capacity but the mother in law and brother in law of her were not satisfied so they allegedly harassed and maltreated the deceased and used to give her beatings. They had demanded various things like refrigerator, television etc. one week prior to the incident the deceased came to the house of her father and narrated them the whole scenario. She mentioned that her husband wanted to set up a new business for which he required sum of rupees 5000. the father could not arrange for the same due to which her mother in law and brother in law burnt the deceased by sprinkling kerosene oil as the result of which the deceased died.

Ashok Kumar V State of Haryana (2010)

- Ashok kumar (husband), mother in law and brother in law were found guilty of an offence punishable under section 304B of the code and sentenced the accused to undergo rigorous imprisonment for 10 years and to pay a fine of Rs 1000. ¶ While upholding the conviction, the apex court held that since the accused is a young person of 48 years, keeping in view the facts and circumstances of the case the court awarded seven years of rigorous imprisonment.

Venugopal V State of Karnataka (1999)

2 SCC 216

- The appellant husband was held liable for dowry death under section 304 B, IPC for creating a situation whereby the wife committed suicide within two years of marriage. [?] Constant demand of dowry leading to ill treatment, harassment and torture of the wife at the hands of the husband soon before her death, led her to take the extreme death of ending life.

Punishment

- According to Section 304B, IPC whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life

Conclusion



- Despite protest by women's organizations, serious activism, legal amendments, special police cells for women, media support and heightened awareness of dowry being a crime, the practice continues unabated on a massive scale. Despite every stigma, dowry continues to be the signature of marriage. It is an accepted fact dowry is not an easy problem to be eliminated. However such a social menace can be combated with effective strategic measures that would protect the dowry of the Indian bride and would allow such dowry to be treated as her exclusive property.





RAPE IPC SECTION 375

Unnatural Sexual Offences:


- Definition:
- **According section 377 IPC;** whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine



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- Rape: - Legal definition, not medical. - Defined in Section 375 I.P.C. - Major amendments done in 2013 as per “The Criminal Law Amendment Act 2013”
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- Definition of rape 8 OLD DEFINITION: A man is said to commit rape if he has sexual intercourse with a woman under the following circumstances:
 - 1. Against her will
 - 2. Without her consent
 - 3. With her consent
 - Fear of death or hurt
 - Impersonation (Not her husband)
 - Unsoundness of mind / intoxication
 - 4. With or without her consent when she is under 16 years of age.


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- • Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Contd

Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.



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- Criminal Law (Amendment) Act, 2013 2nd April, 2013
 - Substitution of new Sections for Sections 375, 376, 376 A, 376B, 376 C, 376 D • Rape
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- (a) The introduction (to any extent) by a man of his penis, into the vagina (which term shall include the labia majora), the anus or urethra or mouth of any woman or child—
 - (b) the introduction to any extent by a man of an object or a part of the body (other than the penis) into the vagina (which term shall include the labia majora) or anus or urethra of a woman

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- (c) the introduction to any extent by a person of an object or a part of the body (other than the penis) into the vagina (which term shall include the labia majora) or anus or urethra of a child. (d) manipulating any part of the body of a child so as to cause penetration of the vagina (which term shall include labia majora) anus or the urethra of the offender by any part of the child's body;

Punishment

- As per 376 IPC


1. 7 – 10 years.
2. If with wife not less than 12 years, 2 years.
3. Custodial Rape:
 - a) Police
 - b) Public Servant
 - c) Jail
 - d) Hospital
4. On pregnant woman
5. Gang Rape



For 3, 4 & 5: Punishment – 10 years to life imprisonment.



- Statutory Rape:


With consent, if age of girl
less than 18 years.

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- Marital Rape:
 - 1. Living separately and
 - 2. Without her consent

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- Rape by woman: Not recognized.
 - Age of the Accused: No age limit.
 - Burden of Proof: As per section 114 IEA.
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Examination of Victim

- Consent
 - History
 - Clothes
 - General Examination
 - Local Examination
 - Samples to be collected
 - Opinion
- 



Examination of victim of rape 22 Objectives of medical examination of the victim of rape

- To find out
 1. Any evidence of recent sexual intercourse
 2. 2. Injuries on the body suggestive of violence, struggle
 3. Age of victim if required
 4. If the victim is intoxicated or drugged

Examination of victim of rape 23

Precautions to be taken

1. Authorization

No exam without proper written order from police or court

2. Identification

By relatives, police, ID Marks

3. Female nurse


should be present throughout the exam

4. No delay

should be done as early as possible




Examination of victim of rape 24 Preliminary Data

1. Reference of requisition letter
 2. Name, age, sex, address etc of the victim
 3. Brought by ?, identified by?
- 




1] Consent:

- Age >12 years - Witnessed, written and informed consent is required - In absence of consent, examination cannot be undertaken
- 



2] History:

- Menstrual History
 - Marital Status
 - Obstetric History (If relevant)
 - History of venereal diseases
 - History of the incident
 - Resistance offered
 - Bath or local washing done?
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Adultery

Section 497 in The Indian Penal Code

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.

- The Court began to hear the arguments on this petition on 1 August 2018. The Court said that if the party challenging this section can simply prove that it violates Article 14 of the Constitution of India, then the section will be struck down.[\[9\]](#)

- A five-judge Constitution bench of the Supreme Court on 27 September 2018 unanimously ruled to scrap Section 497 and it is no longer as a offence in India

- While reading the judgment, Chief Justice [Dipak Misra](#) said, "it (adultery) cannot be a criminal offence," however it can be a ground for civil issues like divorce. [\[10\]](#)

- Advocate Jayna Kothari, Executive Director of CLPR, represented the intervenor Vimochana. She assailed the provision which categorised adultery as an offence by invoking the fundamental right to privacy, as recognised by the Supreme Court in Puttaswamy case. She argued that the right to intimate association is a facet of privacy which is protected under the Constitution.

- Section 497 was unconstitutional as the very basis for criminalising adultery was the assumption that a woman is considered as the property of the husband and cannot have relations outside of marriage. The same restrictions, however, did not apply in case of the husband. Section 497 violates right to privacy as well as liberty of women by discriminating against married women and perpetrating gender stereotypes.

- On 27.09.2018, a 5 Judge Bench of the Supreme Court unanimously struck down Section 497 of the Indian Penal Code as being violative of Articles 14, 15 & 21 of the Constitution.