

AN ANALYSIS OF OFFENCES RELATING TO MARRIAGE IN INDIA

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Abstract:

Marriage is a social institution without which no society be imagine. Marriage converts uncivilized society into civilized society. Marriage provides status to the parties. Marriage is mere more than physical relations as it establish relations between two partners, family & society. But a number of offences are committed behind the curtains of marriage such as adultery, domestic violence, marital rape, abuse & cruelty etc.As marriage is emotional union therefore it affects both parties mentally, emotionally as well as psychologically. As per the need of our society, legislature enacts certain laws for the protection from matrimonial offences. The executive body & judiciary plays a significant role in the enforcement of these laws and prevention of matrimonial offences.

Keywords: *Martial rape, Matrimonial offences, physical relation, domestic violence, matrimonial offences, Enforcement etc.*

Introduction

In Hindus, Marriage is a holy union between two persons who takes seven rounds as a witness to the sacred fire which is deemed to form of God. For most people in India, marriage is one time event in life. Marriage is the bond of seven births.

“Once it is tied, it cannot be Untied.”

“A great marriage in not when the perfect couple comes together. It is when an imperfect couple learns to enjoys their differences.”

In Muslims, Marriage is contractual in nature. As per Prophet Muhammad,“Marriage is my sunnah, and whoever does not follow my sunnah has nothing to do with me. Get married, for I am heartened by your great numbers before the nation.”

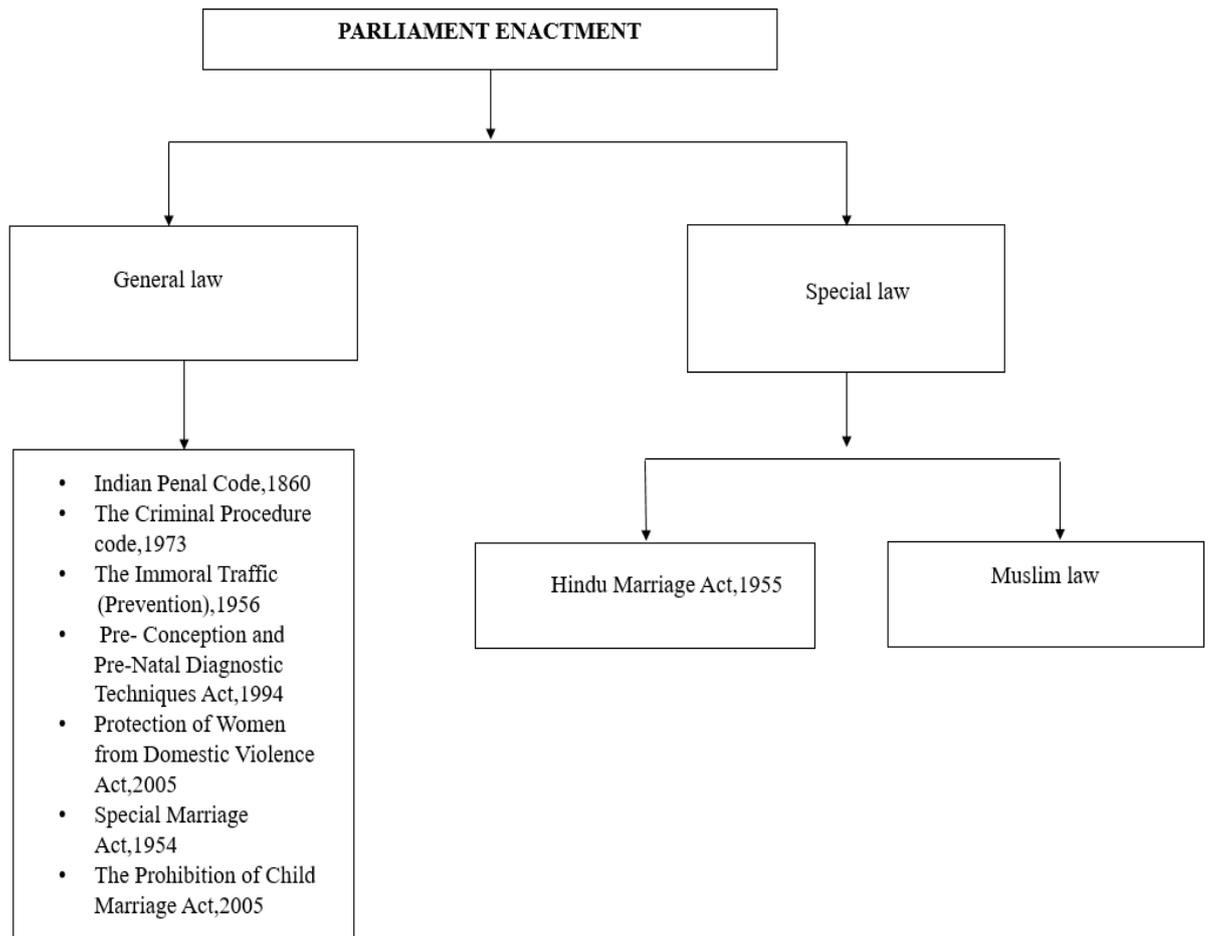
In ancient time, marriage is sacramental in nature however women was considered as a property of man and they treat women according to their wishes. Sati-Pratha, Prostitution, Demand of Dowry, Child Marriage, Poly-gamy, Cruelty, Abuse, Assault etc. were the offences committed against the women.

Due to the advancement of science, technology & time marriage becomes sacrament-cum-contractual in nature. The exploitation of women used to happen even earlier, it happens even today, but only its way has changed. In today’s time not only women but also men suffer from matrimonial offences.It includes various offences such as:-

- Cruelty
- Assault
- Abuse
- Child Marriage
- Dowry Death
- Domestic-Violence
- Adultery
- Bi-Gamy
- Prostitution
- Women trafficking
- Female Foeticide
- Desertion
- Mock &Invaild Marriage
- Marital Rape

Provisions relating to matrimonial offences:-

Time to time, Parliament enact different acts & provision relating to these offences.These are follows:-



Now we will discuss the various matrimonial offences in detail:-

1. Cruelty

No precise definition of cruelty exists, nor is it possible to do so. Acts or conduct constituting cruelty can be so numerous and varied that it would be impossible to fit them into any water-tight compartments. It may be physical and mental. It can be violence some attitude or even mere silence. **Russel v. Russel**¹: “Conduct of such a character as to have caused danger to life, limb, health, bodily or mental, or as to give rise a reasonable apprehension of such danger.”

Section 498A of Indian Penal Code 1860

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.”

Section 13(1)(ia) of Hindu Marriage Act, 1955

Cruelty was not a valid ground for divorce prior to 1976. It served as justification for judicial separation. Cruelty is now a cause for divorce under the 1976 Amendment Act.

Ompati v. Rajvir²: “It was held in the case that false allegations by the wife against her husband stating that he was having illicit relation with his sister-in-law amount to cruelty and it is valid ground for divorce.”

2. Assault

When a gesture is made to any person, knowing that the person is going to apprehend it as the person is going to use criminal force on that person is known as assault. Mere words do not consist of an assault. But a person may use certain gestures and expressions or preparation, such gestures, expressions and preparations may amount to assault. Assault is committed by either partner of a marriage with other partner. It affects both the partner so much and its consequences dissolve their marriage.

For example:-X (wife)shakes his fist at Y(husband), intending or knowing that may cause to believe Y that X is about to strike Y. X has committed assault.

Section 352 of Indian Penal Code,1860

Punishment for assault or criminal force otherwise than on grave provocation:-Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation- Grave and sudden provocation will not mitigate the punishment for an offence under this section. If the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in

¹ 1897(AC) 305

² AIR 2004 P&H 171

obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or if the provocation is given by anything done in the lawful exercise of the right of private defence. Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

3. Abuse

Abuse means use of immoral words and performing immoral acts by either spouse with the other spouse. Abuse may be either by verbal or gesture. It may be sexual, emotional, physical and mental. Husband and wife both uses abusive words for each other due to which their marriage becomes disturbed. Now a days, it has been increasing. It covers under **Section 3 of the Domestic Violence act 2005** and punishable thereon.

These small-small misunderstanding and quarrels results in broken of faith and belief and later on marriage.

4. Child Marriage

“Child” marriage is big issue from the ancienttime. Child means a person who is under the age prescribed by then law.

Section 2(a) of Prohibition of Child Marriage Act, 2005

“Child” means a person who, if a male, has not completed 21 years of age, and if female, has not completed years of age .

Section 2(b) of Prohibition of Child Marriage Act, 2005

“Child marriage” means a marriage to which either of contracting is a child.

Section 3 of Prohibition of Child Marriage Act, 2005

Every child marriage solemnised shall be voidable at the option of the party who was child at the time of marriage.

Section 5(iii) of Hindu Marriage Act, 1955

The bridegroom should have completed the age of 21 years and the bride, the age of 18 years at the time of marriage.

*Naumi v. Narottam*³: The high court of Himachal Pradesh held that the child marriage is valid as it is neither void nor voidable.

5. Dowry Death

Dowry is considered as sin for the society. It is demand of wealth of either type by either parties to the marriage. It is not necessary that only bridegroom family demands dowry, however in few states during marriage, dowry is demanded by the bride family.

Section 2 of The Dowry Prohibition Act, 1961 (Definition of ‘dowry’)

In this act, ‘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.

*Rajesh Kumar and others v. State of U.P.*⁴: In this case, Rajesh Sharma (Appellant) and Sneha Sharma (Respondent) married on November 28th, 2012. Sneha’s father gave the dowry to the best of his ability, but the Appellants were not pleased. They began harassing or beating the Complainant and demanded Rs. 3,00,000/- in dowry and a vehicle. Since the Complainant’s pregnancy had been aborted, the Appellant had left her at her house. On that occasion, the Appellant was called under Sections 498A and 323 of the IPC. The wife filed a civil suit against the Appellant and his family. She claimed that her husband demanded dowry when she was pregnant and that she was tormented by her spouse and his family members, resulting in the termination of her pregnancy.

In this case, it was determined that in order to protect the innocent person, i.e., the husband as well as their relatives, the Court directed the formation of a “Family Welfare Committee” to deal with Section 498A of the IPC, and that no one would be arrested until the committee provided justice to the Complainant. “The committee’s primary goal is to separate genuine cases from fraudulent ones.” To provide assistance to victims of false complaints. The accused who wasn’t in the jurisdiction cannot be excused from making personal appearances in court and must attend through video conference.”

6. Domestic-Violence

Domestic violence is an evil for the society. In India, every time a women is assaulted for any reasons such as for refusing to physical relations, dowry demand, for not having a male child and etc. As from the earlier time women is harassed because she is women. But now days, a number of men suffer domestic violence. Domestic violence is the main reason of matrimonial disputes. The Domestic Violence Act 2005 is enacted by the Parliament and it is central legislation which is religion neutral. It provides meaning of domestic violence, procedure for obtaining relief and etc.

Section 3 of The Protection of Women from Domestic Violence Act, 2005 (Definition of domestic violence)

For the purpose of this Act, any act or omission, commission or conduct of the respondent shall constitute domestic violence in case it—

- (a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or,
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or,
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation For the purposes of this section,—

³ AIR 1963 HR 15

⁴ Criminal appeal no. 1265 of 2017

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “Sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “Verbal and emotional abuse” includes—

(a) Insults, ridicule, humiliation, name calling and insults or ridicule specially, with regard to not having a child or a male child; and

(b) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

*Sandhya Wankhede v. Manoj Bhimrao Wankhede*⁵: In this case the court held that complaints can be filed not only against the adult male person, but also against the adult male’s female relative.

7. Adultery

Adultery as a ground for divorce that is available to both parties in a marriage. Adultery is defined as voluntary sexual activity outside of marriage. It is the petitioner’s responsibility to show that there was a valid marriage and that the respondent had sexual relations with someone other than him or her.

Section 13(1)(i) of Hindu Marriage Act, 1955

“It is valid ground for divorce for the parties, if any party after the solemnisation of marriage, had voluntary sexual intercourse with any person other than his or her spouse.”

*Joseph shine v. Union of india*⁶: “The court upheld the constitutional validity of the section 497 read with section 198 by stating that this provision disables both husband and wife from punishing each other for adultery but it is ground for divorce.”

8. Bigamy

It consist of two words “Bi” means “two” and “Gamy” means “marriage.” It means that a spouse have two living spouses at the time of living of earlier spouse.

As per Section 5(i) of the Hindu Marriage Act, 1955

Marriage between two Hindus can be contracted only when “Neither party has a spouse living at the time of the marriage.”

Here, ‘Hindu’ includes any person who is a Buddhist, Jain and Sikh.

Section 11 of Hindu Marriage Act, 1955

Declares all marriage which is solemnized after the enactment of this act, is in contravention of Section 5(i), it is void.

Section 17 of Hindu Marriage Act, 1955

Provides for the punishment for bigamy in accordance with Section 494 and 495 of the Indian Penal Code (hereinafter IPC), which is discussed in detail below. Further, for a wife to file a case under Section 11, she needs to be a part of the marriage.

Section 494 of Indian Penal Code, 1860

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.

Section 44 of Special Marriage Act, 1954

Punishment of bigamy.—Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code, 1860 (45 of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.

*Smt. Sarla Mudgal v. union of India*⁷: “In this case the Supreme Court held that the second marriage of a Hindu-husband after conversion to Islam without having his marriage dissolve under law would be invalid, the husband would be guilty under section 494 of Indian penal code 1860.

9. Prostitution

Prostitution is a global phenomenon. It is worst form of women exploitation of 21st century every minute of the day a women and child is sold. In India prostitution is not illegal but keeping and using premises as a brothel, living on the earning of prostitution etc. is punishable. Thus if prostitution is done independently or voluntary then it would not amount to offence.

*Cleveland v. U.S.*⁸: “Prostitution suggests sexual relation for hire.”

⁵ SLP(Crl.) No. 2854 of 2010

⁶ (2019) 3 SCC 39, AIR 2018 SC 4898

⁷ AIR (1531), 1995 SCC (3) 635

The Immoral traffic (Prevention) Act, 1956 deal with case of prostitution.

10. Female Foeticide

Foeticide means the abortion or killing of the child. Our society is patriarchal society and it is biased towards giving birth to male child so that there supremacy is maintained in the society. Female foeticide is most violent crime on this earth as the child who is unknown to the world is killed. It is most heinous crime in this planet and eyes of the law. This heinous crime is mainly of two grounds:

- (a) Preference to culture
- (b) Financial burden

In our society, son is always considered asset and daughter is liability. But now a days, government is working to prevent this heinous crime by enacting certain laws as:

- (a) **Section 312 of Indian penal code 1860:** “Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.
- (b) **Pre Conception and Pre Natal Diagnosis Techniques Act ,1994**
- (c) **Medical Termination of Pregnancy Act, 1971 & now MTP amendment 2021 prevails.**

11. Desertion

The Indian Parliament explains in sub-section (1) of Section 13, Hindu Marriage Act, 1955 that “the expression ‘desertion’ means the desertion of the petitioner by the other party to the marriage without reasonable cause and the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly”.

Section 13(1) (i)(b) Hindu Marriage Act, 1955

“It is valid ground for divorce for the parties, if any party deserted the petitioner for a period of not less the two years immediately preceding the presentation of the petition.”

*Gita JagdishMangtani v. JagdishMangtani*⁹: It was held in this case that on wilful neglect by either spouse is a valid ground of divorce on the basis of desertion.

12. Marital Rape

Marital rape means the sex with wife without her consent. As marriage is relation between two persons in which they are physically involved. Many women suffers from that as the marriage is based on emotional and the husband ill-treat behaviour effects the wife. Just because she is married, does she lose her right to say “NO”?

It is a challenging issue whether the sex without consent after marriage constitutes an offence under section 376 of Indian Penal code 1860.

Status of marital rape at global level:-

Australia criminalise the marital rape in 1981.

Canada in 1983 say about the marital rape and also criminalise the marital rape in Canadian law. Rape also including spousal rape. It is illegal and punishable upto 8 years imprisonment under section 3(1) of sexual offences act, 1995.

U.K also criminalise marital rape in 2003.

In South Africa some countries not criminalised but forced marital sex still punishable.

But in our Indian law there is no law which punishes for that. According to section 375 Indian penal code only rape is punishable but spousal rape is not under section 375 exception 2.

Exception 2 of section 375 of Indian penal code 1860 said, “ Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. (In 2017, judgement of Supreme Court read down the exception only to the amending the age 15 years into 18 years for criminalising a husband’s rape of his minor wife.)

Now, issue is arising in Delhi high court for the challenging exception 2 of the section 375 of Indian penal code, 1860 by NGOs and senior advocates Rebecca John and Rajsekhar Rao of Delhi High Court.

Four Petitions were filed in which two came through the public interest litigation by NGO’s RIT Foundation and All India Democratic Women’s Association. And one petition filed by Mrs Khushoo Safi to bar her husband and also prosecuting the complaint of rape against her husband. And other by Mr Farhan.

On this matter there is split verdict by Delhi High Court on criminalisation. Two judges (Rajiv Shaktidher and Hari Shankar) of Delhi High Court heard the matter and they delivered different views on the issue.

Justice Rajiv Shaktidharis in favour of marital rape because in view of Justice Shaktidhar it violates the principle of article 14 and article 21 of Indian constitution. They are fundamental rights of every citizen of India. And Justice Hari Shankar is against of marital rape because according to Justice Shankar exception 2 of section 375 of Indian penal code is not unconstitutional.

Because of the split verdict of judges matter was send to the bench of odd judges of Delhi high court. And certificate granted by both judges of Delhi high court for Special leave petition in Supreme Court under article 136 of constitution because it involve “substantial question of law”.

Also, Gujarat high court said how the consent of woman based on her marital status.

⁸ (Utah 67 S.Ct.13)

⁹ Appeal civil 576 of 2003

Karnataka high Court said case should be filed for martial rape also.

Kerala high court has passed a landmark order acknowledging a woman's autonomous and individual rights in a marriage and martial rape amounts to cruelty and is a ground divorce. The bench of Justices A. MuhamedMustaque and Kauser delivered the order in July, 30 while hearing a woman's petition seeking a divorce from her husband on ground of harassment and cruelty.

Suggestions

- Parliament should be amended in matrimonial laws as in ancient time mostly women were suffered by matrimonial offences but, in present time men also suffered by it due to advancement of technology and science.
- Parliament should also enacted the laws related to martial rape. The Supreme Court also itself and directs the subordinate courts for the strict interpretation of the matrimonial laws.
- Uniformity of matrimonial laws.

Conclusion

Marriage is considered to be an institution in India, it is a 'Sanskara' or pure ceremony. Because in earlier time marriage was not only between two individuals but also between two families. If any dispute and misunderstanding arose between individuals there family acted as mediator between them to resolve their problem because according to them marriage is like "Bone to bone and flesh to flesh of each other."

In ancient time, marriage was a bond of love but now it has become a noose of hanging because a number of offences attach with it. Marriage has become a game for the people, due to which not only the lives of the parties have been spoiled but the child also suffered. Marriage gain a form of contract hence it is easily dissolve and reunite.

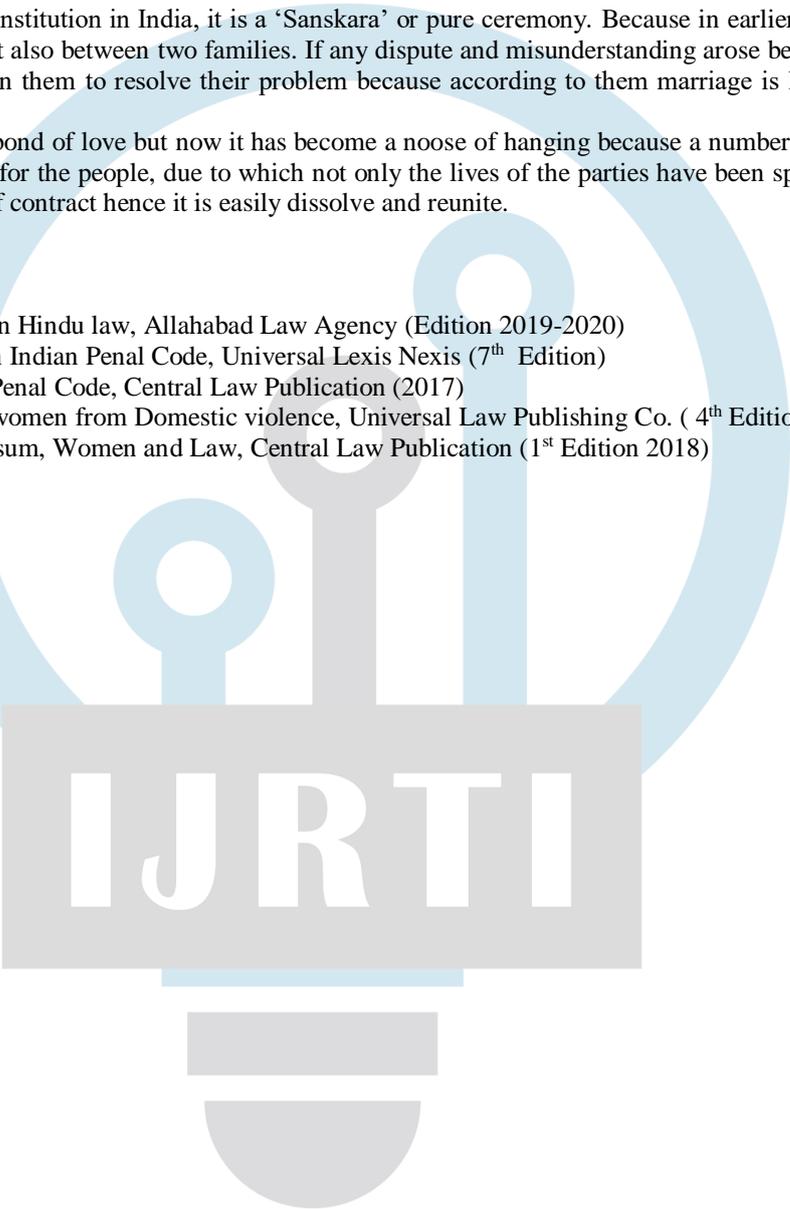
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