

**LL.B(3 YEAR.) SEM-2 UNIT-2**

**LAW OF CRIMES -II**

**Q.1- What do you mean by ‘Obscene acts and songs’? Examine the test of obscenity with the help of the relevant cases.**

**Q.1(a)- What do you mean by obscene acts and songs?**

**Ans.** Under the Indian Penal Code (IPC), Sections **292, 293 and 294 deal with the offence of obscenity.**

- **Section 292** says that any content shall be deemed to be obscene if it is lascivious or appeals to the prurient interest, or if its effect tends to deprave and corrupt persons likely to read, see or hear the content.
- This section **prohibits the sale or publication** of any obscene pamphlet, book, paper, painting, and other such materials.
- **Section 293** criminalises the **sale or distribution of obscene objects** to anyone who is under the age of 20, or an attempt to do so.
- Although it is a bailable offence, the maximum punishment for the first conviction is **three years of imprisonment** and a **fine up to Rs 2,000**, and for the second conviction seven years with a fine up to Rs 5,000.

**Q.1(b)- Name the tests of obscenity.**

**Ans.** There are mainly three tests to check the content or any art or gesture is really obscene or not.

- Miller test(**Miller v. California (1973)**)
- Hicklin Test( **Regina v. Hicklin (1868)**)
- Community standards test(**Aveek Sarkar v. the State of West Bengal (2014)**)

**Q.1(c) What do you mean by Hicklin test.**

**Ans.**

- **This test is a legal test for obscenity came from the English case Regina v. Hicklin (1868) .**
- **The case totally based on the interpretation of the word “obscene”.**
- In the case Justice Cockburn stated the **Hicklin test of obscenity as:**
  - Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such influences, and into whose hands a publication of this sort may fall.
  - In simple words, **a work can be considered as obscene if any part of it is proven to degrade individuals** whose brains are open to such influences.

**Q.1(d) In which case Hicklin test was introduced in India?**

**Ans.**

- In the case of **Ranjit D Udeshi v. State of Maharashtra (1965), Justice Hidayatullah introduced three modifications** to the Hicklin test:
- **Sex and nudity in art and literature** alone cannot be evidence of obscenity.
- The work must be **evaluated as a whole**, considering both obscene and non-obscene parts.
- **Publication for the public good can be a defence** against the charge of obscenity.
- While applying the **Contemporary community standards test**, the Supreme Court abandoned the Hicklin test in the case of **Aveek Sarkar v. State of West Bengal (2014)**.
- This test states that the evaluation of obscenity should consider the present community standards reflecting the sensitivities and tolerance levels of an average, rational person.

**Q.1(e) Discuss the ‘Miller Test’.**

**Ans.**

- Miller test is a famous test applied by the United States of America, it is named after the U.S Supreme Court decision in **Miller v. California (1973) .**
- This test faced challenges with online obscenity cases.

- In this case, Melvin Miller mailed five distrustful brochures to the manager of the restaurant which contained conspicuous images and drawing of men and women engaged in different sexual activities.
- After the manager read the mail, he filed the case of Obscenity against Mr. Miller and he was prosecuted for violating the California Law.
- There are three parts of the Miller test. They are:
  - The average person, enforcing the contemporary *community standards*, would find that work, taken as a whole, appeals to the prurient interest.
  - Whether the work depicts or describes, in a *patently offensive* way, sexual conduct specially defined by the applicable state law.
  - The work, taken as a whole, short of serious *literary, artistic, political or scientific* value.

The work is considered obscene only if all three conditions are satisfied. The first two points of this test are for the standards of the community, and the last point is held to a person of the United State as a whole.

**Q.1.(f)- Write a short note on Community standards test.**

**Ans.**

- The scope of obscenity has been significantly reduced by the judiciary over the years. In the *Aveek Sarkar v. the State of West Bengal (2014)*
- the Supreme Court did not apply the British Hicklin test and used the American Roth test instead. As per this test, obscenity was to be evaluated from an average person's perspective, applying prevailing community standards.
- The contemporary community standards test takes into account the changing values in society and how something which could be considered obscene ten years back would not be considered obscene today.
- The Hicklin test was toppled in United State v. One Book Called Ulysses , in 1933, which was taken from an English case which a district judge permitted to allow James Joyce's "Ulysses" to be sold in America.
- Judge John M. Woosley focused on the Literary value of the entire work and its effects on a person with average sex instincts.
- At that time, the word obscene defined as tending to stir the sex impulsion or to lead to sexually impure and salacious thoughts.
- The government of the U.S appealed Woosley's decision, but the U.S Court upheld his finding that Ulysses book did not come under obscene material.

**Q.2. Discuss the law relating to 'rape' as laid down in the Indian Penal Code.**

**Q.2. (a) When is it said a man has committed rape.**

**Ans** The offence of rape is a serious offence done against the whole society. Sec. 375 defines rape and Sec. 376 provides for its punishment. According to Section 375.

A man is said to commit "rape" if he –

- a. Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b. Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d. Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

Such Act must be done under any of the following seven circumstances-

1. Against her will.
2. Without her consent

3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or hurt
4. 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.
5. With her consent when at the time of giving such consent, because 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.
6. With or without her consent, when she is under eighteen years of age.
7. When she is unable to communicate consent.

**Q.2. (b) What do you mean by custodial rape.**

**Ans.**

- When any woman is in the custody of any police officer or public servant or in jail and the accused taking the advantage of his official position, commits rape, such sexual intercourse would amount to custodial rape.
- Due to the seriousness of this offence, it provides enhanced punishment.
- The provision of custodial rape is provided in sec. 376(2)(a),(b),(d) and it provides the punishment of rigorous imprisonment up to 10 years which may be for life and also with fine.
- Sec. 376(2)(a) punishes those police officials who commits rape on any woman in their custody in police station or in its premises.
- Sec. 376(2)(b) punishes those public servants who take the advantage of their official position and commits rape on woman in his custody.
- Sec. 376(2)(d) punishes the management or the staff of a jail, remand home or other places of custody, who taking advantage of their official position, commit rape on any inmate of such jail or remand home etc.

**Q.2. (c) What is the Punishment for Rape ?**

**Ans.**

- Except in certain aggravated situations, the punishment will be imprisonment of not less than seven years but it may extend to imprisonment for life, and shall also be liable to fine.
- In aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life, and shall also, be liable to fine.

**Q.2. (d) Write a short note on Gang Rape.**

**Ans.. Gang rape(sec 376D)**

- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape
- Such persons shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:
- Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

**Q.2. (e) Write a note on the case Mukesh & Anr. v State for NCT of Delhi & Ors.**

**Ans.**

- The case is famously known as the Nirbhaya case. In this case, a 23-year-old medical student was returning after a movie with her friend and took a bus.

- On the bus, she was gang-raped by six people and was brutally assaulted. After the rape, she along with her friend were thrown out of the bus naked.
- The girl died while she was being treated in a hospital in Singapore.
- In this case, the Supreme The court awarded death penalty to four of the accused among six.
- One of them being a juvenile was convicted by the Juvenile Justice Board and sent to the correctional home.
- The other one committed suicide before the judgment was delivered.

**Q.2. (f) What changes were made in the punishment for rape after the Nirbhaya case.**

**Ans.**

- After this case, the need to amend certain provisions of Section 375 was felt so the Criminal Law (Amendment) Act, 2013 was brought into effect. Under the newly amended section, the punishment of rape is at least seven years which may extend to life imprisonment.
- Any man who is a police officer, medical officer, public officer, or public servant may be imprisoned for at least 10 years if commits rape.
- Where rape leads to the death of the victim or entered into a vegetative state the punishment of life imprisonment extending to death has been prescribed. The punishment for gang rape is at least 10 years.

**Q.3. What do you understand by Adultry? Discuss the constitutionality of Sec 497.**

**Q.3.(a) What do you mean by Adultry?**

**Ans.** When a man does sexual intercourse with a women, whom he has knowledge and reason to believe to be wife of another man , without the consent or connivance of her husband . Such sexual intercourse not amounting to the Rape , is guilty of the offence of adultery .

**Essential Element Of Adultery**

1. Sexual intercourse must be committed with the wife of another man.
2. The person must have knowledge or has reason to believe that the women is wife of another man.
3. Without the consent or connivance of her husband.
4. Such sexual intercourse must not amount not rap e.
5. Consent or willingness of women is not excuse to the crime of adultery.

**Q.3.(b) Discuss important cases on constitutionality of this offence.**

**Ans. Yusuf Aziz V. State of Bombay 1954 [1]**

- This was the first case in which the Adultery law was challenged in 1951.
- It was challenged for being violative of Fundamental Rights under Articles 14 and 15 of the Constitution. The petitioners contended that Section 497 of IPC discriminated against men by not penalising women in an adulterous relationship.
- The court held that Section 497 of IPC is constitutionally valid under Article 15(3) of the Indian Constitution.
- The court asserted that the rationale behind introducing Adultery law was that in most cases, it is the woman who is the victim and hence, cannot be a perpetrator. However, the irony in the case was that although the court considered women as the victims in cases of Adultery, they did not provide them with the right to file a complaint.

**Sowmithri Vishnu V. Union of India 1985**

- Even after the judgment, in this case, the ambiguity around the validity of Adultery law could not be resolved.

- The Supreme Court held that in order to protect the sanctity of marriage, both the husband and the wife should not be allowed to file a complaint against each other in case of an adulterous relationship. However, the court retained the criminalization of marriage under IPC.
- The court also held that if an unmarried woman indulges in a sexual relationship with a married man, she would not be held liable for Adultery and if an unmarried man enters into a sexual relationship with a married woman, then that man would be held liable for punishment under Section 497 of IPC.

### **V Revathy v. Union of India 1988**

- The court in this case held that the rationale behind the non-prosecution of women in cases of Adultery was to protect the sanctity of a marriage and in turn, promoted a social good.
- It was "a shield rather than a sword" and it gave the couples a chance to "make up".
- Therefore, the court held that Adultery law does not infringe on anybody's constitutional rights and hence, it was completely valid.

### **Q.3.(c) In which case sec 497 was declared unconstitutional? Discuss.**

**Ans.**

- The constitutionality of Section 497 of IPC was challenged in the case of **Joseph Shine v. Union of India, 2018**.
- In this case, the petitioners contended that criminal law should be used only as the last method of social control and it should not be used to check or control private morality or immorality.
- Centre, on the other hand, argued that Adultery is an intentional action which impinges on the sexual fidelity and sanctity of marriage.
- It is an action knowingly and willingly done with the full knowledge that it would hurt the family, the children and the spouse.
- After hearing both the sides, the Supreme Court in a Bench headed by the then Chief Justice of India, Deepak Misra, pronounced that Section 497 of the Indian Penal Code is unconstitutional and hence, struck it down.
- The court held that the provision was based on gender stereotypes and hence violated Article 14 (equal protection of laws) and Article 15 (non-discrimination on grounds of sex) of the Indian Constitution.

### **Q4. What do you understand by cruelty by husband or relatives of husband? Critically examine the constitutional validity of the provisions of this section.**

#### **Q4.(a) What was the Reason for addition of Section 498A?**

**Ans.**

- Due to the increasing incidents of violence against women, a new chapter XX-A was added in IPC through the Criminal law (Amendment) Act, 1983. By the newly inserted sec. 498-A, the cruelty with a married woman was declared as an offence. According to sec. 498-A.
- Prior to 1983, there was no specific provision in Indian law that specifically addressed domestic abuse or cruelty within the context of marriage. The Amendment to the Indian Penal Code in 1983 brought about a significant change by introducing Section 498A, which aimed to tackle the issue of "matrimonial cruelty" against female spouses.
- The inclusion of Section 498A in the IPC marked a crucial milestone in recognizing the pervasive problem of domestic violence and dowry-related offenses faced by married women in India. It acknowledged that women within the institution of marriage were particularly vulnerable to abuse and required legal protection.

#### **Q4.(b) What do you understand by cruelty by husband?**

**Ans.** According to sec 498-A-

- 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.
- For the purposes 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.

**Q4.(c) Write down the essentials of sec 498-A.**

**Ans.** Essentials of Section 498-A

There are certain important essentials of Section 498-A, and fulfillment of these essentials is a mandatory pre-requisite for the application of Section 498-A.

### **1. Married women**

To attract the application of Section 498-A, the women must be married. Section 498-A has been inserted in the Act to protect and safeguard a woman from the cruel and unruly behavior of her husband and/or in-laws.

### **2. Cruelty or harassment**

For the application of Section 498-A, married women must have been treated with cruelty or harassment. Cruelty here includes a wide range of cruelties such as mental, physical, emotional, psychological, financial, etc.

### **3. Husband or in-laws**

To attract the application of Section 498-A, such cruelty or harassment must have been shown to a married woman either by her husband or by the relatives of her husband for any reason.

### **4. Wilful conduct**

Another important essential of Section 498-A is there should be wilful and intentional conduct to cause any sort of harm to a wife or daughter-in-law for any reason.

**Q4.(D) Write the important cases of sec 498-A.**

**Ans.**

### **1. Kans Raj v. the State of Punjab, AIR 2000 SC**

- In this case, the Court observed that for the fault of the husband, the in-laws or any other relations cannot, in all cases, be held to be involved in the demand of dowry.
- In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond a reasonable doubt.

### **2. Sushil Kumar Sharma v. UOI, (2005) 6 SCC**

- In this case, it was held by the Supreme Court that:- "Provision of S. 498A of Penal Code is not an unconstitutional and ultra virus.
- The mere possibility of abuse of a provision of law does not per se invalidate legislation. Hence plea that S. 498A has no legal or constitutional foundation is not tenable.
- The object of the provisions is the prevention of the dowry menace.

### **3. Manju Ram Kalita v. the State of Assam, (2009)**

- The court relying on several precedents observed that the meaning of “Cruelty” differs in each statutory provision and hence must be established in the context of Section 498A of IPC.
- The conduct of the man, the seriousness of his acts must be compared with the likeliness of the woman to commit suicide, etc.

- It must be established that the woman has been subjected to cruelty continuously or at least in close proximity of time of lodging the complaint. Petty quarrels would not come under the purview of “cruelty”.

**Q.5. Write short answers of the following**

**(i) Voyeurism**

**(ii) Stalking**

**(iii) Bigamy**

**(i) Voyeurism [Section 354C]**

- This offence came into existence after Nirbhaya Rape Case, 2012. It is mentioned under Section 354C, IPC. The word ‘voyeurism’ means appeasement derived from observing the genital or sexual acts of others usually secretly.
- This provision is divided in two different parts. Firstly, when a person watches or captures image of a woman engaging in some private act and secondly, when the person disseminate or spread such image.
- The first offence is punishable with imprisonment of not less than one year which may extend upto three years with fine.
- The second offence is punishable with imprisonment of not less than three years which may extend upto seven years with fine.

**Ingredients**

1. The accused must be a male.
2. He must watch or capture the image.
3. The woman whose images are captured must be engaged in some private act.
4. The circumstances must be such that she has the expectations of not being observed by the perpetrator;  
or
5. The accused disseminates that image.

**(ii) Stalking [Section 354D]**

- Section 354D, IPC talks about The term ‘stalking’ which generally means the act of following or trying to contact despite disinterest of woman.
- This section contains two offences. Firstly, where a man follows or contacts or attempts to contact a woman repeatedly despite her clear indication of disinterest and secondly, where a man monitors the use by a woman of the internet, email, or any other form of electronic communication.
- For the first conviction, the punishment prescribed is imprisonment for a term which may extend to three years with fine. The punishment for second conviction may extend up to five years of imprisonment with fine.

**Ingredients:**

1. The accused must be a man and victim must be a woman.
2. Follow or contact a woman or attempt to contact; or
3. Monitors the use by the woman of the internet, email or any other electronic communication.
4. Despite disinterest of woman.

**What does not amount Stalking?**

- Section 354D has a proviso attached to it which carves out an exception to this offence.
- If a part of responsibility is imposed on a person by the State to prevent and detect any crime and such acts must be pursued by any law and in the particular circumstances such conduct of the person must be reasonable and justified then, it will not amount to stalking.

**(iii) Bigamy**

- The Indian Penal Code, 1860 explains bigamy under Section 494.

- The said provision states that any person who already has a wife or husband living, further proceeds to marry another person while being lawfully wedded to such wife or husband shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Moreover, such marriage shall be considered void in whatsoever case.

### **Exceptions**

1. The said provision does not extend to any individual whose marriage with their partner from the prior marriage has been declared void by a court of competent jurisdiction.
2. The said provision does not extend to any individual who contracts a marriage during the lifetime of their former partner wherein such partner at the time of such individual's second marriage was not heard of for a period of seven years or wherein there is no information of them being alive.

### **Nature of Offence**

The nature of the offence specified under Section 494 of the IPC is non-cognizable, bailable, compoundable, and triable by the magistrate of the first class.

### **Essential ingredients for constituting the offence of bigamy**

1. **Existence of a previous marriage**
2. **Second Marriage has to be valid in itself:** In order to attract the provisions of this section, not only the first marriage but also the second marriage should be a valid one. This means that all the necessary ceremonies required by the personal laws governing the parties to the marriage should have been duly performed
3. **Second marriage to be Void solely by reason of First Husband or Wife Living:**

### **Important Cases**

#### **1. Lily Thomas v. Union of India and Ors. (2000)**

- In this case of the Hindu married man had converted to the Muslim religion solely for marrying for the second time, not because he had genuine faith in that religion.
- This was established by providing evidence that the accused did not perform any Muslim religious ceremonies or change his name.
- The court decided upon the merits of the case that the accused is guilty of bigamy, although he converted to Islam religion, under Section 17 of the Hindu Marriage Act, 1955, read with Section 494 of the IPC.
- The Supreme Court finally quoted: "*Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fiber.*"

#### **2. M.M. Malhotra v. Union of India and Ors. (2006),**

- The Supreme Court decided that a subsequent marriage by the husband during the subsistence of the first marriage would not make him guilty of the offence of bigamy if the said first marriage is proved to be void.
- In this way, the accused can escape the charges under Section 494 of the IPC by defending himself by proving that one or more of the essential elements of a valid marriage were not fulfilled during the performance of the first marriage.

#### **3. Krishna Gopal Divedi v. Prabha Divedi (2002)**

- The Supreme Court held that the performance of a second marriage by the accused after attaining the *ex parte* decree is not an offence under Section 494 of the IPC because, during such a period, the first marriage is not subsisting.

#### **4. Abdul Gani and Ors. v. Azizul Haq (1911),**

- A Muslim woman is charged under Section 494 of the IPC for marrying another man during her Iddat.
- She rightly defended herself, saying that her second marriage was considered void because she violated the Muslim doctrine of Iddat, which has no link with the Indian Penal Code.
- The Calcutta High Court approved her defence and held that a re-marriage by a Muslim woman during the period of Iddat is just a civil wrong that results in the nullity of the marriage but not a criminal offence of bigamy under the Indian Penal Code.



**5. Sarla Mudgal v. Union Of India and Ors. (1995)**

- This is a landmark judgement both in the case of bigamy laws as well as the Uniform Civil Code (UCC).
- The Supreme Court answered the controversial question of whether a Hindu married man can solemnize a second marriage during the persistence of his first marriage after converting to the Muslim religion, which allows bigamous marriage.
- The Court outrightly held the second marriage void and convicted the accused under Section 494 of the IPC due to the presence of all essential elements to constitute the case of bigamy.

**6. Dr. Surajmani Stella Kujur v. Durga Charan Hansdah and Anr. (2001).**

- The Supreme Court ruled that the fifth marriage of a Muslim man would be deemed void because Muslim personal laws allow a Muslim man to have only four wives at a time, not more than four.
- Further, the Court held that the Muslim man who married for the fifth time would be punished under Section 494 of the IPC.