

In the husband as to  
inflict punishment



**ASSIGN  
BUSTER**

In order to justify the charge under Section 498, it is necessary that the accused could be said to have detained her with the intention that she may have illicit intercourse with him. The persuasion, allurements or blandishments necessary to make out such detention must be with intent to such illicit intercourse.

Object: The object of the section is to protect the right of the husband and it cannot be any defence to the charge that though the husband has been deprived of his right, the wife is willing to injure the said right and so the person who is responsible for her willingness, has not detained her. Section 498 is intended to protect the husband in the sense that the gist of the offence consists in depriving the husband of his proper control over his wife for the purpose of illicit intercourse. Any consent or willingness on the part of the wife is immaterial to the guilt of the accused.

The object is not so much to protect the husband as to inflict punishment on those who intercourse with the sacred relation of married woman in this country, whether chaste or unchaste, must be protected by the Legislature, and it is the duty of the Court to see that they are given sufficient protection. Provisions of Section 498 like those of Section 497 are intended to protect the rights of the husband and not the rights of the wife. The gist of the offence under Section 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her. In this connection it would be material to compare and contrast the provisions of Section 498 with those of Section 366 of the Code. Section 366 deals with cases where the woman kidnapped or abducted is an unwilling party and does not respond to the criminal act of the accused,

the intention being to compel the victim afterwards to marry any person against her will or to force or seduce her to illicit intercourse.

The policy underlying the provisions of Section 498 may no doubt sound inconsistent with the modern notions of the status of the women and of the mutual rights and obligations under marriage. That however, is a question of policy with which Courts are not concerned. In other words, Section 366 is intended to protect women from such abduction or kidnapping. If it is shown that the women alleged to have been kidnapped or abducted is a major and gives her free consent to such abduction or kidnapping, it may prima facie be a good defence to a charge under Section 366. On the other hand, Section 498 is intended to protect not the rights of the wife but those of the husband and so prima facie the consent of the wife to deprive her husband of his proper control over her would not be material. It cannot be any defence to the charge to say that, though the husband has been deprived of his right, the wife is willing to injure the said rights and so the person who is responsible for her willingness has not detained her.

Mere keeping back a wife from her husband is detention under Section 498, I. P. C. Such keeping back may not be the result of force and may even be the result of persuasion, allurements and blandishments. Detention in the context must mean keeping back a wife from her husband or any other person having the care of her on behalf of her husband with the requisite intention.

Such keeping back may be by force; but it need not be by force. Elopement —Scope: It is plain that four different kinds of cases are contemplated by the

section. A woman may be taken away, or enticed away or concealed or detained. In the first three cases, the consent of the woman would not matter if it is shown that the said consent is induced or encouraged by the offender by words or act or otherwise if on evidence, the Court is satisfied that the act of the woman in leaving her husband was caused either by the influence or allurements or blandishments proceeding from the offender, that may be enough to bring his case within either of the three classes of cases mentioned by Section 498. As regards the fourth case of detention, the Supreme Court rejected the contention that detention implied detention of the woman against her Will in the context of the section. Detention means keeping back. This may take place either by physical force, that is to say, the person detained is kept back by physical force or threat, or it may be due to deception practised on the person concerned or it may be due to inducement or persuasion, that is to say, a rosy picture may be painted before the person concerned and on account of this rosy picture the person concerned remains in the house or money may be offered by way of inducement or it may be to marry after. So long as the person is under the influence of that persuasion or inducement and is kept back he must be deemed to be detained.

Ingredients: The following ingredients are required to be proved: (1) That the offender must take or entice away or conceal or detain the wife of another person from such person or from any other person having the care of her. Where the wife willingly leaves her husband and lives with the accused, it was held that in spite of the wife's willingness, the accused will be deemed to have enticed her away and her staying with him amounts to detention. The consent of the wife to deprive her husband of his proper control over her

would not be material. It is the infringement of the right of the husband with the intention of illicit intercourse that is the essential ingredient of the offence. (2) That he must know or has reason to believe that the woman is the wife of another person.

(3) That taking, enticing, concealing or detaining of the woman must be with the intent that she may have illicit intercourse with any person.