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The section contemplates that the offender must take or entice away a woman. Such woman must be the wife of another man. The offender must either know or have reason to believe that the woman is the wife of another man. The taking or enticement of the woman must be from the man to whom she is married or from any other person who has the care of that woman on behalf of her husband.

The intention of the offender must be that the woman may have sexual intercourse with any person. Or, the offender must conceal or detain with such intention any such woman. As stated under the comments of the preceding section, an offence punishable under sections 493 to 498 can be taken cognizance by a court, under section 198, Code of Criminal Procedure, 1973 only upon a complaint made by a person aggrieved by that offence, and such person generally is the husband of the woman, and in his absence anyone else who has the care of the woman on his behalf and with the leave of the court.

Where marriage by custom with a widow is valid, taking away or enticement of such a woman is punishable within this section. But the woman victim must be the wife of another man, and if such marriage is voidable, this section is not attracted. Where the complainant's father used to ill-treat the complainant's wife as a result of which she left his house one day and went to her first cousin, living next door, and refused to return when the complainant went there to fetch her, it was held that this section was not attracted at all as the essential elements of this offence were not present. The Allahabad High Court held the view that taking or enticing away a married woman with the intention to get her married to another man entails

liability under this section because intention of getting her married to another man means having intention that she may have illicit intercourse with another man. The word ' detain' means to keep back and thus it implies some positive act on the part of the offender. Some physical restraint or some influence on the mind of the woman by the accused is necessary and, therefore, where a married woman leaves her husband's house and joins another man voluntarily, section 498 is not attracted. Where the relations between a husband and wife had soured so much that she had left him and he had also given up all hope of reconciliation, and there was no evidence to show that the accused had taken or enticed her away, he could not be held guilty of committing the offence under section 498 even if it was proved that the accused had offered her a residence and they had been living in illicit relationship and the accused was a reputed film producer and she aspired to make a mark in films.

Where the wife of the appellant, before the incident in question, had left him on some earlier occasions and developed illicit intimacy with others, and a petition for divorce by the husband had been pending before the complaint in the present case, and there was no evidence to establish that she was being detained by the respondent on the basis of allurements or blandishments, section 498 would not be attracted. In *Alamgir v. State* the Supreme Court examined the meaning of the word ' detains' in this section.

In this case a married woman voluntarily left her husband and started living openly with the accused. She was not taken away or enticed or concealed by him. The Supreme Court held that though the word ' detains' generally means detention against will, this meaning could not be attributed here

because the expression 'detains' should be construed in the light of other words 'takes', 'entices' and 'conceals' in its company.

Since section 498 protects the rights of a husband who has been deprived of the company of his wife, the word 'detains' must mean keeping a woman without the permission of her husband and the woman's consent under this provision is therefore, meaningless. Detention does not necessarily mean use of force, and it may be the result of persuasion, allurements or blandishments. Detention of a married woman has been held to be a continuing offence and prior acquittal in respect of a previous detention does not mean that fresh charge for subsequent detention cannot be brought. Where the accused did not allow a married woman to go to her home and continued to detain her in his house on the ground that he had married her against payment of money, it is clear that her detention was with the intention of having illicit intercourse with her, which means that whether the validity of the second marriage is proved or not is immaterial.

It has already been seen under section 494 that the Supreme Court has held that the word 'marries' means marrying legally and validly. Similarly, it can be held that the expression 'wife' in sections 497 and 498 should mean legally and validly married wife, and as such the fact of marriage along with its legality and validity must be proved. But the same may not have to be done in case of second marriage of a widow in certain communities where on the death of a brother the brother's wife may be got married to a brother of the deceased for which special ceremonies may not be observed and the community grants its approval to such a marriage, and this would be treated so even by the criminal law. Marriage of a Muslim woman before the expiry

of her period of 'iddat' is null and void. Therefore, marrying a man during this period, and contracting another marriage with another man later on would not make the latter man guilty under section 498 of the Code. The offence under section 498 is non-cognizable, bailable and compoundable, and is triable by any magistrate.