
MARITAL AND FAMILY DISCORDS IN ARMED FORCES HOUSEHOLDS

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ABSTRACT

In the language of law ‘marriage’ means a ‘social contract.’ In reality, marriage comes with a lot of emotional as well as social compression and due to the stigma attached to this people keep marriage and family as their priority and everything else is considered secondary especially when we speak of a country like India where for the longest period joint family system existed almost in every household. However, this stigma does not imply when we speak of military households, where the primary responsibility for military personnel is safeguarding the territorial integrity of the country over any external factors. By committing to a career in military one is voluntarily prioritizing their duty over their family and marriage.

This paper aims to present the legal provisions which determines the positions of members in a armed forces family and understand the position of Indian law in case of a marital or family dispute. Further it analyses the common grounds for the failure of marriage in a military household focusing on Indian armed forces only and not implying the position of laws of other countries. I, also intend to present some controversial debates over adultery law and a distinctive position of armed forces on decriminalization of adultery.

Legal Provisions determining the position of members belonging to a military family

The instances of polygamy in armed forces are rare due to the strict discipline however, the position of armed forces in case of plural marriage would be as per the Hindu Marriage Act, 1956 which is applicable to most other religions except the religions having their own personal laws in India. Under the HMA, the woman with whom an officer was married for the first time is the 'legal wife' of the respective officer. Under this provision a marriage with another woman prior to the divorce or death of the first wife would be void in the eyes of laws. Also, a wife from a void marriage won't be entitled to the family pension.

The children born from void marriages are considered as legal children. They are legally entitled to family pension and are equally as eligible as children from a void marriage. The dispute between the wife and parents after the demise of officer regarding the claim over family pension is common. As per the current rules the widow or a child are the first-class heirs of the family pension and the parents would have no claim over the pension. The parents would be eligible for the family pension of bachelor officer or widower without children. The hierarchy of eligibility would be widow/widower, children, parents, and siblings. In case of giving family pension to a minor child legal guardianship certificate from the court would be needed.

In some cases, the retired or serving officers have voiced their displeasure towards their spouse regarding their character or conduct and have written a will stating that the family pension should not go to their spouse and should be given to NOK (Next of Kin). The legal position regarding such cases is that (i) A will can only be written for one's personal property and family pension comes out of Govt. funds thus a will on family pension would be null and void. (ii) After the demise of an officer the status of legal wife would continue to be incessant and her claim over family pension and other benefits would be legally valid. Even when a divorce proceeding is going on the status of legal wife would be uninterrupted unless divorce has been pronounced by the court of law.

In case the demise of the officer happens prior to the pronouncement of divorce then the divorce proceedings would terminate and become insignificant in the eyes of law and she would be eligible for all the benefits entitled to a widow.¹

¹ Legal Aspects Related with Family Pension (June 18, 2021) <https://indianarmy.nic.in/Site/FormTemplate/frmTempSimple.aspx?MnId=JVzBgNsYOzi0IjmoCbSVpw==&ParentID=CraDbnMsYZW6Zg8SygIdIg=>

Marital Discords and challenges faced by an Armed Forces family

Military deployment leads to various challenges in the lives of army families. Research indicates that separations stimulated by the military deployments leads to a lot of stress within families as well as marriages. Emotional turmoil associated with departure, disconnected relationships, lack of frequent or direct communication among spouses and children leads to isolation of the deployed family member. Further increased household responsibilities and readjustment of roles upon reunion lead to bitter and strained relationships. Military deployments create tension and inconsiderable pressure on the spouse who is at home. Due to these reasons the family dynamic in military households often changed in comparison to a civilian family. Frequent absence of one of the parents could lead detachment in the head of children from that parent.

Spousal deployments are worrying not only due to the forthcoming separation but also due to enormous nature of change it brings with entire family, relationships. A paper by Priyanka Mishra observes the challenges exclusively faced by wives on their husband's military deployment where they have mentioned how 'shifting, relocating and readjusting' is a big challenge. While some families choose to stay at Field Area Family Accommodation (FAFA) that is provided by military within cantonment however, at other times the family live with their parents or in laws. Mishra notes how women have implied that when they are at their parents, they are under this constant pressure whereas when they are at their in laws and the husband isn't there with you they are they become the servant of her husband's family members. Of course, we can imply that this does leave a bitter taste in family dynamics sometimes leading to discords within the family itself. Further, on the absence of their husbands the wives are overwhelmingly burdened with responsibilities and household chores adjusting to this can not only be challenging but stressful as well. There is too much shift in the dynamics that family lives of army personnel internally witness.²

One of the most common grounds as to failure of marriages in not only Armed Forces but universally is because of infidelity by one or both the spouses. However, one can argue it happens more often in army due to the nature of profession which could keep couples apart

² Dr. Priyanka Mishra 'Exploring the Challenges Faced by Indian Military Wives during Spousal Deployment or Field Area Posting' International Journal Of Indian Psychology ,July-September 2019, Vol. 7 Issue 3, at p. 388-403

from each other making infidelity one of the most common causes. There are plenty of cases of army husbands cheating over their wives while they are deployed overseas or at home. Similarly, there are many cases of military wives having extra marital affairs while they are deployed overseas or when their husbands are deployed at a different location. Infidelity is not only a problem in military but universally it is an issue in marriages and most common deal breaker. Whether infidelity occurs more in military is a topic for debate, but one could easily argue it to be one of the leading causes of marital discords. One of the controversial debates that's exclusive to army is criminalization of adultery for army men. In September 2018, the apex court in *Joseph Shine v. UOI*³ struck down Section 497 of IPC which criminalized men for committing the offence of adultery. It was held that adultery is a ground for divorce, but it is not a criminal offence. However, it was stated that decriminalizing adultery does not apply to men in armed forces.⁴ Military separations could get quite complex as compared to the civilian separations due to this provision in armed forces. In case a civilian gets separated from his wife and dates someone prior to their divorce there can be no legal action against them due to decriminalization of adultery however, if an armed forces man gets legally separated from their wives and sees someone, he might get penalized for this.⁵

In August 2019, the apex court quashed the General Court Marshal (GCM) proceedings against a colonel who was accused of having an extra marital affair with the wife of a retired Lt. Col. Thus, legal ambiguity about this provision persists as per the Supreme Court verdict in *Joseph Shine* as there wasn't a lot of discussion about this however, according to the recommendation of Attorney General KK Venugopal adultery must be a criminal offence for military personnel thus, this legal provision still is in grey spot. In early 2021, again an application was filed by the Centre to criminalize the arbitrary law for armed forces. The center's application mentions that the peculiar working conditions of the armed forces puts them in a different position as compared to civilians and clearly mentions that armed forces need psychological satisfaction as to their family not indulging in any untoward activity and criminalizing adultery would ensure that. The Supreme Court said that a request to seek clarification would be proceeded before a five-judge bench of the apex court.

³ *Joseph Shine v. Union of India*, (2018) WP (Criminal) 194 of 2017 (Supreme Court of India)

⁴ NC Asthana, 'Army's Plea to Retain Adultery as a Crime Borders on the Absurd' *The Wire* (January 24, 2021), accessed June 20, 2021, < <https://thewire.in/law/indian-armed-forces-adultery-crime-sexual-misconduct> >

⁵ Allan R. Manka, 'Some Differences between Military and Civilian Marriages'

The word ‘adultery’ has not been explicitly used under the Army Act, 1950 or Army Rules, 1954 but the language of the statute could imply prohibition towards a conduct of such kind.

Section 45⁶ and s. 63⁷ mention the term ‘unbecoming conduct’ and ‘violation of good order and principle’ respectively, since there is no precise explanation to what its scope is thus one could interpret adultery to come within the ambit of these provisions, as also provided as a valid ground by center itself in criminalizing adultery for army men. The potential rationale behind this ground could be the harsh conditions army personnel are subjected to away from their families for long period of time which could lead to concerns regarding families engaging in untoward conduct and this could lead to instability in service.⁸

The military euphemism for adultery is ‘stealing the affection of a brother officer’s wife’ and the armed forces views it as an offence. The provision to deal with this offence is under s. 497 of the IPC. From our above discussion we can gather of course the wide interpretation of s. 45 and s. 63 of the 1950 Act though a significant point is that both these provisions are gender neutral and hence it is applicable to both men and women in armed forces. The MoD has stated that unlike s. 497 the army law did not discriminate between men and women and it was a gender-neutral provision prosecuting soldiers of both the genders for such acts. Thus a female could be equally prosecuted like a male in the offence of adultery.⁹

Reluctance in army to decriminalize adultery could also be due to the rigid hierarchical structure. If adultery is decriminalized the pervert seniors due to the absolute power they possess could indulge in sexual exploitation of junior officer’s wife and might get away with it calling it an adulterous relationship. In 1988 KPS Gill who was the then DGP of Punjab sexually exploited a senior IAS woman officer during a party where her husband was also present. In 2005 the apex court convicted him ruling that “Knowledge can be attributed to the accused that he was fully aware that touching the body of the prosecutrix at that place and time would amount to outraging her modesty.” It was due to the admiration he received from media and his social circles and the power he possessed that made him believe that he might get away with anything. It is reasonable to assume that Gill isn’t an exception and there might be many

⁶ Army Act 1950, s.45

⁷ Army Act 1950, s. 63

⁸ Rangin Pallav Tripathi & Suman Dash Bhattamishra ‘India’s effort to criminalise adultery for armed forces reflects a paternalistic mindset’ Scroll.in (21 February, 2021)

⁹ Abraham Thomas, ‘Decriminalizing Adultery could lead to ‘instability’ in armed forces’ Hindustan Times (14 January, 2021)

senior officers who are capable of this behavior. Men in power positions are probable to indulge in exploitative social conduct. Armed Forces is considered as a 'closed society' and is known for brushing incidents under the carpet. On the inside the army is aware if adultery is decriminalized in armed forces due to the absolute power structure the seniors would exert this upon their juniors and the deviant seniors might use this and indulge in sexual exploitation of junior's wife in the name of adulterous relationship.¹⁰

The Children belonging to military deployments often experience higher rates of mental health problems and traumas. Frequent deployments, changing family dynamics, multiple moves and having a parent die or injured is a reality and constant fear in the minds of military raised children. In cases of family deployments, the changing environment for the child and losing connection with friends and closed ones often leads to loneliness and stress which sometimes the military children get used to but many times they are internally dealing with the stress of re-adjusting somewhere else. It's also reasonable to believe that life of an army kid or as they say fauji brat (Born, Raised and Transferred) is not an easy one. They face their own challenges, emotional turmoils with amenities and facilities provided to them. While the amenities in an army life are great devastation is something they witness quite routinely fear of losing their parent, witnessing other peers lose their parents, they are relatively more exposed emotionally than a civilian kid. Family Dynamics keep changing in case a parent is deployed or posted at a remote area that parent gets isolated from the life of the military kid. Military children experience detachment from the parent who gets deployed due to loss of emotional connection and lack of communication. While research I came across plenty case stories of kids in armed forces families how they felt that they were raised by a single parent. As we discussed how armed forces is a closely knit community, parties and alcoholism is a part of army life that most of us are aware of. While witnessing such a life with amenities and leverages is something is what kids are exposed to but for them this becomes life and thus when they step out in public life they often witnessed difficulties due to lack of those facilities.¹¹

The family dynamics and marital discords in armed forces are quite complex due to certain legal obligations as well as their own lifestyle. The profession involves constant fears, isolation

¹⁰ NC Asthana, 'Army's Plea to Retain Adultery as a Crime Borders on the Absurd' *The Wire* (January 24, 2021), accessed June 20, 2021, <<https://thewire.in/law/indian-armed-forces-adultery-crime-sexual-misconduct>>

¹¹ Dr. Priyanka Mishra, 'Exploring the Challenges Faced by Indian Military Wives during Spousal Deployment or Field Area Posting' *International Journal Of Indian Psychology*, July-September 2019, Vol. 7 Issue 3, at p. 388-403

and missing out on family life. Further rigid power structure of army and their own insecurities due to the nature of profession indicates why there are certain legal obligations they are subjected to like criminalization of adultery while it's not an offence for rest of the country but people belonging to armed forces are still abiding by this. However, legally we are still under a grey area when it comes to the position of law on adultery in armed forces, but we understand the rationales provided by the center some, frivolous in nature but some provide reasonable ground for at least a debate.