



DECRIMINALIZATION OF ADULTERY IN INDIA

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ABSTRACT

In India, adultery has been a criminal violation for the past 150 years. If a man has sexual relations with a married lady without first obtaining her partner's permission, he has committed an infraction. The idea of adultery is emphasized throughout the study of India. At the beginning of the paper, there is a summary of the idea that is presented. In the second part of the article, an in-depth investigation of the Indian Penal Code's Article 497, which is devoted to the transgression of adultery, is presented. Thirdly, the article discusses the history of adultery as well as the nations where it has been deemed an offence as well as the countries where it is still followed today. The paper addresses the fundamental issues against adultery in its fourth and final sections. It focuses on how the Indian Constitution's provisions have been challenged by the offence of adultery. In addition to this, it focuses on a variety of instances, particularly the one known as *Joseph Shine vs. Union of India*¹, which determined that adultery is a violation of the constitution. And last, the article concludes and emphasizes how the judge's decision in 2017 found adultery to violate the Constitution.

INTRODUCTION

A somatic relationship that develops two persons who are not bound by nuptials with each other and who marry another individual who has a consort who lives with either one of them or both of them is considered to be an act of adultery. Adultery is defined as a sexual act that takes place when two people who are not married to each other develop a physical relationship with one another. The correct definition of adultery may vary from one district to the next, but the issue at hand is the same everywhere: engaging in sexual activity outside of the context of a married relationship. Adultery is regarded as a form of infidelity or fornication across the board in the world's major faiths. Adultery, as defined by the dictionary, is engaging in sexual activity with a person who is not one's spouse or wife. Having sexual relations with a third party is considered to be adultery.² Adultery is generally

regarded as despicable conduct since it demonstrates a blatant breach of trust, which is in line with the norms of society. The permissible aspect of adultery varies greatly from country to country. In certain contexts, "adultery" refers to the act of a woman willingly engaging in sexual activity with a third party without the knowledge or approval of her husband, while in other contexts, "adultery" refers to the act of a woman having sex intentionally with a person who is not her partner. This idea is not only supplied in the field of philosophy but is also given in the law as a statutory provision. The Indian Penal Code, 1860, includes a definition of adultery in its Section 497³. It makes males who commit adultery subject to the consequences of their actions. It gives the impression that the man is responsible for perpetrating the charge of adultery and must be penalised for as long as five years.

EVALUATION OF SECTION 497 OF IPC

Adultery is widely seen as a problematic factor for the health of a marriage between a husband and a wife. It is a violation of the purity and piety of a home that has been blessed with marriage when this sin is committed. It is both a socially unacceptable and unlawful thing to do. It is not recognized to be the crime of adultery if a man has sexual relations with a woman who is not married or with a prostitute. In the context of the divorce process, adultery is a lesser offence than its counterpart, adultery-related misconduct. It was previously determined by the Supreme Court that it is not possible to assert that any constitutional provision is violated in the process of construing the offence of adultery by restricting the class of wrongdoers to only men.⁴ This conclusion was reached because the Supreme Court found that such an assertion was legally impossible.

The man is subject to the penalties outlined in Section 497 of the Indian Penal Code if he engages in sexual activity in the company of a wedded lady without first obtaining the agreement of the woman's spouse. This crime is perpetrated by an unauthorized third party against the husband about his wife.⁵ Even though the wife gave her permission for the offence, she will not be held responsible for being an adulteress or an abettor to the crime. If any sexual activity takes place between a married man and an unmarried woman, a widow, or a married lady whose male spouse gives assent, then it is deemed that the crime of adultery has not been achieved/perpetrated. The same logic applies to a married woman whose husband gives agreement to her having sexual relations with another man. According to this provision, the criminal is required to be aware of whether or not the woman is married.

HISTORY OF SECTION 497

Since the beginning of civilization, people have been guilty of the crime of adultery; yet, many ancient civilizations had laws that made it illegal to commit adultery. Adultery is a serious crime in India, and one of the country's sacred writings, the Manusmriti, stipulates that those found guilty of the crime should be exiled from their communities as an appropriate penalty.⁶ The act of adultery was deemed to be a criminal infraction in several other books, such as the Dharmashustra and the Apastamba, and the punishment for the offence differed for the male and the woman based on their respective social ranks and castes. The sin of adultery was considered to be a criminal act for both Gents and ladies in Christian thought. It was St. Paul's witness to the citizen of the world that

established its legitimacy for the first time. The act of committing adultery is considered a criminal offence in Islam as well.

REASONS FOR DECIMALISATION

Articles 14 and 15(1) are broken by 497: The part is a clear violation of the right to equality because the woman couldn't be charged with adultery and the woman couldn't charge her husband with adultery if he slept with a single woman. It helps keep men and women from being treated the same way. Also, no crime can be shown if the husband or boyfriend of a woman who has been unfaithful gave his "consent or connivance." The phrase is arbitrary and goes against Article 14 because it doesn't have a good reason for making consenting sexual behaviour illegal. Also, Article 15 says that the government can't treat men and women differently because of their gender.⁷ The way the rule is written, a husband can make a complaint if his wife has sex with another man against his will, but if a woman's husband has sex with another woman, the woman is not the one who has been wronged. From this point of view, the crime of cheating only hurts married women because married men and married women have the same sex.

In violation of one's right to live a dignified life: The dignity of the human person is one component of Article 21. The inherent dignity to which a woman is entitled is effectively diminished by Section 497 since it makes offensive distinctions based on preconceived notions of gender. This has the impact of diminishing women's sense of their sense of worth.⁸ In addition, subordinating women is the result of placing an excessive amount of emphasis on the husband's complicity or assent in an act. As a direct consequence of this, doing so is contrary to Article 21. Women had become objectified, and this raised questions about the future of their agency. A woman's sexual autonomy is violated under Section 497 of the Criminal Code since she is required to obtain the consent of her spouse before engaging in sexual conduct. By doing so, it reinforces the notion that when a woman joins into marriage, she gives up on her wish to have some autonomy that has been curtailed. This restriction has been placed on her ability to make her own decisions. When the sexual liberty of women is restricted to coercively ensure their chastity, this constitutes a violation of their fundamental right to dignity and equality.

LAW OF ADULTERY IN OTHER COUNTRIES

Adultery is widely regarded as a form of dishonesty that takes place between two parties. The punishment for the crime of adultery varies from country to country. It shifts depending on the customs and mentalities of the people living there. There are still a great number of nations on earth that have not enacted appropriate legislation regarding adultery crimes. Countries such as Pakistan, Afghanistan, Indonesia, Bangladesh, Nepal, and some sections of the United States of America are examples of places where adultery is still commonly treated as a criminal offence. On the other hand, some nations have adopted stringent legal codes regarding the offence of adultery. France, Austria, Denmark, Brazil, New Zealand, and Japan are just a few of the countries that have made adultery a criminal offence in their legal systems.⁹

CASES RELATED TO ADULTERY CHALLENGES BEFORE THE COURT

The charge of adultery was contested for the first time in the case of Yusuf Aziz v. State of Bombay¹⁰. The petitioner says that adultery is a violation of the fundamental right to equality, which is to be done under Articles 14 and 15 of the Constitution of India. This was one of the arguments that was included in the petition. Later that same year, in 1954, the Supreme Court concluded that the part in question did not violate the Constitution and that the man, not the woman, was the one who was guilty of fornication because he was the one who had seduced her. According to section 497, the lady can only be deemed a suffer of adultery and not a admonitory of a misdemeanour. This is because the statute prohibits women from committing adultery.

The Indian Supreme Court decided in the case of Sowmithri Vishnu vs. Union of India¹¹ that Articles 14 or 15 of the Constitution of India are not violated by Section 497 of the Indian Penal Code. To preserve the sacredness of marriage and to ensure that this provision does not discriminate between a lady and a man, the court decided that the man will not be permitted to arraign his wife for the crime of adultery even though the court of law found that this provision does not discriminate between a woman and a man.

The Supreme Court of India ruled in the case of V.Revathi vs. Union of India¹² that the prosecution of adultery cases without the involvement of female helps in affording a chance for the couples to make up and keeps the boldness of marriage intact. This decision was made because the prosecution of adultery cases without the incorporation of lady helps keep the boldness of marriage intact. The court of law determined that certain laws regarding adultery should be viewed as a shield rather than a brand.

Both the Statute Commission of India Report from 1971 and the Malimath Committee on Criminal Reforms report from 2013 concluded that an adjustment ought to be made to the adultery statute. In their respective reports, the Law Commission and the Malimath Committee suggested that Section 497 of Indian Penal code has to be reworded so that it is no longer gender-specific.

In the case of Joseph Shine vs. Union of India¹³, it was determined that adultery is not a crime and hence the case was dismissed. A crime is committed against society as a whole, although adultery is a personal matter. Adultery does not fit into the definition of a crime. On the other hand, divorce can be granted on the grounds of adultery, which is also considered a civil wrong in some jurisdictions. They have equal status in society, and they should be given every opportunity to put forward their point of view. "Husband is not the master of his wife,"¹⁴ the fact that women should not be considered as the property of their husband.

CONCLUSION

Since its founding in 1869, the Supreme Court has been considering cases involving the offence of adultery. On the other hand, just recently, it decided that the crime of adultery violates the Constitution since it serves the spouse as the master of his bride. The adultery law in India has been deemed to have an element of arbitrariness to it and to primarily offend the dignity of women, according to the Chief Justice of India. The paternal law that had been

upheld in the country for such a significant amount of time was overturned as a direct result of the court's directives. As part of its ruling in the Joseph Shine case¹⁵, the court made it quite plain that a lassie cannot be regarded as the belongings of a man. Furthermore, it stipulated that an extramarital affair will not be considered adultery if the spouse gives his permission for it and the affair takes place outside of the marriage and because Section 497 of the Code of Criminal Procedure 1973, together with Section 198, has been found unconstitutional, the offence of adultery is no longer considered a criminal offence.

Endnotes

1. (2019) 3 SCC 39, AIR 2018 SC 4898 (Last visited on April 4th 2023 at 9:24 pm IST)
2. <https://www.bartleby.com/essay/Introduction-Of-Adultery-Essay-FKY8W9VZAEPP> (Last visited on April 4th 2023 at 7:54 pm IST)
3. <https://awrato.com/indian-kanoon/ipc/section-497> (Last visited on May 9th 2023 at 5:19 am IST)
4. <https://www.legalserviceindia.com/legal/article-1896-evolution-of-section-497-ipc-1860-trespass-to-burial-sites.html> (Last visited on April 14th 2023 at 7:14 am IST)
5. <https://blog.ipleaders.in/supreme-court-struck-adultery-law-section-497-ipc-justified/> (Last visited on April 14th 2023 at 2:43 pm IST)
6. <https://www.scobserver.in/cases/joseph-shine-v-union-of-india-decriminalisation-of-adultery-background/> (Last visited on April 16th 2023 at 7:14 am IST)
7. <https://www.legalserviceindia.com/legal/article-1140-decriminalization-of-adultery-in-india>. (Last visited on April 16th 2023 at 8:26 am IST)
8. <https://www.jstor.org/stable/44283691https://indianexpress.com/article/india/india-decriminalises-adultery-a-look-at-other-countries-where-it-is-still-a-crime-or-not-5376598/> (Last visited on April 26th 2023 at 10:19 pm IST)
10. (1954) SCR 930 (Last visited on April 27th 2023 at 11:40 pm IST)
11. (1985) Supp SCC 137 (Last visited on April 27th 2023 at 12:19 pm IST)
12. (1988) 2 SCC 72 (Last visited on April 27th 2023 at 01:45 pm IST)
13. 2018 SC 1676 (Last visited on April 28th 2023 at 07:19 am IST)
14. <https://theprint.in/india/governance/husband-is-not-master-of-wife> (Last visited on April 29th 2023 at 10:19 pm IST)
15. 2018 SC 1676 (Last visited on April 29th 2023 at 11:19 pm IST)