

# Adultery: Violation of Wedding Bed

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**ABSTRACT:** *This paper majorly discusses the term “adultery” and moves on describing the term, as laid down by the Section 497 of Penal Code of India, 1860, which provides the right to the women of the society, against their husband in order to save their wedlock, effected by any third person’s interference, involvement or invasion in the same. “Adultery” is basically defined as the offence or an illegal act of criminality, which is mostly committed by any third or unknown person on the husband, with respect to his wife, and on committing such an offence, husband is the only party, who is held liable for such an offence. The paper further moves on discussing the crucial ingredients or key features present in the act of such offence, and discusses the standing of apex court regarding the same. Finally, the paper concludes by mentioning or recommending various different changes or extensive reforms required for amendments within the current laws, for the safety and security of wedding bed.*

**KEYWORDS:** *Adultery; Crime; Indian Penal Code; Punishment.*

## INTRODUCTION

An extramarital sexual intimacy or an affair, having consent from both the individuals or parties, involved in a physical relationship outside their respective wedlock or wedding bed, such an act is termed as “adultery”. In other words, sexual relations outside marriage, is defined as “adultery”, and comes under the category of heinous and punishable crime in India. In India, marriage plays an important role, as it is considered as a lawful and spiritual authorization, therefore, any sort of sexual activities, that creates a barrier between such a sacred bond and goes against the customary laws of India, will be considered as an infringement in the wedding bed followed by the punishment under the Section 497 of Penal Code of India, 1860[1].

Giving a mere plain reading to the text of Section 497 of Penal Code of India, 1860, states that any sort of sexual intercourse by the third party with the woman, married with another man, without taking any consent from her lawful partner or husband, such sort of an activity, won’t amount to a rape, but on the other hand, it will lead to an offence of adultery, then that third person outside the wedding bed, will be liable for a punishment of 5 years imprisonment or fine or both. The said section, also states and concludes in the end, by stating that, in such an act of sexual intercourse, the wife won’t be held liable for any offence, in other words, the male offender will be liable alone for an offence of adultery. The offence of adultery is entirely unforgivable since it constitutes a sex act with the consent of both parties and thus, under both faith and cultural classes, such a criminal offence is completely forbidden because it contradicts public morals and distorts the reputation of the delinquent and the abhorrent.[2].

This paper majorly discusses the term “adultery” and moves on describing the term, as laid down by the Section 497 of Penal Code of India, 1860, which provides the right to the women of the society, against their husband in order to save their wedlock, effected by any third person’s interference, involvement or invasion in the same. “Adultery” is basically defined as the offence or an illegal act of criminality, which is mostly committed by any third or unknown person on the husband, with respect to his wife, and on committing such an offence, husband is the only party, who is held liable for such an offence. The paper further moves on discussing the crucial ingredients or key features present in the act of such offence, and discusses the standing of apex court regarding the same. Finally, the paper concludes by mentioning or recommending various different changes or extensive reforms required for amendments within the current laws, for the safety and security of wedding bed[3].

The heinous crime of adultery and the law or legislation behind the same within the jurisdiction of India, seriously requires a revision, with respect to the abettor and adulterers, being included as the parties responsible behind the crime of sexual intercourse, without involvement of any sort of consent from either of the concerned parties in the act of crime. Moreover, the female or male partner of the guilty partner in the act, should be allowed to move in-front of the court for legal proceedings demanding divorce due to the involvement of third person in the wedlock. These sort of actions are required in order to bring change in

the society, and providing equality to the women of the society and to keep intact the constitutionality behind such enactment of the law of adultery[4].

### *Research Question*

- What is the meaning of the term “Adultery”, defined under Section 497 of Penal Code of India, 1860?
- How does the crime of “Adultery” impacted upon the wedding bed?
- What are the current laws and available remedies of such a heinous crime, within the jurisdiction of India?

## **DISCUSSION**

Giving a mere plain reading to the text of Section 497 of Penal Code of India, 1860, states that any sort of sexual intercourse by the third party with the woman, married with another man, without taking any consent from her lawful partner or husband, such sort of an activity, won't amount to a rape, but on the other hand, it will lead to an offence of adultery, then that third person outside the wedding bed, will be liable for a punishment of 5 years imprisonment or fine or both. The said section, also states and concludes in the end, by stating that, in such an act of sexual intercourse, the wife won't be held liable for any offence, in other words, the male offender will be liable alone for an offence of adultery. The offence of adultery is entirely unforgivable since it constitutes a sex act with the consent of both parties and thus, under both faith and cultural classes, such a criminal offence is completely forbidden because it contradicts public morals and distorts the reputation of the delinquent and the abhorrent.[4].

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An extramarital sexual intimacy or an affair, having consent from both the individuals or parties, involved in a physical relationship outside their respective wedlock or wedding bed, such an act is termed as “adultery”. In other words, sexual relations outside marriage, is defined as “adultery”, and comes under the category of heinous and punishable crime in India. In India, marriage plays an important role, as it is considered as a lawful and spiritual authorization, therefore, any sort of sexual activities, that creates a barrier between such a sacred bond and goes against the customary laws of India, will be considered as an infringement in the wedding bed followed by the punishment under the Section 497 of Penal Code of India, 1860.

### *1. Religious Perspective and Legal Sanctions*

Adulterers have always been affected by the dislike of society, which depends greatly on local history, faith and beliefs. Adultery has historically been strictly condemned and prosecuted, usually only as a breach of the rights of the husband. In these people, the prostitute was deemed to be her wife's property and, therefore, adultery was described as robbery of a worsening kind. In certain places in Africa, like the man who robbed the husband, the deceiver is punished with the loss of one or both hands. It is not just the seducer who has lost, her wrongful partner has received serious fines for the offended woman. In several cases it has suffered

a physical mutilation that would preclude it from being once again tempting to other men in the eyes of the aggravated husband. However, against this unfaithful husband, the wife was not permitted; and, in fact, almost all the ancient legal codes have this injustice in the practise of the ancient people. In the other hand, if a wife, or a proud of her family's greatness or (its own) excellence, violates the obligation she owes to her Lord, the king would have his reason to be the laws of Manu are striking on this subject in ancient India. In fact, the husband must be constantly adored as a god by a faithful wife.

In Jewish law both men and women were penalised for adultery, but this was only enforced after two impartial observers warned the offenders of the offence. He is obligated to send her or obtain a divorce bill from a sofer or a scribe, but today Jewish law prohibits a person from living with a wife who is cheating him. The adulteress, who would also issue her a divorce letter, will also not be allowed to the adulterer. There were strict adultery rules in the Greco-Roman world that only extended to anyone who had sex with a married woman. Adultery is prohibited and punishable by death in Christianity in the Old Testament. Jesus held a lighter position on adultery in the New Testament, though he was preaching that it was a sin. Adultery is seen in the Bible as a huge sin and a societal mistake. Adultery was prohibited in Judaism, but it was not for a married man who had contact with an unmarried woman. Just one woman who was married who had a romantic relationship with a man was considered adultery, both the woman and the man being held responsible. Adultery is, according to Islam, a breach of a marriage agreement and a serious sin. In Islam, both pre-marital and extramarital sex was used in adultery.

Thus, adultery has suffered from serious penalties, including the death penalty and death penalty, since ancient times. This was a reason for divorce on the basis of fault rules. Adultery is unconstitutional and includes criminal law in most states. Laws vary from state to state in the United States. Adultery is punished legally in Pennsylvania by 2 years' imprisonment or 18 months of insane therapy. Adultery in Michigan is punishable by the possible death penalty while adultery is fined ten dollars in Maryland. Adultery is specified in Canadian law by the law of divorce. The legislation named the Hudood Ordinance that establishes a mandatory death sentence has criminalised adultery in Pakistan. Adultery is criminalised in India under S. 497 IPC, though both husband and wife will seek divorce for adultery in civil law.

## 2. *Constitutional Validity of S.497 IPC*

The Committee on the Status of women in India opposed the judicial attitude to the criminal offence of adultery (CSWI). It has been questioned because it breaches the fundamental equality mandate. Constitutional validity was also disputed on numerous occasions. "Section 497 does not envisage punishment of the wife by her husband for adultery," the Supreme Court upholding the constitutional validity of S. 497 IPC noted. The section specifically provides that even as a stirrer, the wife is not penalised. There will then be no complaint that a woman cannot be prosecuted for adultery under the clause. Obviously, the consideration of the law is that the wife engaged in an illegal relationship with another man is a survivor and not the crime's creator. The law making process considers an offence against the sanctity of the marriage home to be an offence committed by an individual, as specified in Section 497. Those men who defile this holiness are then taken into the net of justice. Law only constitutes an offence of a certain kind of extra-marital arrangement, the association between a male and a married female the perpetrator alone. An infidel married man risks or maybe calls for a legal suit by the partner. They add, of course, that "Law does not give husbands freedom to licence with unmarried women." If he does, he faces the danger that his wife will file a suit.

The Court also noted that when it dealt with the defence contention that women, whether married or unmarried, have changed their way of life over the years and cases have damaged the harmony and satisfaction of other marital homes,: "With the inclusive meaning of the subject not inherently discriminating, we hope this is not too correct. The presumed change in attitude towards women, for good or worse, will fairly attract the interest of legislators as penal law is reformed. They should broaden the 'Adultery' concept and keep track with the time going. Yet rule has to stay as it is until then. As it stands, neither Article 14 nor Article 15 of the Constitution is infringed by statute.'

The penal law (Sec 494 IPC) prohibits Bigamy. Considering that Hindu women are still discriminated against by society as a male and as the result of misunderstanding of the law or long prevailing social norms in rural regions, polygamous marriages and child marriages remain unchastely. The observed in the Supreme Court's observation that it is perhaps time to punish women for adultery, has been claimed for considerable weight and that a woman who is seduced is always the victim rather than the perpetrator of the offence.

This is not unfair since either the husband or wife does not sue each other in accordance with the clause of the Penal Code. The offence is only aimed at the 'external' who was a man who offended the sacredness of a marital home. The penal code thus seems to have a very narrow definition of adultery. It was viewed as a case of reverse sexism in favour of femme rather than against her who a female 'outsider' that violated marriage home in the same fashion could not be punished. However, criminal law does not clarify the basis for this reverse discrimination. It implies that the holiness of a wife's paramour, not a male, should be avoided. Is it justified to reverse discrimination? S. 497 IPC recognises adultery as an offence against the sanctity of a husband's house, so why does it not recognise that a woman can commit the same act? It has been critical of the double norm. "It is time to ask why the offence of adultery corresponds to what we know now about women's marital status." The offence of adultery in the Indian Penal Code allows the husband to sue his wife's paramour without allowing the wife to proceed against the man if he has extra-marital affairs, or to prosecute her. The offence of adultery was understood to be in breach of Article 14, and it gave men and women unequal treatment.

And while we recognise the impartiality of the rule, both husband and wife cannot be sued under statutory adultery statute. Why does a grieved son alone have the right, but the wife doesn't have the same right, to accuse a man's paramour, for an absence of spousal sanctitude? Should the rule not include misogyny and breach of the human rights of a woman? Some argue that the statute discriminates against all married women and men (paramour). A woman is now allowed to sue the paramour of their husband's wife.

Recent attempts to change Section 597 of the Criminal Code to provide for adultery to women were vetoed by the National Women's Commission (NCW). Adultery can therefore be used in accordance with a fundamental law as a legal mistake rather than a criminal offence. Adultery must be seen as a breach of trust. However, the commission has stated that this can only be done after a national agreement has been reached on the subject. They also said that women are economically disadvantaged and law on women protection needs to be enhanced. It also proposes to amend Article 198(2) of the Code of Criminal Procedure (Cr. PC), which currently bars an unfaithful wife of a husband from punishing him for his promiscuity. We, on the other hand, disagree with the guidelines because they would once again contribute to gender inequality in the legal system. There must be a wrongdoer (victim) and a perpetrator of the crime for any alleged crime. The aggrieved party is the partner, who is charged with a breach of matrimonial sanctity concerning the wife's male paramour. Why the wife isn't considered an aggrieved party in the criminal law because the husband and female new bride are both guilty of the same crime?

The demand for imprisonment of women by themselves seems unfounded as long as the husband is not convicted of sexual adultery. When a wife is seduced, she will certainly be taken as a victim and not the perpetrator, which justifies revenge for the paramour of men. Is it justified to discipline the man paramour when he is not the seducer, or when he is a seducer in married women (wife?). It must be incorporated and developed into criminal legislation.

### CONCLUSION & IMPLICATION

This paper majorly discusses the term "adultery" and moves on describing the term, as laid down by the Section 497 of Penal Code of India, 1860, which provides the right to the women of the society, against their husband in order to save their wedlock, effected by any third person's interference, involvement or invasion in the same. "Adultery" is basically defined as the offence or an illegal act of criminality, which is mostly committed by any third or unknown person on the husband, with respect to his wife, and on committing such an offence, husband is the only party, who is held liable for such an offence. The paper further moves on discussing the crucial ingredients or key features present in the act of such offence, and discusses the standing of apex court regarding the same. Finally, the paper concludes by mentioning or recommending various different changes or extensive reforms required for amendments within the current laws, for the safety and security of wedding bed.

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sexual act with consent between the two individuals, is strictly forbidden under all religious and cultural traditions, since it is beyond general morals and it tarnishes the reputation of criminals and abusers.[5]

We think that there is an inadequate use of the judicial system of the term "adultery." In true sense, adultery constitutes a crime against a wife, breach of confidence and house and thus, adultery in its present form, is not at all protected by p. 497 IPC because neither the adulterer's husband nor the adulterous wife are punished in any way. However, the statute specifies penalty for the non-attached person, who is also the only male paramour for break in the sanctity of the house of marriage. Criminal law considers the offence of men and women, the discrimination of the married woman and her paramour.

The role of judges in the readings of the constitution and the amendments is very important with shifting popular views. Given that the woman, as noted by the Supreme Court of Honble, is socially poor and vulnerable in most parts of the world, she certainly needs to improve her status. Female (wife) must have the same right to sue the female as male (husband).

The heinous crime of adultery and the law or legislation behind the same within the jurisdiction of India, seriously requires a revision, with respect to the abettor and adulterers, being included as the parties responsible behind the crime of sexual intercourse, without involvement of any sort of consent from either of the concerned parties in the act of crime. Moreover, the female or male partner of the guilty partner in the act, should be allowed to move in-front of the court for legal proceedings demanding divorce due to the involvement of third person in the wedlock. These sort of actions are required in order to bring change in the society, and providing equality to the women of the society and to keep intact the constitutionality behind such enactment of the law of adultery.

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