



LEGAL IMPLICATIONS OF ADULTERY: A COMPREHENSIVE ANALYSIS ACROSS JURISDICTION

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ABSTRACT

Adultery shows a conflict between social pressure and individual struggles for happiness. Adultery is now not a crime in India under section 497 of the Indian Penal Code, 1860. Legal analysis of the regulation of adulterous behaviour of married persons under different legal systems demonstrates that the provision of adultery is greatly influenced by the social values of sexual morality which existed at the moment of formulating the legal provision. When one sees reality, the first response is a shock at the state's obvious interruption into the apparently private sexual domains of life. My concentration is towards the substantive area of the paper: exploring the psychological effects of adultery, societal perceptions, legal consequences, cultural variations, or representations of adultery in India. The law of adultery is not applied to a woman. In India, section 497 of the Indian Penal Code, 1860 was drafted before 150 years colonial period and since its inception, it has been whirling into debatable controversies on several accounts, such as its gender bias approach, reflecting cultural conflicts, questioning equality cause, and strong arguments have been raised either for its retention, modification or complete deletion from penal statutes. Additionally, the paper delves into landmark legal cases that have shaped the discourse on adultery in the Indian context. By examining the cultural and social dimensions influencing legal perspectives, this research aims to provide a nuanced understanding of how adultery is legally defined, prosecuted and perceived in the Indian legal system. The findings of this study contribute to the broader conversation on the intersection of morality, law and individual freedoms in the context of marital relationships in India. This research paper has attempted to articulate these controversies from a legal point of view in contemporary India and to analyze adultery from its legal conceptual base and proceeded to examine its effect, impact and co-relation with other aspects such as marital ties, property claims, over the progeny, remarriage and divorce. In conclusion, this research paper

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contributes to a deeper understanding of the legal complexities surrounding adultery in India, offering insights into the evolving nature of these laws and their implications for individuals and society. The findings provide a foundation for informed discussions on potential reforms and considerations for a legal framework that aligns with contemporary values and societal norms.

Keywords: Adultery, Criminalized, Controversies, Articulate, Inception, Whirling, Progeny.

INTRODUCTION

“Whoever looks at a woman to lust after she has committed adultery already with her in his heart.”

- Jesus Christ.

Adultery in its literal sense has been defined as a consensual physical association between two individuals who are not married to each other and either or both are married to someone else having a living spouse. The actual definition of adultery may vary in different jurisdictions but the basic theme is sexual relations outside marital wed-lock. Adultery also known as infidelity or extra-marital affair is certainly a moral crime and is thought of as a sin by almost all religions. In the sixteenth century, the catechism of the Council of Trent defined adultery, as the defilement of the marriage bed. If a married man has intercourse with an unmarried woman, he violates the integrity of his marriage bed; and if an unmarried man has intercourse with a married woman, he defiles the sanctity of the marriage bed of another. Some legal jurisdictions have defined it as a “crime against marriage”. Although the definition of ‘adultery’ seems to differ in nearly every legal system, the common theme is sexual relations outside of marriage, in one form or another. Adultery in India is a criminal offence as per section 497 of the Indian Penal Code, 1860, which states that, Whoever has sexual intercourse with a person who whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to 5 years, or with fine, or both. In such cases, the wife shall not be punished as an abettor.

Adultery has been incorporated into the Indian Penal Code as an offense that punishes only the adulterous men, who in their view have lived already in low and oppressive conditions in the

family. In its recent decision on the case of **Joseph Shine v Union of India**, the Supreme Court abolished the 158-year-old Victorian morality act on adultery. The decision is one of these kinds, and all prior judgments upholding the crime of adultery have been overridden

PERSPECTIVES ON ADULTERY

Cultural Variations: Attitudes toward adultery vary across cultures. Some societies may be more permissive based on cultural, religious or traditional values.

Changing Social Norms: Evolving societal norms and increased awareness of individual rights have led to changing perspectives on marriage and relationships.

Therapeutic approaches- Therapists often work with couples facing adultery to explore the root causes, facilitate communications and rebuild trust.

Alternative relationships model: Some individuals advocate for alternative relationship models, challenging the conventional norms of monogamy.

CONSEQUENCES OF ADULTERY

Emotional Impact: Adultery often results in profound emotional distress for both partners. Betrayal, guilt and feelings of inadequacy can lead to long-lasting psychological consequences.

Relationship breakdown: Adultery is a significant contributor to marital breakdowns.

Legal Ramifications: In some jurisdictions, adultery can have legal consequences, affecting divorce proceedings, custody battles and financial settlements.

Social Stigma: Societal attitudes toward adultery vary, but it often carries a social stigma.

Adultery involves mental as well as physical action. The overt act of adultery cannot be committed unless mental adultery has been accomplished. Spooning seems to be the potent cause that generally leads to mental adultery and that finally drives the person in the overt act of adultery. There are thousands of ways of seducing a woman. An effort may be made to find them from the decided cases. To provide meaningful remedial measures, it becomes necessary to look into the causes of adultery. In many jurisdictions, adultery is viewed as an offence injurious to public morals and mistreatment of the marriage relationships. It jeopardizes the institution of marriage.

HISTORICAL PERSPECTIVE

Historically, adultery has been considered to be a serious offense by many cultures. Even in jurisdictions where adultery is not a criminal offense, it may still have legal consequences, particularly in divorce cases. Moreover, adultery could result in social ostracism in some parts of the world.

It has been observed that sexual relations have found the basis of social relationships in almost all the civilized societies in the world. History has evidence that there has been a chain of normative values that govern and regulate the sexual activities of an individual. The permitted sexual relationship within the marital wedlock has been found the basis of the marriage institution, which had been thought to be an important institution for sustaining society. Historical analysis has revealed that depending upon the various factors, the different society shows either a clear permission or prohibition of sexual relationships which may be governed by a value-based system of 'sexual'.

Morality' prescribes norms of permitting or prohibiting sexual relationships between opposite sexes. Adultery, as understood in the known history of human civilization, was also prohibited as it directly threatened the marital bondage invaded by strangers. Therefore, adultery is also observed to be a relative phenomenon depending upon the values governing sexual morality in society. It has also been governed differently in different societies.

SUPREME COURT STANDINGS

The first important discussion regarding the constitutional validity of the section was held in the case of **Yusuf Abdul Aziz v The State of Bombay**. In this case, section 497 of the Indian Penal Code was challenged to be ultra vires the articles 14 and 15 of the constitution of India. The Supreme Court held that Article 14 is a general provision and should be read keeping in mind the other provisions that set out exceptions to fundamental rights. Sex is a sound classification and Article 15(3) provides for exceptions to women and children. The petitioners argued that this clause is made only for the benefit of the women and not for giving a license for committing or abetting a crime. However, the court held that they cannot see any restrictions as such; nor do they agree that the section is tantamount to a license to commit the offence of which punishment has been prohibited. The court finally held that articles 14 and 15 when "read together validate the impugned clause in section 497 of the Indian Penal Code."

In the case of **Revathi v Union of India**, the constitutional validity of section 198(1) read with section 198(2) of the criminal procedure code, 1973 that it only allows the husband of the adulteress to prosecute the adulterer but does not permit the wife of the adulterer to do so. The court said that the law does not allow either of the spouses to prosecute each other under criminal law; a husband is not permitted because the wife is not treated as an offender in the eye of the law. The wife is not permitted as section 198(1) read with section 198(2) does not permit her to do so. Moreover, there is “reverse discrimination” in favour of women and there is no discrimination against women so far as she is not allowed to prosecute their husband.

COMMITTEE REPORTS AND SUGGESTIONS FOR LAW REFORMS

The Fifth Law Commission in its 42nd law reports suggested that section 497 should not be removed from the penal code, but it recommended that both the man and the wife should be made guilty as there is no valid justification “for not treating the guilty pair alike” and also scaled down the maximum punishment from five years to two years as the existing punishment is “unreal and not called for in any circumstances.”

The recommended section is as follows:

497 - **ADULTERY** - If a man has sexual intercourse with a woman who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The Indian Penal Code (Amendment) Bill of 1978 provided for amendment of section 497, however, it was not passed by the legislature.

ADULTERY - ANALYSIS OF AN ARGUMENT OF NCW

The National Commission on Women (NCW) in its report has levelled an argument against the existing provision of section 497 of the IPC. Expressing its lament attitude, it expressed that the existing provision in the IPC is based on the mindset that the wife is a personal possession of the husband, who is the sole aggrieved person in an incident of adultery. On this line, the commission has recommended suitable amendments to section 198(2) of the Criminal Procedure Code, which as of now disqualifies the wife of an unfaithful husband from

prosecuting him for his promiscuous behaviour. This argument is however not tenable in the light of the object of section 497 of IPC and the apex court judgments of V. Revathi case. The section attempted to cover family as an institution and punished infidelity committed by an outsider stranger. It can also be conveniently said that there is ample scope for women as an individual to punish a man, though a marital relationship exists between them. Specially, section 498A also provides scope for a wife to punish any act of the husband. It is also argued in the same report of the National Commission of Women that despite the other provisions available there is no reason that she should be debarred from initiating prosecution under section 198 of Cr. P.C. However, this argument is also ridiculous because if section 497 of IPC had been brought on the line of gender neutrality, it would have both the basic purpose i.e. protecting harmony in marriage institution and protecting women. In another important recommendation, the commission has said adultery should be treated as a civil wrong and not a criminal offence. It is of the view that there may be many instances where the woman wants to save the marriage and sees the adulterous relationship as an aberration. This argument appears to be sound, mature, strong and imbibe the solution amicable to modern society.

WHY ADULTERY IS STILL PUNISHABLE?

The basic question is, 'why adultery is still punishable'? The arguments advocated in the present context for the deletion of the provision 'adultery' as an offence in general and urging for

Decriminalization of adultery in particular raised because, in the present context, sexual relationships are neither a very sensible aspect nor the marriage institution got central attraction for penal statutes. The period when section 497 of the IPC had been drafted and the modern era where it is still made applicable demonstrate disparities in its context and degree of 'sexual morality' prevailing in society at two different intervals. During the 19th century, the social and legal context to regulate sexual relationships and marriage was strongly influenced by social values. The social values were strongly against adulterous behaviour. Even widow marriage was not allowed. It was the general practice to keep the wives of poor and subordinate persons as security and surety, and this was the general mode of exploitation of the dominant class. Therefore, to protect the person whose wife has been taken away and whose forceful sexual relationship either with the consent or without the consent of the wife had been established, the husband was in a position to resort to the penal laws.

However, the state of affairs is not the same in the present context as it was in the mid-19th century when the penal provision for ‘adultery’ had been drafted in the IPC. At present, society has become much more liberal with changed social values on sexual relationships. The sexual exploitation of the poor class has been lessening. One thing should be taken into ‘consideration’ that adultery under the Indian legal system is committed when even the wife of the husband has her consent for an adulterous relationship with a man who is other than her husband. If the wife does not have consent for the adulterous relationship, the offence does not meet u/s 497 of the IPC and it would fall under s. 376. Therefore, for an offence of adultery, the consent of the women is a necessary corollary. This again raised another argument that when adultery is a consented act between two persons of opposite sex having a living spouse at the time of adulterous act does not it violate and appear to be irrational that the offender is always a male and the woman, even though she may be an abettor, shall not be prosecuted for the offence of adultery? These arguments strongly advocate the complete deletion of the provision of adultery from the penal statutes though it may be retained to have civil remedies.

CRITICISM

The decision to decriminalize adultery in India does not seem to be based on established principles of criminal jurisprudence because it has led to chaos and confusion in the minds of common people and has also disturbed the social order as public opinion and the Indian culture has not taken into consideration. On one hand, India is heading towards growing gender equality and on the other hand snatching this right by providing divorce and alimony the ultimate justice to the sufferer.

No doubt the said law was gender biased in its phraseology towards women which needed amendment striking down the whole law i.e. section 497 of IPC and section 198(2) of Cr. P.C. and declaring it as unconstitutional may not solve the problem. Decriminalization of adultery will critically endanger the institution of marriage not only it can run the risk of fostering sexually transmitted infections but will encourage extramarital affairs.¹⁵

CONCLUSION

Thus the foregoing legal analysis of the provision related to ‘adultery’ under penal statutes clearly defines the substantive and procedural requirements and lays down that section 497 has been drafted differently. It can further be stated that it leads to several illogical absurdity. As time passes, and as the feminine jurisprudence makes the women more empowered, the

provision that imbibes the prejudiced attitude towards this class loses its relevance. Though, to some extent, the gender-neutral version of the provision of adultery as recommended by the Mall math committee and law commission would have appeared to be more logical, incidental, relevant and able to serve a better purpose, looking to the various context, social reality, it may be said that its complete deletion from the penal statutes for a better purpose.

Thus, it can be concluded that provision on adultery under the different legislative packages has ideology to promote marital harmony, strengthen the marriage institution, provide an opportunity for to husband to punish outsiders, provide a chance for both spouses to forgive and forget, and in turn also form, one of the basis for dissolution of marriage under personal laws. Therefore, the legislative package in its present form also protects the women considered their victims in the male-dominated society.

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