

# ADULTERY IN INDIA

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## INTRODUCTION

The topic of sexual relations always piqued society's curiosity. The challenges have also been encountered when attempting to place the rider on legal sexual practices. The problem may have been in society since its inception, but it may have taken on new dimensions with the advent of the family structure. Many societal structures, including marriage, have come under attack as society advanced and improvements in science and technology were created. Mechanization, urbanization, industry, and population growth have all contributed to the breakdown of the family institution. It has caused significant challenges in terms of daily life. Unnatural sex, unmarried motherhood, abortion, rape, kidnapping, enticement, abduction, adultery, incest, indecent assault, and other types of social delinquency are all well-known. In today's society, these sexual offenses are on the rise. Because of the growing number of enactments and judicial decisions restricting sexual freedom, the boundaries of legitimate sexual behavior have shrunk significantly. Adultery legislation in India has been contentious since its inception due to several fundamental issues. Adultery, incest, indecent assault, and other difficulties include abortion, rape, kidnapping, enticement, abduction, adultery, incest, and indecent assault. Sexual offenses are on the rise in today's culture. Adultery is not a serious crime, but it has a significant impact on the lives of people who are engaged. Although adultery is not the most serious of crimes, it has some of the most terrible consequences. A person who commits adultery is constantly aware that he or she is breaking the fundamental standards of the institution of marriage as well as those of society, and that their reliability and trustworthiness are being questioned. The individual committing adultery is always conscious of the fact that if somehow his/her partner will come to know of his/her liaison, he/ she won't take it calmly, indeed that person will have to face a lot of wrath and criticism from the family as well as society. The western world does not treat adultery as a crime but in India, the offense of adultery is a crime. The person who commits adultery is always aware that if his or her spouse learns of the affair, he or she will not take it lightly, and will be subjected to a great deal of fury and ridicule from both his or her family and society. Adultery is not considered a criminal offense in the Western world, but it is in India.

Adultery is legally defined as a consensual physical relationship between two people who are not married to each other and are either married to someone else or both married to someone else. Adultery is defined

differently in various countries, but the core issue is sexual encounters outside of marriage. Adultery, often known as infidelity or extramarital affairs, is a moral violation that virtually all faiths consider to be a sin. Adultery is not a crime in the western world, and only a few western countries, such as Finland, Belgium, and Sweden, do so, but it is a criminal and horrible crime in India. In India, marriage is sanctioned on spiritual, communal, and legal grounds. As a result, a sexual relationship that violates this holy link denotes disobedience to social norms. It is a betrayal of trust as well as a violation of the sacred marriage pledges, which are treasured conscientiously and ethically, and it is punishable under the decree.

Now, because the phrase is used about marriage in section 497 of the Indian Penal Code, 1860, it is vital to remember that the institution of marriage was created as, and only as, a way of securing a man's property even after his death. Men desired to keep their possessions for the rest of their lives. They could only do so if they could assure that the person or individuals inheriting the property after their death belonged to their own family and not someone else's.

In India, the offence of adultery is defined under Section 497 of the Indian Penal Code, 1860 which states, "Whoever has sexual intercourse with a person who is and whom he knows or has a 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 the offence of Adultery".

Therefore, in order to prove adultery, the following ingredients must be identified-

The adulterer must have had sexual intercourse with the wife of another man. Clear indulgence in sexual intercourse must be proved on the part of the accused.

This area will not be highlighted if the act does not entail real sexual intercourse and finishes at the stage of preparation. As a result, proof of sexual intercourse is required for an adultery conviction. *Kasturi v Ramaswamy*<sup>1</sup> decided that if sexual intercourse could not be shown unequivocally, it had to be inferred from the facts and circumstances of the case.

It is important to note right away that Section 497 of the Indian Penal Code, 1870, applies only where the woman in the adulterous connection is the legitimate wife of another man. The factum of marriage must be shown beyond a reasonable doubt for a man to be found guilty of adultery under the Indian Penal Code, 1870. This provision does not apply to sexual relations with a prostitute, an unmarried woman, or a widow. In the instances of *Yusuf Aziz*<sup>2</sup>, *Sowmithri Vishnu*<sup>3</sup>, and *V. Revathi*<sup>4</sup>, the Constitutionality of Section 497 was challenged before the Supreme Court under Article 14 on the basis that it constitutes arbitrary sex discrimination.

The Supreme Court concluded in *Yusuf Aziz* that the immunity afforded to women under section 497 was not discriminatory and was constitutional under Article 15 (3) of the Constitution.

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<sup>1</sup> .1979 Cr.L.J 741

<sup>2</sup> AIR 1954 SC 321

<sup>3</sup> AIR 1618, 1985 SCR Supl. (1) 741

<sup>4</sup> AIR 1988 SC 835

In the instances of Sowmithri and V.Revathi, it was determined that the law's policy of not punishing women for adultery is unquestionable. Second, it was never intended for a husband and wife to hit each other with a criminal law weapon. As a result, adultery constituted a crime against the marriage household, rather than just the woman or the husband.

Infidelity is now a felony solely for men, according to section 497 of the Indian Penal Code, and is punished by up to five years in prison and a fine.

### **Adultery according to religion**

Known as the land of diversity, India is a country of unity. Our country is a secular one where all religious feelings are honored. Every religion has its own set of beliefs and aims. Adultery, on the other hand, is frowned upon by nearly every faith. Adultery is seen differently by different religions, yet the fundamental principle stays the same. Adultery is a felony in every faith. Religions differ in the methods they use to chastise their adherents. A delinquent act because it offends the religious feelings of every religion is treated as such.

It has been deemed a sin since the beginning of time, not only on a religious or legal level but also on a spiritual level.

The traditional Hindu attitude on adultery is that it disrupts society and diminishes the value of a family. Marriage is regarded as a sacrament in Hinduism, and it is expected that both partners would be loyal to one another for the duration of their union, which Hindus believe will last seven generations. They're thought to be monogamous, meaning they only have sexual relations with their partner.

Fornication, rape, and adultery are all termed Zina in Islam, which means that they are forbidden. As stated in the Quran, Zina, which is defined as a huge offense, is punished according to the will of God. Some of the punishments include amputation of hands, crucifixion, and public whipping. A person who commits adultery according to the Quran shall be stoned to death, according to Islamic law.

Adultery is a transgression that warrants death for both men and women, according to the Bible. Adultery is considered morally and ethically wrong and depraved by society.

Having sex outside of marriage is considered a sin in Buddhism, which causes more pain in the long run. Adultery is the third of the five basic precepts from which one must abstain in Buddhism.

Judaism, an old religion, imposes death punishment on both the adulterer and the adulterous woman or girl.

### **Adultery as a ground for divorce**

Adultery may be grounds for divorce and civil fines, but no criminal charges.

Section 13 of the Hindu Marriage Act of 1955 grounds for divorce (1). Adultery is a basis for judicial separation under Section 10 of the Hindu Marriage Act, 1955.

Section 22 of the Indian Divorce Act allowed for a judicial separation due to adultery.

Extramarital affairs outside of marriage are grounds for divorce under the 1954 Special Marriage Act.

## **Adultery is Not a Crime: Supreme Court**

The Supreme Court has declared unconstitutional Section 497 of the Indian Penal Code, which criminalizes adultery 158 years after it was passed.

The five-judge Bench led by Chief Justice of India Dipak Mishra also ruled that Section 198 of the Criminal Procedure Code is unconstitutional, which governs the procedure for filing an adultery charge. according to this, only the husband may file a complaint against adultery, whereas the wife of an adulterous man had no such privilege.

## **Observations from the Supreme Court**

It declared the 158-year-old statute illegal, claiming it violated Article 21 (Right to Life and Personal Liberty) and Article 14 (Right to Property) (Right to equality).

The court stated that while two people may separate if one of them cheats, attaching criminality to infidelity is going too far. How married spouses deal with infidelity is unquestionably a personal affair.

Furthermore, there is little evidence to support allegations that making adultery a non-criminal offense would lead to "chaos in sexual morality" or an increase in divorce.

Any provision of law that jeopardizes individual dignity or women's equality is subject to the Constitution's wrath. It's time to acknowledge that a husband is not the only ruler of his wife. One sex's legal authority over the other is unjust.

If proof was shown, any unhappy spouse who took her own life as a result of her partner's adulterous relationship might be charged with abetment to suicide.

The Doctrine of Coverture is the foundation of Section 497. This idea, which is not recognized by the Constitution and states that when a woman marries, she loses her identity and legal rights, is unconstitutional.

Marriage does not imply relinquishing one's liberty to the other. Human liberty requires the ability to make sexual decisions. Individuals should be entitled to make their own decisions, even in private zones.

"A woman is elevated to a pedestal by society, which imposes unachievable qualities on her. She is confined to some areas. She is objectified, and she is told that she should be pure. Society, on the other hand, has no qualms about committing rape, honor murders, sex-determination, or infanticide ".

## **Conclusion and suggestions**

My view is that legalizing adultery is a step in the right direction because the prohibition is removed, which took away women's dignity. It is considered aberrant behavior because it is unethical and immoral because it

undermines the sanctity of the institution of marriage, which is considered to be a sacred institution of society by many people.

The process, however, is still in its early stages. Although we have made significant progress in eliminating prejudice and ensuring gender equality, there is still a long way to go. The patriarchal worldview needs to be broken free by society as a whole as well.

Marriage has an inherent sanctity that I believe is essential in every aspect of life, whether religious, legal, or spiritual. Therefore, each of us must display greater caution and sensitivity towards the institution of marriage and the family system, which is the most fundamental unit of society, in order to protect marriage.