

Adultery and the Indian Law

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ABSTRACT

In India, adultery is punishable by up to five years in prison under Section 497 of the Indian Penal Code, 1860. The first reaction upon seeing reality is one of shock at the State's blatant intrusion into what appear to be private sexual spheres. Specifically, to determine whether there are any moral justifications for making adultery a crime. My focus is on the paper's main argument, which is that the Legislature should repeal Section 497 because it, among other things, enacts detrimental gender segregation.

Keywords Adultery, Indian Law, crime, argument

INTRODUCTION

For as long as one can remember, adultery—the act of being sexually unfaithful to one's life partner—has been a fundamental aspect of human society. Why do we humans believe that being committed to our life mates is difficult? Before pursuing prosecution, it is necessary to cut crosswise over the majority of locations in order to obtain the troubled life partner's prior consent. The emphasis placed on women by these restrictions, which are a result of their generally more dependent social status, has supported the notion that laws against adultery help a blatantly male target reject the spouse—who is viewed as little more than an asset—when they inquire about fatherhood and ancestry. We'll start with a brief overview of adultery from a legal standpoint, including how the legal system has defined it and how the Supreme Court has addressed it in its most recent ruling. It will cover the inconsistencies in the definition of adultery as it is understood by the government and courts.

Previous Challenges to The Adultery Law: -

Adultery has attracted interest from a variety of social groups due to its contentious character. We would be focusing on how the courts and administration have seen it. Through three separate challenges to measures that were discriminatory in nature, the Supreme Court addressed the legality of adultery three times and upheld the restrictions in each case. The government contended that "decriminalizing adultery would

undermine the value of marriage and the foundation of society at large." But now that a recent ruling has ruled it unconstitutional, adultery is simply to be taken into consideration as a basis for divorce rather than being a crime. Let's start by outlining the portions that address adultery in India: This is the bare text of both the sections: Section 297 of Indian Penal Code and Section 198 of Criminal Procedure Code.

S 497: Adultery:

Anyone who engages in sexual activity with someone he knows or has reason to suspect is another man's wife without that man's knowledge or consent is guilty of adultery, which is not the same as rape, and faces a sentence of either description for a period of up to five years, accompanied by a fine, or both. The wife will not be held accountable for aiding and abetting in such a situation.

S 198: Prosecution for offences against marriage:

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence. (2) For the purpose of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code: According to the law, adultery occurs when a married man engages in sexual activity with a married woman about whom he

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knows she is the wife of another man without the other man's agreement. Therefore, that human conduct amounted to adultery rather than rape, for which the penalty may have been fined, given a five-year extension, or both. Importantly, a woman was not to be convicted of the offence and also could not initiate any criminal proceeding against the husband for the offence of adultery. The proceeding could be initiated only from the husband or the woman and if the husband was absent, then by his nominee.

Two cases dealt by Apex Court on Adultery:

There have been two instances before Supreme Court i.e., *Yusuf Abdul Aziz v State of Bombay* and *Sowmithri Vishnu v Union of India* wherein, the arguments against adultery was challenged but never once, the petition asked to render the sections (mentioned above), as unconstitutional which was done in *Joesph Shrine v Union of India*. In the case of *Yusuf Abdul Aziz v State of Bombay*, Yusuf Abdul Aziz on trial for adultery, he challenged Section 497 of Indian Penal Code by arguing that this section is contradictory to Article 14 (Right to Equality) of the Constitution. After losing the case in Bombay, he approached Supreme Court. In SC, he argued that concept of equality enshrined in Article 14 and 15 is violated in the S497, by assuming that the offence of adultery could only be committed by a man and by the provision that the adulterous wife be not punished even as an abettor. Some have argued that this gives a license to women to commit adultery. However, the court declared that: "We are unable to read any such restriction into the clause; nor are we able to agree that a provision which prohibits punishment is tantamount to a license to commit the offence of which punishment has been prohibited." Article 15 deals with Prohibition of discrimination based on religion, race, caste, sex or place of birth. Article 15(3) enables the government to make special provisions for women and children. It was this Article 15(3) which was debated in this case and the court unanimously through Vivian Bose J declared that the exemption provided by this section is safeguarded by Article 15(3) of the Constitution. In the second case, *Sowmithri v Union of India*, it was contended that Section 497, being contrary to Article 14 of the Constitution, makes an irrational classification between women and men in the sense that it: (i) Confers upon the husband the right to prosecute the

adulterer but it does not confer a corresponding right upon the wife to prosecute the woman with whom her husband has committed adultery, (ii) Does not confer any right on the wife to prosecute the husband who has committed adultery with another woman, and (iii) Does not take in its ambit the cases where the husband has sexual relations with unmarried women, with the result that the husbands have a free license under the law to have extramarital relationship with unmarried women. When the third argument was raised in *Sowmithri* case of husband using this section as a license, one question that was arose was that a similar argument can be raised by man too that this provision provides license to women as well. Coming back to the *Sowmithri* case, court did not find any substance in the argument of violation of Article 14 & 15 of women through S 497 which disables women from initiating any criminal proceeding for the act of adultery.

Non-Monogamy, Infidelity, Fornication and Adultery

One form of non-monogamy is a marriage in which the spouses are allowed to have sexual contact with others besides their spouse. Even though a spouse or wife's relationships with other people may be regarded as adultery in some legal jurisdictions, the life partners do not treat these relationships as such, nor do they treat the spouse or wife's subsequent sexual relationships with other people as infidelity in some legal jurisdictions. Neither is the adulteress authorized to the adulterer, who must additionally supply her bill of divorce. In the Greco-Roman world there have been stringent legal guidelines against adultery, and implemented only to the ones having intercourse with a married woman. Some cultures have a distinguished understanding of the term unfaithfulness. In some legal systems, it may be endured by the jurisdictions, while in others a similar act is adultery and a crime. Fornication is a term which refers to sex between consenting unmarried partners. Subsequently is no way identified with adultery. It may be tolerated by the jurisdictions in some legal systems, but in others, a comparable act is considered adultery and a crime. Fornication is a term which refers to sex between consenting unmarried partners. Consequently, it is not in any way associated with adultery.

Religious Perspectives and Legal Sanctions

Adulterers have constantly suffered from society's disapproving mindset closer to them, the character of which varies extensively relying on neighborhood culture, faith and values. Historically, adultery became fastidiously condemned and punished, usually only as a violation of the husband's rights. Among such human beings the spouse became taken into consideration as the property of her spouse, and adultery became therefore identified with robbery, robbery of an aggravated kind. In some parts of Africa the seducer became punished with the loss of one or each hand, as a person who has perpetrated a robbery upon the husband. It is not the seducer alone who suffered, dire consequences have been visited upon the offending spouse through her wronged spouse. . In Jewish Law, the penalty for adultery became stoning for both man and woman, however this was enacted most effectively while two independent witnesses had warned the offenders previous to the crime being committed.

The Section Calls for The Subsequent Essentials

Sexual contact between a man and a woman he knows or has reason to believe to be another man's spouse. Such sexual sex ought to be without the consent or connivance of the husband. Such sexual sex ought to now no longer quantity to rape. Complaining through a man or woman aggrieved is necessary. (Sec 198 Cr. PC) The attention of this offence is constrained to adultery dedicated to a married lady, and the male offender by myself has been made vulnerable to punishment. Thus, below the Code, adultery is an offence committed through a third man or woman in opposition to a husband in admiration of his spouse.

CONCLUSION

The government's argument that decriminalizing adultery would undermine marriage's sacredness may be a reflection of societal attitudes. Morality, which is the foundation of society's worldview, evolves and, to some extent, must with time. Since adultery was declared to be unconstitutional, the breach of Articles 14, 15, and 21 that the adultery legislation was sustaining has been acknowledged. It is important to realize that a conduct based on consent cannot be classified as criminal when, in the event that reconciliation fails, divorce is a civil remedy that has been acknowledged in this ruling as well. Although the underlying inequality in adultery law has now been addressed with its recognized as illegal, we believe that this ruling will open the door for future challenges to discriminatory legislation. In order to address the concerns of women's equality and dignity, there must be a criminal violation that excludes or modifies.

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HOW TO CITE: Nikhil Gautam*, Adultery and the Indian Law, *Int. J. Sci. R. Tech.*, 2025, 2 (3), 534-536. <https://doi.org/10.5281/zenodo.15091425>