

# Changing Dimension of Adultery: An Overview

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## Abstract-

Adultery, which refers to a consensual sexual relationship between a married person and someone who is not their spouse, has been a contentious issue in India. In 2018, the Indian Supreme Court declared Section 497 of the Indian Penal Code, which criminalized adultery, unconstitutional and struck it down. This decision was seen as a significant step towards gender equality, as the law only punished men for committing adultery, treating women as the property of their husbands. Despite the legal changes, societal attitudes towards adultery remain deeply conservative in India. Adultery is still widely stigmatized, particularly for women, who may face social ostracism, violence, or even honor killings if they engage in extramarital affairs. The burden of upholding marital fidelity continues to fall disproportionately on women, who are expected to remain faithful to their husbands, regardless of their own desires. There are also economic and legal ramifications of adultery in India. In divorce proceedings, adultery can be used as evidence of marital misconduct and may affect the division of property, alimony, and child custody arrangements. Furthermore, some companies have policies that prohibit employees from engaging in extramarital affairs, which can lead to termination of employment. Overall, while the legal landscape around adultery has changed in India, societal attitudes and cultural norms continue to uphold the sanctity of marriage and penalize those who deviate from it.

**Keywords:** Adultery, Voluntary Sexual Intercourse, Sexual Relations, Manusmṛiti, Offence, Personal Liberty, Right to Privacy, Divorce, Maintenance.

## Introduction

Adultery is the act of engaging in a sexual relationship with someone other than one's spouse. In India, adultery is considered a criminal offense under Section 497 of the Indian Penal Code (IPC). This law criminalizes adultery as a punishable offense, but only for men who have sexual relations with married women without their husbands' consent. Under Section 497 of the IPC, the husband of the woman involved in adultery can file a complaint against the man with whom she had sexual relations. The law does not permit the wife to file a complaint against her husband for committing adultery. However, in September 2018, the Supreme Court of India declared Section 497 unconstitutional and struck it down. The court held that the law was discriminatory against women and violated their right to equality under the Indian Constitution. After the Supreme Court ruling, adultery is no longer a criminal offense in India. The court held that the act of adultery is a private matter between consenting adults, and the state should not intervene in it. However, adultery can still be grounds for divorce under the Indian Marriage Act, 1955.

## Definition

Adultery refers to voluntary sexual intercourse between a married person and someone who is not their spouse. It is considered a violation of the marital contract and is often regarded as a form of infidelity. Adultery is usually viewed as a breach of trust and a betrayal of the marital commitment between two partners. It can have serious consequences for the couple involved, including emotional pain, legal action, and the breakdown of the marriage.

## Statutory Provisions

In India, the legal provisions and sections related to adultery are primarily governed by the Indian Penal Code (IPC), which is a criminal law code of India. Section 497 of the IPC defines adultery as a criminal offense, which is committed by a man who has sexual intercourse with the wife of another man, without the consent or connivance of that man. The section states that a woman who commits adultery is not punishable as an abettor or an accessory to the offense. The punishment for adultery under Section 497 is imprisonment for a term that may extend to five years, or with fine, or both.

## Historical Perspective

Adultery, or the act of engaging in sexual relations with someone other than one's spouse, has a complex history in India that spans thousands of years. In ancient India, the concept of adultery was closely linked with the institution of marriage, which was considered a sacred bond between two individuals.

The ancient Indian text, the Manusmriti, prescribed severe punishments for adultery, including public humiliation, banishment, and even death. However, these punishments were often reserved for women, while men were often allowed to engage in extramarital affairs with little to no consequences.

During the medieval period, adultery was still frowned upon, but it was not as severely punished as it was in ancient times. The Mughal Emperor Akbar, for example, is said to have had numerous wives and concubines, and his court was known for its liberal attitudes towards sexuality.

During the British colonial period, adultery was criminalized under Section 497 of the Indian Penal Code. This law only applied to men who engaged in sexual relations with married women, and it did not criminalize extramarital affairs between consenting adults.

In 2018, the Supreme Court of India struck down Section 497, stating that it violated the fundamental rights of equality and privacy. The court held that adultery was a private matter between consenting adults and that criminalizing it was a violation of personal liberty.

Today, adultery remains a controversial issue in India, with some people advocating for stricter punishments for those who engage in extramarital affairs, while others argue that it is a private matter that should not be criminalized.

## Judicial Interpretation

However, in September 2018, the Supreme Court of India, in the case of *Joseph Shine v. Union of India*<sup>1</sup>, declared Section 497 of the IPC unconstitutional and struck it down. The court observed that the law treated women as the property of men and violated the right to equality guaranteed under the Constitution of India. After the Supreme Court's decision, adultery is no longer a criminal offense in India, and there are no legal provisions or sections related to it in the IPC. Before its repeal, Section 497 of the IPC stated that a man who had sexual intercourse with a married woman without the consent of her husband was guilty of adultery. The section only criminalized men and did not allow the woman to file a complaint. The husband could file a complaint against the man with whom his wife had committed adultery.

Here are some significant cases related to adultery in India:

*Yusuf Aziz v. State of Bombay* (1954)<sup>2</sup> in this case, the Supreme Court upheld Section 497 of the IPC and held that adultery was not a violation of women's rights but a crime against the institution of marriage.

*Sowmithri Vishnu v. Union of India* (1985)<sup>3</sup> in this case, the Supreme Court held that Section 497 of the IPC violated a woman's fundamental right to equality and was discriminatory against men since it only criminalized men.

*V. Revathi v. Union of India* (1988)<sup>4</sup> in this case, the Supreme Court upheld the constitutional validity of Section 497 of the IPC, stating that it was not violative of Article 14 of the Constitution, which guarantees the right to equality before the law.

*Joseph Shine vs. Union of India* (2018)<sup>5</sup> in this case, the Supreme Court struck down Section 497 of the IPC and declared it unconstitutional. The court held that the section was discriminatory against women and

<sup>1</sup> 2018 SC 1676

<sup>2</sup> AIR 1951 Bom 470, (1951) 53 BOMLR 736, ILR 1952 Bom. 449

<sup>3</sup> Writ petition No. 845 of 1980

<sup>4</sup> 1988 AIR 835

<sup>5</sup> 2018 SC 1676

violated their fundamental right to equality. The court also struck down Section 198 of the Criminal Procedure Code, which dealt with the prosecution of offenders under Section 497 of the IPC.

The court noted that the law treated women as the property of their husbands and reduced them to passive objects without agency, dignity, or autonomy. It has been further observed that the law did not take into account the consent of the wife in the sexual act, and hence, the offense was not against the wife but against the husband's exclusive right over her. The court also criticized the patriarchal and moralistic nature of the law and its potential for abuse and exploitation by husbands to control and intimidate their wives.

In its judgment, the court emphasized that the right to sexual autonomy and privacy was a fundamental right of individuals, regardless of their gender or marital status. It held that the law could not be justified on the grounds of protecting the sanctity of marriage or upholding morality, as it did not serve any legitimate state interest and violated the right to dignity and liberty. The court also noted that several other countries had already decriminalized adultery, and India could not lag behind in upholding modern values and principles of equality.

### **Neglected Side of Adultery**

Despite the legal aspect, adultery can have several disadvantages and problems in Indian society.

**Social Stigma:** Adultery is often viewed as a social taboo in India and can result in a loss of social status and reputation, especially for women. Society often looks down upon those who engage in extramarital affairs, and they may face social isolation and rejection.

**Legal Consequences:** Although the law criminalizing adultery has been struck down, it can still be used as a ground for divorce. Adultery can also result in legal action and lawsuits for compensation, and can lead to a loss of custody of children in divorce cases.

**Mental Health:** Adultery can lead to emotional trauma, anxiety, depression, and stress for all parties involved. Infidelity can be especially hurtful for the betrayed spouse, causing them to experience a range of negative emotions and thoughts.

**Financial Consequences:** In some cases, adultery can lead to financial consequences such as alimony and child support payments, which can be significant and long-lasting.

**Physical Consequences:** Adultery can also result in physical consequences such as sexually transmitted diseases (STDs), unwanted pregnancies, and other health issues.

Overall, adultery can have significant and far-reaching consequences both for the individuals involved and for society as a whole. It is important to approach relationships with honesty, integrity, and respect to avoid such issues.

Adultery is considered taboo in Indian society due to various cultural, social, and religious reasons. In traditional Indian culture, marriage is viewed as a sacred bond between two individuals and is given great importance. It is seen as a lifelong commitment, and the idea of infidelity is considered a breach of trust and betrayal of the sanctity of the marriage.

Indian society is also deeply rooted in traditional values and norms that emphasize morality, respectability, and family honor. Adultery is viewed as a violation of these values and can bring shame and disgrace to the family, especially for the woman involved. In many cases, the woman may be blamed for the infidelity, even if she is the victim of the act.

In addition, Indian society is influenced by religious beliefs that condemn adultery. For example, in Hinduism, adultery is considered a sin and can lead to negative consequences in both this life and the afterlife. In Islam, adultery is considered a major sin and is punishable by death in some cases because it is seen as a violation of traditional values, cultural norms, and religious beliefs. It is viewed as a breach of trust and can bring shame and dishonor to the individuals involved and their families.

### **Effect of Adultery on Children**

Adultery, or cheating on a spouse, can have a significant impact on children. The effects can vary depending on the age of the child, their personality, and the circumstances surrounding the affair. Here are some common ways that adultery can affect children:

**Emotional distress:** Children may feel a range of emotions, such as anger, confusion, sadness, or betrayal when they find out about their parent's infidelity. They may also feel like they have to choose sides or keep secrets, which can be emotionally distressing.

**Trust issues:** Adultery can damage a child's ability to trust others, especially those who are close to them. They may find it difficult to trust their parents or other adults, and may become more guarded and less likely to form close relationships.

**Behavioral changes:** Children may exhibit behavioral changes in response to their parent's affair. They may become withdrawn, depressed, or act out in school or at home.

**Relationship issues:** Adultery can also affect a child's view of romantic relationships. They may be more likely to have trust issues, fear commitment, or struggle to form healthy relationships in the future.

It's important for parents to be aware of the impact that their actions can have on their children and to take steps to address any issues that may arise. This may involve seeking therapy, being honest and transparent with their children, and working to rebuild trust and repair any damage caused by the affair.

### Divorce on Basis of Adultery

Divorce can be granted on the basis of adultery in India. Section 13(1) (i) of the Hindu Marriage Act, 1955 provides that a marriage can be dissolved by a decree of divorce on the ground of adultery. Adultery refers to voluntary sexual intercourse of a married person with someone who is not his or her spouse.

There are also several case laws in India that have dealt with the issue of divorce on the grounds of adultery. Some of the prominent cases include:

- i. *Smt. Sowmithri Vishnu v. Union of India* (1985)<sup>6</sup> this case dealt with the constitutional validity of Section 497 of the Indian Penal Code, which criminalized adultery. The Supreme Court held that the provision was discriminatory against men and violated the right to equality enshrined in the Constitution.
- ii. *V. Bhagat v. D. Bhagat* (1994)<sup>7</sup> in this case, the Supreme Court held that in order to prove adultery, it is not necessary to establish actual sexual intercourse. Other circumstantial evidence, such as companionship, intimacy, and romantic correspondence, may also be taken into account.
- iii. *K. Srinivas Rao v. D.A. Deepa* (2013)<sup>8</sup> In this case, the Supreme Court held that a husband who himself is guilty of having an extramarital affair cannot seek divorce on the grounds of adultery.
- iv. *Smt. Suman v. Surendra Kumar*, (1982)<sup>9</sup> in this case, the husband filed for divorce on the ground of adultery, alleging that his wife had an affair with a man who used to visit her frequently. The court held that the husband had proved his case of adultery and granted him a decree of divorce.
- v. *Amardeep Singh v. Harveen Kaur*<sup>10</sup>, In this case, the husband filed for divorce on the ground of adultery, alleging that his wife had an affair with another man. The court held that the husband had failed to prove his case of adultery and dismissed his petition for divorce.
- vi. *Naveen Kohli v. Neelu Kohli*<sup>11</sup>- In this case, the husband filed for divorce on the ground of adultery, alleging that his wife had an affair with her cousin. The court held that the husband had proved his case of adultery and granted him a decree of divorce.

It is important to note that divorce on the ground of adultery can only be granted if the petitioner (the person seeking divorce) is able to prove that the respondent (the other spouse) has committed adultery. The burden of proof lies on the petitioner, and the evidence presented must be strong enough to prove the allegation beyond reasonable doubt.

<sup>6</sup> Writ petition No. 845 of 1980

<sup>7</sup> [(1994) 1 SCC 337]

<sup>8</sup> 2013 (III) AD 458 (SC), AIR 2013 SC 2176, 2013 (3) ALD 11

<sup>9</sup> 1 DMC 214 (Delhi High Court)

<sup>10</sup> (2017) 8 SCC 746

<sup>11</sup> (2006) 4 SCC 558

## Maintenance

In India, maintenance can be granted to a wife regardless of whether she has committed adultery or not. The law recognizes that a husband has a legal obligation to provide for the maintenance of his wife, irrespective of her conduct.

Section 125 of the Code of Criminal Procedure, 1973, provides for the maintenance of wives, children, and parents who are unable to maintain themselves. This section applies to all religions in India.

In addition, the Hindu Marriage Act, 1955, also provides for the maintenance of a wife by her husband. Section 24 of the Act allows a wife to claim maintenance during the pendency of a divorce proceeding, while Section 25 provides for permanent alimony and maintenance after the divorce has been granted.

Therefore, even if a wife has committed adultery, she may still be entitled to maintenance under the law. However, the amount of maintenance awarded may be affected by her conduct. For instance, if the court finds that the wife has willfully refused to live with her husband without any sufficient reason, then her entitlement to maintenance may be reduced or denied altogether.

It is important to note that each case is unique, and the court will consider various factors, including the financial capacity of the husband and the needs of the wife and children, while determining the amount of maintenance to be awarded.

## Conclusion

Adultery is a complex and controversial topic in India, with various legal, social, and cultural dimensions. In India, adultery is considered a criminal offense under Section 497 of the Indian Penal Code (IPC), which criminalizes consensual sexual intercourse between a man and a married woman without the husband's consent. However, this law has faced criticism for being gender-biased, as it only criminalizes men for having sexual relations with married women, and not vice versa.

The decision was widely praised by human rights activists, who argued that criminalizing adultery was an archaic and discriminatory practice that had no place in a modern democracy. However, the ruling was also criticized by some conservative groups, who argued that it would lead to a breakdown of traditional family values and morality.

Overall, the legal status of adultery in India has been a subject of debate and controversy for many years, and the recent Supreme Court decision has opened up new avenues for discussion and reform. It remains to be seen how the Indian society will adapt to these changes and what impact they will have on the social and cultural norms surrounding adultery.

Infidelity is more common in larger cities where people are moving towards westernization. This decision has been widely criticized on the ground that it paved a way for people to commit adultery without any fear. There has been an increase in adultery since its decriminalization.<sup>12</sup> Males have claimed that now there is no way to ensure the purity of bloodline. Many claim that recommendations from Law Commissions should have been accepted by the parliament in order to punish men and women both equally for adultery. The Supreme Court has also been criticized that they should have let parliament take decisions on adultery according to the changing social environment.

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<sup>12</sup> <https://blog.iplayers.in/case-analysis-joseph-shine-v-union-india>