

LAW RELATED TO OFFENCE OF ADULTRY IN INDIA

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ABSTRACT

Adultery is defined under law as a consensual physical correlation between two individuals who are not married to each other and either or both are married to someone else. The actual definition of adultery may vary in different jurisdictions but the basic theme is sexual relations outside marriage. Adultery, also known as infidelity or extra-marital affair is certainly a moral crime and is thought-out a sin by almost all religions. The western world and particularly few western countries like Finland, Belgium and Sweden doesn't treat adultery as a crime but the Indian jurisdiction considers adultery as a punishable and heinous crime. The union of marriage has a spiritual, communal and lawful authorization in India. Hence, a sexual liaison that flouts this sacred bond implies rebelliousness with common customs. It is a breach of trust as well as infringement of the holy marital promises, conscientiously and ethically held to be revered and does carry a punishment under the decree. Adultery in the realm of crime: In India, adultery is considered as an offence and is punishable under Section 497 of the Indian penal code.

KEYWORDS: - Adultery, Consensual Physical Correlation, Infringement, Heinous, Western.

INTRODUCTION

Adultery is defined under law as a consensual physical correlation between two individuals who are not married to each other and either or both are married to someone else. The actual definition of adultery may vary in different jurisdictions but the basic theme is sexual relations outside marriage. Adultery, also known as infidelity or extra-marital affair is certainly a moral crime and is thought-out a sin by almost all religions. The western world and particularly few western countries like Finland, Belgium and Sweden doesn't treat adultery as a crime but the Indian jurisdiction considers adultery as a punishable and heinous crime. The union of marriage has a spiritual, communal and lawful authorization in India. Hence, a sexual liaison that flouts this sacred bond implies rebelliousness with common customs. It is a breach of trust as well as infringement of the holy marital promises,

conscientiously and ethically held to be revered and does carry a punishment under the decree. Adultery in the realm of crime: In India, adultery is considered as an offence and is punishable under Section 497 of the Indian penal code. The rule comes under the criminal law of India and has been placed in chapter XX which is related to offences pertaining to marriage¹.

DEFINITION

Section-497- Adultery “Whoever has sexual intercourse with a person 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 rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor.” Section-498- Enticing or taking away or detaining with criminal intent a married woman “Whoever takes or entices any woman who is and whom he knows or has reasons to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”. Adultery may not be a serious crime but it does play chaos in the lives of the people concerned. Our Indian society is more conserved and expects faithfulness and loyalty of an individual towards his or her spouse. A person who is committing an adulterous act is always aware of the verity that he or she is violating the basic norms of the institution of marriage and that of the society and credibility and trustworthiness is being targeted. Adultery may not seem to be gravest of crimes but it does bring out some of the direst consequences. 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 by the family as well as the society. To be vigilant against such a result, the felonious party may instigate a fierce attack against his/her partner, resulting in a critical fault such as abduction or even murder. Considering Indian laws and the scenario of our society, adultery is definitely a crime in India².

Inherent Gender Bias

It is important to establish, from the very onset, that the law in this regard does not seek to preserve the sanctity of marriage – rather, it seeks to protect the structure of the institution. As referenced in the case of **V. Revathi v. Union of India**, in which the Court held that the man was the seducer and not the woman, the aforementioned

¹<http://www.advocatekhaj.com/library/lawareas/divadultery/10.php?Title=Adultery%20Divorce&STitle=Adultery%20crime%20in%20India>

²<http://www.advocatekhaj.com/library/lawareas/divadultery/10.php?Title=Adultery%20Divorce&STitle=Adultery%20crime%20in%20India>

law is striking in its pursuit to punish only the ‘outsiders’ in the marriage – in this case, the male adulterer. Adulteration refers to the mixing of an undesirable substance in an otherwise ‘pure’ element, hence the parallels drawn between the husband, whose bloodline has been ‘adulterated’ by the outsider, gives some idea to the origin of the law. The husband has been cheated of his right to a ‘pure’ bloodline, and under the above terms, he should receive some measure of protection under the law.

This is essentially saying that if a man’s property is defiled by another, the man can punish the offender – the woman here is reduced to mere property. This was reinforced in the case of **Sowmithri Vishnu v. Union of India** –where Sowmithri, whose lover was prosecuted for adultery, contended that the law was gender biased. Despite being an equal party in the offence, the woman was a ‘victim’- she was exempt from punishment, as a child would be, suggesting that the woman committing adultery is incapable of rational thought and therefore has no agency.

Addressing another major controversy, the adultery law has also received flak from protesting men who claim that this law is biased against them. But they overlook the fact that this law does not permit a woman to bring to justice the lover of her husband. How does one contend that a law is favourable to women when the very same law makes it legal for a man to have extramarital relations with a widow, or even an unmarried woman? The wife’s hands are tied in this instance – she is helpless to bring charges against her husband under this section.

The Indian Law has been known to advocate gender discriminatory and patriarchal lines of thought, hence the marital rape and abortion laws in India, and it is increasingly clear that such laws have no place in a modern society which needs to develop beyond the colonial mind set. Most countries have decriminalised adultery – India should follow their lead and do away with such dated laws, lest they further expose the stagnancy of the legal system³.

Section-498- Enticing or taking away or detaining with criminal intent a married woman “Whoever takes or entices any woman who is and whom he knows or has reasons to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”.

³**Vaagisha Das:** Whether Biased Against Women Or Men, India’s Adultery Law Is Seriously Messed Up <https://www.youthkiawaaz.com/2015/10/adultery-law-in-india/>

These laws were drafted in 1860 when India was under British rule and the condition of Indian woman was pathetic. During those periods, a man could've several wives and women were socially and economically dependent on men. Women were treated as an object and considered the property of men. Thus, while drafting the laws it was presumed that women are hapless victims, not capable of committing such an offence, instead, it must be a man who will entice her and involve her in an adulterous relationship. But these laws definitely treat a man and a woman unequally in the institution of marriage. According to these laws:-

1. Man is always a seducer and the married woman just an innocent and a submissive victim.
2. Wife is no more than a chattel to her husband and a third person had committed the crime of intruding upon his marital possession by establishing a physical relationship with his wife.
3. Only the husband of the treacherous woman (or a person who had care of the married woman) is a distressed party and he is liable to file a complaint against the third party.
4. There is no provision in the law for a woman to file a complaint against her adulterous husband. If a married man commits adultery with an unmarried woman or a widow or with a married woman with the consent of her husband, his wife is not regarded as an aggrieved party and she is not permitted to make any official grievance against her husband⁴.

Considering the changes our society has witnessed in recent times, the Indian penal code must revise these laws and upgrade them keeping in mind the equality of men and women and enabling women to have more freedom and liberty in making their choices.

JUDICIAL VIEW

In *Alamgiri vs State of Bihar*, 1958, the Supreme Court found that “The gist of the offence under Section 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her.” It also said, “The consent of the wife to deprive her husband of his proper control over her would not be material.”

In *V Revathi vs Union of India*, 1988, as well, the Supreme Court held that the man is always the seducer. In *Yusuf Abdul Aziz vs The State of Bombay*, 1954, the constitutionality of Section 497 was questioned on the grounds that it violated gender equality, as promised by Articles 14 and 15 of the Constitution. The Supreme Court found the section to be constitutional. Thirty years later, it came up before the Supreme Court again on the

⁴<http://www.advocatekhaj.com/library/lawareas/divadultery/7.php?Title=Adultery%20Divorce&STitle=Adultery%20Indian%20penal%20code>

same grounds in *Sowmithri Vishnu vs Union of India*, 1985. Here, the Supreme Court looked into the meaning and purpose of the law more closely. It said, “It is commonly accepted that it is the man who is the seducer and not the woman.” It also said, “The contemplation of the law, evidently, is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime,” and that adultery is “an offence against the sanctity of the matrimonial home, an act which is committed by a man, as it generally is.” The Court went on to say, “The legislature is entitled to deal with the evil where it is felt and seen most: A man seducing the wife of another.”

In Ranjit’s experience, the conviction rate in adultery cases is “next to zero, because most cases are filed for the purpose of securing a divorce and are not pursued beyond that.” Referring to the *V Revathi and Sowmithri Vishnu* cases, Nundy points out, “These patriarchal ideas are somewhat prevalent in those who decide what the law is, whether it will stand the test of constitutional scrutiny, and how it is to be enforced. If these sections (497 and 498) are used at all, it is a problem.”

It is both ironic and tragic in Nila’s case that Section 498 should have been added (likely on behalf of her husband against the rapist) to the list of charges, when it was the addition of her husband’s torture to the ordeal of being raped that drove her to take the extreme step of taking her own life⁵.

Legislative intent

However, the legislative intent behind the enactment of Section 497 is quite different from what is perceived by these critics. In 1847, the Law Commission of India was given the responsibility of drafting a new penal code. The Commission rendered liable only the male offender, keeping in mind “the condition of the women in this country” and the law’s duty to protect it.

While critics of Section 497 argue that the adultery law tries to dictate and intervene in the lives of two consenting adults, they forget how adultery wrecks the life of another. Generally, the people who advocate the decriminalisation of adultery are those who define morality according to their whims and fancies.

The law deters the adulterer

The intention behind criminalising adultery in the present day is to deter the adulterer from committing such a crime again. One may argue that the law has failed to prevent the act of adultery. Such failure cannot be attributed

⁵Amala Dasarathi Section 497 and 498 of the IPC on adultery laws are dusty Victorian remnants <http://www.firstpost.com/india/section-497-and-498-of-the-ipc-on-adultery-laws-are-dusty-victorian-remnants-2866568.html>

to the law itself but to its enforcement. If such reasoning is to be taken into account, it would apply similarly to laws against rape, murder, trafficking, etc., but we do not talk about decriminalising them, do we? If we were to bring down a single brick, the whole house would collapse. A welfare-oriented and inclusive country like India, while demanding that a marriage be registered in order to acknowledge and protect the rights of the parties involved, cannot do away with a crime which undermines the same legally recognised institution. Even if the Supreme Court were to decriminalise adultery, it would still remain intact in various personal laws, eventually leading to harrowing inconsistencies.

Need for amendment

There is no denying that there exist ambiguities within Section 497 of the IPC. First, it only regulates the seemingly sordid conduct of the man who commits such a crime, all the while exonerating the voluntary conduct of the wife involved. Second, the benefit of such a law has not been extended to the wife whose husband engages in such an offence with another woman. However, such a plight can be resolved eventually by way of an amendment⁶.

CONCLUSION

Indian legal system has often been hailed for its progressive and detailed stance on various issues. Yet the IPC has not been able to shed the absurd set of laws that have been criticized for a long time. Examples? Again the last sentence of this article makes a comment about gender bias in our law without giving any examples⁷. India has to debate this issue and take its own stand. In doing so, it may, however, pay heed to the numerous calls given by the United Nations Organisation (UNO) to the governments to repeal laws that criminalise adultery, as these are predominantly⁸.

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⁶ <http://www.thehindu.com/opinion/op-ed/should-adultery-be-a-crime/article22180770.ece>

⁷ <http://nirmukta.com/2015/03/13/on-indian-adultery-laws/>

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