



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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The Law of Adultery in India: A Past, A Pivot, A Progress

When we talk about adultery, most people think of broken trust, fractured relationships, or tabloid-worthy scandals. But legally, the conversation around adultery in India has gone through a massive transformation. From being a punishable offense under the Indian Penal Code to being decriminalized entirely afterwards, the path of adultery law in India can be called as much an emotional journey as it is legal.

The Law of Adultery before 2018?

Before 2018, adultery was a criminal offense under Section 497 of the Indian Penal Code, 1860. It essentially said that if a man had sexual relations with a married woman without the consent of her husband, then it was a crime. But here's where it got controversial: the woman was not held accountable, as she was not seen as a perpetrator but as a "victim" of the man's actions.

This law came from colonial times when women were not seen as independent legal beings. Instead, they were viewed almost as property of their husbands. So if another man "trespassed" into that property, the husband could take him to court, but not the wife. This one-sidedness, over time, began to feel outdated and unfair in a modern democracy that speaks of equality.

The Gender Bias Was Loud and Clear:

The old law was being criticized for its obvious gender bias. Only the man involved in the affair could be punished, while the woman, even if she willingly participated, was immune from prosecution. In contrast, a wife had no legal recourse if her husband cheated. If he had a relationship with a married woman, only the husband of that woman could file a case.

It created a strange imbalance. Why punish only one party? Why allow only men to claim that their trust was violated? Why reduce women to passive spectators in their own relationships?

In simple terms, the law denied women both agency and accountability, and that is where the larger problem lay.

The Turning Point: Joseph Shine v. Union of India (2018)

In 2018, Joseph Shine filed a petition in the Supreme Court challenging the constitutionality of Section 497. Who knows that this will become a landmark case that completely changed the legal face of adultery in India?

The five-judge Constitution Bench, led by then Chief Justice Deepak Mishra, unanimously struck down Section 497 as unconstitutional. The court called it “archaic,” “patriarchal,” and “discriminatory.” It held that the law violated Articles 14, 15, and 21 of the Constitution, which were equality before the law, prohibition of discrimination, and the right to personal liberty.

The court said that while adultery might be a valid ground for divorce or for civil consequences within a marriage, criminalizing it was excessive and unfair.

Adultery Is No Longer a Crime, but Still a Civil Wrong:

After the 2018 verdict, adultery is no longer a criminal offense. This means no one can go to jail just for having an extramarital affair. However, it doesn't mean that adultery is acceptable under law. It can still be used as a ground for divorce, custody battles, or even alimony cases.

In short, the law now treats adultery as a personal issue between partners, not as something the state should punish with jail time.

What the Judgment Really Meant for Indian Marriages:

For many, the judgment wasn't just about legality; it was about dignity. The court recognized that marriage is a partnership of equals. Treating the wife as someone whose consent didn't matter or as someone who couldn't make her own choices, even if wrong, was a denial of her constitutional rights.

The judgment shifted the narrative: it told the legal system to stop treating women like fragile beings who couldn't be held responsible for their own actions.

Also, it underlined the idea that the state should not interfere in consensual relationships between adults unless there's coercion, abuse, or harm involved.

The Armed Forces Exception: A Complicated Debate

In 2023, the Ministry of Defence approached the Supreme Court seeking an exemption from this ruling for the armed forces. Their argument was that discipline and trust were crucial in military settings, and adultery among personnel could damage morale and effectiveness.

The court has kept the matter pending for consideration. So, for now, the law stays the same for everyone, even for civilians or armed forces. But this remains an area to watch, as it may lead to nuanced changes.

So, Where Do We Stand Today?

Adultery today in India is not a crime, but it's not without consequences. If someone cheats on their partner, they cannot be sent to jail, but their actions may still have serious legal and

emotional fallout. The focus has shifted from punishment to accountability within the private sphere of marriage.

The law now recognizes that adults in consensual relationships should not be policed by criminal law. At the same time, it respects the sanctity of marriage by allowing for consequences like divorce and civil relief.

In Conclusion: Law Should Reflect Society, Not Control It

The law of adultery in India has evolved, not because adultery is encouraged, but because personal relationships deserve space, nuance, and fairness. A marriage is not a courtroom, and love, betrayal, or forgiveness can't be dictated by criminal sections.

By striking down Section 497, the judiciary gave a clear message: laws must evolve with time, and people, whether men or women, must be trusted with their own choices, mistakes, and moral compass.

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TASK 3: THE ROLE OF ADULTERY IN INDIA