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LAW OF ADULTERY IN INDIA

~ Shreya Mishra

A law which treated women's choice as her husband's property, also known as Adultery. Prior to 2018, it used to be a criminal offence in India. The Law of Adultery in India, which has been discussed in the Indian Penal Code's Section 497 states that -

“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.”

The law talks about the consent or connivance of the husband for the act of sexual intercourse between the wife and the other person. This means that the wife is reduced to someone who, after getting married is treated merely as her husband's property. The law was so gender-biased that it not only treated the “wife” as the property of the husband, but also only prosecuted the man in this scenario. The wife involved in the sexual intercourse could not be punished, which also clearly intimated the fact that the wife cannot be treated as an abettor of the act. Placing the man in this very circumstance as the only abettor of the act as if there was no liability on the part of the woman. The liability and punishment for the criminal offence held the man as the only adulterer, while putting the woman at an immune position. However, this law has existed in India for more than 150 years.

The very first constitutional challenge to Section 497 occurred in the case of *Yusuf Abdul Aziz v. State of Bombay* (1954)¹. Here, the Supreme Court maintained the validity of the provision,

¹ *Yusuf Abdul Aziz v. State of Bombay*, (1954) 1 SCC 341

arguing that even though only men could face punishment for adultery, this did not infringe upon Articles 14 or 15 of the Constitution. The Court rationalized the exclusion of women from punishment by referring to Article 15(3), which allows for special measures concerning women. By doing this, the Court regarded the wife not as an independent legal entity but as someone in need of protection rather than accountability - a perspective that would influence adultery jurisprudence for many years to come.

However, this law hampered both males and females more or less equally, but put women at a disadvantaged position in a marriage, as a husband could also consent for the sexual act in which his wife would not consent and the most unbearable part is that this would not even amount to rape against the woman as the husband consented for it. The law had many loopholes which has been used every now and then before it was decriminalized. An apt example for this is the case of *Sowmithri Vishnu v. Union of India* (1985)², the Supreme Court was asked to review Section 497 because it barred wives from bringing charges against their adulterous husbands. The Court dismissed the challenge, affirming that the legislature had deliberately limited criminal responsibility to men while excluding wives from prosecution. It opined that adultery constituted an offense against the integrity of the matrimonial home rather than a private grievance between spouses, and that wronged wives could seek redress through civil law. This ruling solidified the notion that criminal law ought to protect marriage rather than uphold individual autonomy. Section 497 IPC was rooted in patriarchal assumptions and treated women as passive subjects rather than autonomous individuals. “Decriminalisation of Adultery: Really a Step Forward?” (17 Oct 2024)³

About 40 years of existence of this law after independence, finally the judgement in the case of *Joseph Shine v. Union of India* became the guiding light in the Indian society. Adultery was decriminalised by the Supreme Court in 2018 when Section 497 IPC was struck down as unconstitutional and discriminatory. “Adultery in modern Indian law: From decriminalisation to civil relevance” (15 Feb 2025)⁴

² *Sowmithri Vishnu v. Union of India*, 1985 Supp SCC 137

³ “Decriminalisation of Adultery: Really a Step Forward?” (17 Oct 2024) - <https://www.vintagelegalvl.com/post/decriminalisation-of-adultery-really-a-step-forward#:~:text=In%20Joseph%20Shine%20v.,rights%20and%20personal%20freedom%20standards>

⁴ “Adultery in modern Indian law: From decriminalisation to civil relevance” (15 Feb 2025) - <https://www.newindianexpress.com/nation/2025/Feb/15/adultery-in-modern-indian-law-from-decriminalisation-to-civil-relevance>

On 27th of September 2018, Section 497 of IPC and the equivalent provision for the same in Section 198 of the Code of Criminal Procedure, 1973 (“to the extent it applied to adultery”) was struck down by the Supreme Court of India with one accord. The Court ruled that Section 497 violated constitutional rights guaranteed under Article 14 of the Indian Constitution (equality before the law), Article 15 of the Indian Constitution (non-discrimination), and Article 21 of the Indian Constitution (right to life and personal liberty, which includes dignity, autonomy, and sexual privacy) considering the fact it was "manifestly arbitrary" and based on gender stereotypes. The ruling emphasized that the state should not interfere in people's consensual relationships; classifying adultery as a criminal was not in consensus with the provisions of equality, privacy, and individual dignity provided by the Constitution of India. Consequently, making adultery no longer a criminal offence for private individuals under IPC. In terms of gender fairness, individual autonomy, and constitutional morality in India, the ruling is largely considered a turning point.

This case also overturned the *Sowmithri Vishnu* and the *V. Revathi*⁵ case to showcase a cohesive judicial approach that saw infidelity as a crime against the husband rather than against personal dignity and subordinated women's autonomy to marital preservation. The Supreme Court finally rejected this patriarchal and property-based view of marriage, making a significant departure from the past.

However, Adultery is still significant under personal laws in India, even if it has been decriminalized. It can be a legitimate reason for divorce or judicial separation. Section 13(1)(i) of the Hindu Marriage Act, 1955 (HMA) permits either spouse to seek for divorce if the other spouse "has, after solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse." Courts have made it clear that a single instance of extramarital sex, even in the absence of a "continuous adulterous connection," may be sufficient justification for divorce. However, the burden of proof for adultery as a basis for divorce rests with the spouse making the accusation. Crucially, courts may refuse divorce on the grounds that the petitioner spouse tolerated (i.e., pardoned or passively accepted) the act of adultery. This is based on the HMA's "condonation" theory, where if the spouse even after knowing about the adultery still tolerated the other spouse i.e. resumed marital life, thereby losing the right to use that specific act as grounds for divorce.

⁵ *V. Revathi v. Union of India*, (1988) 2 SCC 72

While adultery under Section 27 of the Special Marriage Act (renumbered over time) is also a legal reason for divorce for couples married under the Special Marriage Act, 1954 (for interreligious or civil weddings). The requirements are different for non-Hindu personal laws (such as Christian, Muslim, and Parsi). According to the Indian Divorce Act, 1869 (for Christians), adultery can result in judicial separation; but, depending on the petitioner, courts have historically required additional grounds such as cruelty in these cases.