



The Indian Journal for Research in Law and Management

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

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THE LAW ON ADULTERY IN INDIA

Sudarshana Panchariya

INTRODUCTION

Adultery has historically straddled the lines between morality, marriage, and legislation in India. For more than one hundred and fifty (150) years, Section 497 of the Indian Penal Code of 1860 made adultery an infraction of law, however, it was primarily viewed as a patriarchal problem; only the male person participating in sexual activity with another man's wife was liable for this crime and the woman involved was treated as the property of the man and therefore, could not consent or be criminally liable for her actions. In 2018, the Supreme Court of India repealed Section 497, thereby fundamentally changing the interpretation of adultery within Indian law. This blog will follow the legal evolution of adultery in India, explore how the landmark ruling which decriminalized adultery was accomplished and whether or not adultery will continue to be a legitimate reason to pursue civil remedies including divorce.

THE COLONIAL-ERA PROVISION: SECTION 497 IPC

According to Section 497 of the Indian Penal Code, if a man had sex with an other man's wife without the husband's agreement, then he could be convicted of a crime and be sentenced to up to five years in prison or pay a fine or both. A husband could only begin a case against an adulterous man and so therefore would never be able to prosecute his own wife for adultery. It was assumed that a husband views his wife as one of his properties and this provision considered the act of a wife having intercourse with another man as a wrongful act to the husband and did not view this act as a wrong against the wife's independence. Furthermore, if the husband had consented to the sexual act of his wife, this law did not apply and this condition served to demonstrate how the "adulterous" act of the wife would be more of a violation of the property of the husband, rather than a true concern for the continuing fidelity of the marriage between the husband and wife.

CONSTITUTIONAL CHALLENGES AND THE JOSEPH SHINE VERDICT

Section 497 faced several constitutional challenges over the decades, including in *Yusuf Abdul Aziz v. State of Bombay* (1954) and *Sowmithri Vishnu v. Union of India* (1985), where the Supreme Court upheld the provision, reasoning that it protected the sanctity of marriage and that any reform was a matter for the legislature rather than the judiciary. This position was decisively overturned in *Joseph Shine v. Union of India* (2018), where a five-judge Constitution Bench, led by then Chief Justice Dipak Misra, unanimously declared Section 497 unconstitutional. The Court held that the provision violated Articles 14, 15, and 21 of the Constitution, as it discriminated on the basis of gender, treated women as the property of their husbands, and infringed upon individual dignity and sexual autonomy within marriage. Justice D.Y. Chandrachud, in his concurring opinion, observed that the provision was structured around an outdated notion of marital fidelity as a unilateral obligation owed by the wife, rather than a mutual commitment between equal partners. The judgment emphasised that while adultery may be a valid ground for civil remedies such as divorce, it cannot be treated as a criminal offence, since criminalising private consensual conduct between adults oversteps the legitimate boundaries of state intervention into personal life.

ADULTERY AS A CIVIL WRONG: MATRIMONIAL LAW TODAY

Although adultery is no longer a crime, it remains highly relevant in matrimonial law as a ground for divorce. Under Section 13(1)(i) of the Hindu Marriage Act, 1955, a spouse may seek divorce on the ground that the other party has voluntarily engaged in sexual intercourse with a person other than their spouse. Similar provisions exist under the Special Marriage Act, 1954, the Parsi Marriage and Divorce Act, 1936, and the Divorce Act, 1869 governing Christian marriages. The burden of proof rests on the petitioner, who must establish adultery on a preponderance of probabilities rather than the stricter criminal standard of proof beyond reasonable doubt. Courts have accepted circumstantial evidence, including conduct and opportunity, given the inherent difficulty of proving such allegations through direct evidence. Adultery may also have a bearing on ancillary matrimonial issues, such as claims for maintenance and alimony, since courts retain discretion to consider a spouse's conduct, including infidelity, while determining the quantum of financial relief in appropriate cases.

CONCLUSION

The history of adultery laws in India has changed vastly since it was introduced during British Colonial rule. It used to be a criminal act and considered a crime under law (additionally up until a few months ago) by the British government. Under Colonial law, women were seen as property and therefore the law recognised the wrong committed against married men when their wives committed "adultery". This view was based on a belief that women had no autonomy in a marriage and were merely extensions of their husbands (hence viewed as property). The change in Indian law is also reflective of the creation and interpretation of the Indian Constitution as it provides for individual dignity and equality under the Constitution. The Joseph Shine case was a turning point in Canada and India as it reinforces the view that the role of the state is no longer criminally sanctioning marriages based on unfaithfulness, rather to ensure that all relationships are formed and maintained on the basis of consent and equality. Although there are still legal consequences (e.g., spousal awards) for adultery, the decriminalization of the act means that the law should keep pace with how people understand marriage, gender and personal liberty.