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LAW ON ADULTERY IN INDIA: FROM CRIME TO CIVIL WRONG

~Princy S Das

Adultery has long been a controversial subject in Indian society and law. For over 150 years, Indian law treated it as a crime, but only for men. In 2018, the Supreme Court ended that. That does not mean it had vanished from the legal system, though. It has moved from criminal law into family law. The law and the views on it has evolved over the years in the context of changing social norms and new perspectives.

THE OLD LAW: SECTION 497 OF THE IPC

The Indian Penal Code of 1860 defined adultery in a very specific way. A man who had sexual relations with a married woman without her husband's consent or connivance was punishable with imprisonment, while the woman was not treated as an offender or even an abettor. The punishment could be up to five years in prison, a fine, or both.¹

The provision had three striking features:

- Only men were punished. The married woman involved escaped liability entirely.
- Only husbands could complain. A wife had no right to prosecute her husband or his partner.
- Only the husband's consent mattered. If he agreed to or ignored the affair, no offence was made out.

The law's origin, thus, lay rooted in patriarchy. In effect, it saw a wife less as an individual with her own choices and more as her husband's property. The husband was treated as the aggrieved party.

EARLIER CHALLENGES THAT FAILED

Even before 2018, Section 497 had been challenged and survived. In *Yusuf Abdul Aziz v. State of Bombay* (1954), the Supreme Court upheld it, reasoning that Article 15(3), which permits special provisions for women, allowed a law that exempted women from punishment. Later

¹ Section 497 in *The Indian Penal Code, 1860*, Available at: <https://indiankanoon.org/doc/1833006/> accessed 4 October 2026.

decisions such as *Sowmithri Vishnu* (1985) and *V. Revathi* (1988) also upheld the provision. Courts saw it as a legislative policy choice to protect marriage.²

THE TURNING POINT: JOSEPH SHINE V. UNION OF INDIA (2018)

On 27 September 2018, a five-judge Bench unanimously decriminalised adultery. The case began as a public interest petition filed by Joseph Shine, a non-resident Indian, under Article 32 of the Constitution. The Court struck down both Section 497 IPC and the linked Section 198(2) of the CrPC.

The Court's reasoning rested on three constitutional pillars:

- Equality (Article 14): the law treated people differently purely on the basis of sex.
- Non-discrimination (Article 15): it was built on stereotypes about women's roles.
- Dignity and autonomy (Article 21): it denied women sexual agency.

The Court held that the provision was rooted in patriarchal assumptions that treated women as passive subjects lacking sexual autonomy. Justice Nariman called it an archaic law that had outlived its purpose.³

IS ADULTERY STILL LEGAL IN INDIA?

This is the most common misunderstanding. Adultery is no longer a criminal offence, but that does not mean it has become legally irrelevant either.⁴:-

Divorce. Adultery remains a ground for ending a marriage, and it applies equally to both spouses. Under Section 13(1)(i) of the Hindu Marriage Act, 1955, either spouse may seek divorce if the other has had voluntary sexual intercourse with someone other than their spouse after marriage. The Special Marriage Act, 1954 contains a similar ground. Comparable provisions exist in the personal laws governing Christians and Parsis.

Maintenance. Proof of adultery can be enough to deny a wife maintenance under Section 125(4) of the Code of Criminal Procedure. This rule continues under the corresponding provision of the new Bharatiya Nagarik Suraksha Sanhita (BNHS).

Cruelty and custody. Courts may consider an extramarital relationship when deciding cruelty or custody disputes, depending on the facts.

Armed forces. Adultery remains punishable for armed forces personnel under the Army, Navy and Air Force Acts to maintain service discipline and conduct. As this aspect has not come up before the court as of now, the Joseph Shine judgement of 2018 only applies to civilians and does not include defence forces in its purview.⁵

² *Should Adultery Be a Crime at All?* (May 4, 2019), Available at: <https://pldindia.org/advocacy/submissions-to-domestic-and-international-bodies/should-adultery-be-a-crime-at-all/> accessed 4 October 2026.

³ Soutik Biswas, *Adultery no longer a criminal offence in India*, (Sept. 27, 2018), Available at: <https://www.bbc.com/news/world-asia-india-45404927> accessed 4 October 2026.

⁴ *Adultery in India: Law Before and After Decriminalization*, Delhi Law Academy (Feb. 1, 2026), Available at: <https://www.delhilawacademy.com/adultery-before-after-decriminalization/> accessed 4 October 2026.

⁵ *Making Justice Accessible and Affordable for All*, Available at: <https://www.lawyered.in/legal-disrupt/articles/adultery-laws-applicability-indian-army/> accessed 4 October 2026.

THE NEW CRIMINAL CODES

When India replaced the IPC with the Bharatiya Nyaya Sanhita (BNS), which came into force on 1 July 2024, adultery briefly returned to the debate. A Parliamentary Standing Committee on Home Affairs recommended retaining the offence in a gender-neutral form, saying this was necessary to protect the institution of marriage.⁶ When the revised Bill was reintroduced, adultery did not feature as a crime, so the committee's recommendation was not taken up. The position set by *Joseph Shine* therefore continues to hold.⁷

THE DEBATE STILL CONTINUES...

Supporters of the 2018 verdict argue that marriage is a private matter between two adults and that criminal law is a blunt instrument for personal betrayal. Jailing someone rarely repairs a marriage, and such laws can be misused for harassment. The Standing Committee's lone dissenter, P. Chidambaram, argued that the state has no business regulating how marriages work.

Critics counter that without a criminal deterrent, spouses, especially financially or emotionally dependent ones, have fewer ways to hold a straying partner accountable. Making the offence gender-neutral would remove the idea of women as property, though it may not resolve the broader concern about criminalising private relationships.⁸

Most legal scholars see the 2018 decision as a milestone in recognising women as equal and autonomous citizens.

CONCLUSION

Can an affair land someone in jail in India today? No. But it can still end a marriage, affect maintenance claims and shape family court outcomes. The law has moved from punishing the act to treating it as a personal and civil matter.

⁶ Bharti Jain, *Reintroduce in BNS adultery section in gender-neutral form, says panel*, Times of India (Oct. 26, 2023), Available at: <https://timesofindia.indiatimes.com/india/reintroduce-in-bns-adultery-section-in-gender-neutral-form-says-panel/articleshow/104708378.cms> accessed 4 October 2026.

⁷ Ambika Pandit, *Despite panel nudge, adultery & unnatural sex not crimes in BNS*, Times of India (Dec. 13, 2023), Available at: <https://timesofindia.indiatimes.com/india/despite-panel-nudge-adultery-unnatural-sex-not-crimes-in-bns/articleshow/105943331.cms> accessed 4 October 2026.

⁸ *Parliament Committee Recommends Gender-Neutral Adultery Law | Daily Article*, LA Excellence (Dec. 3, 2023), Available at: <https://laex.in/articles-editorials/re-criminalizing-adultery-as-a-gender-neutral-offence/> accessed 4 October 2026.