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## Adultery In India: A Critical Study of Law, Morality, And Justice

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# Adultery In India: A Critical Study of Law, Morality, And Justice

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## **Abstract:**

Adultery is a sensitive topic in Indian society. It is closely linked to marriage. What people think is right or wrong. For a time adultery was considered a crime under Section<sup>1</sup> 497 of the Indian Penal Code. Many people did not agree with this law because it was not fair to women. The law saw women as victims. Did not give them the same rights as men. It will explore the history of adultery laws why people think it is wrong and what the constitution says about it. With a focus on the change from a criminal offence to a civil basis for matrimonial remedy, this research paper offers a thorough legal examination of the development of adultery legislation in India. The law was widely criticised for its patriarchal foundations, which saw women as their husbands' property and denied them agency. Historically, it was governed by Section 497 of the Indian Penal Code (IPC) and Section 198(2) of the Code of Criminal Procedure (CrPC). The concept of adultery in India is very complex and has as many different sides. Adultery, in India is still an issue. Special emphasis has been placed on important judicial decisions such as *Yusuf Abdul Aziz v. State of Bombay*, *Sowmithri Vishnu v. Union of India*, and the landmark judgment of *Joseph Shine v. Union of India*<sup>2</sup>, through which adultery was decriminalised.

**Keywords:** *Adultery; Section 497 IPC; Decriminalisation; Gender Discrimination; Constitutional Rights; Marriage; Morality; Supreme Court Judgments*

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<sup>1</sup> The Indian Penal Code, 1860

<sup>2</sup> *Joseph Shine v. Union of India*, 2019 3 SCC 39

## **Introduction:**

Adultery, or being sexually unfaithful to one's life partner, has been an essential feature of human civilization for as long as people can remember. Why do we humans think it's hard to be dedicated to our life partners? To get the disturbed life partner's previous assent, it is important to cut crosswise over most regions before pursuing prosecution. The idea that laws against adultery assist a blatantly male target in rejecting the spouse—who is seen as little more than an asset—when they ask about fatherhood and ancestry has been reinforced by the emphasis these restrictions place on women due to their generally more dependent social status. We'll begin by giving a quick legal review of adultery, including how it has been defined by the legal system and how the Supreme Court addressed it in its most recent decision. It will address the contradictions in the government's and courts' definitions of adultery.

## **Former Objections to the Adultery Law:**

Due to its controversial nature, adultery has drawn attention from a wide range of societal organizations. We would be concentrating on the administration's and judges' perspectives. The Supreme Court examined the legality of adultery three times through three distinct challenges to discriminatory legislation, upholding the prohibitions in each instance. According to the government, "decriminalizing adultery would undermine the value of marriage and the foundation of society at large." However, adultery is no longer considered a crime but rather a basis for divorce after a recent court declared it to be unconstitutional. Let's begin by summarizing the sections that deal with adultery in India: Both Section 497 of the Indian Penal Code and Section 198<sup>3</sup> of the Criminal Procedure Code have this exact phrasing.

## **Section 497: Adultery**

Adultery is not the same as rape, and anyone who has sex with someone they know or have reason to believe is another man's wife without that man's knowledge or consent is guilty of adultery, which carries a maximum five-year sentence, a fine, or both. In such a case, the wife will not be held responsible for aiding and abetting.

## **Section-198: Prosecution for offences against marriage:**

(1) Unless a person who has been wronged by the offense files a complaint, no court will consider an offense covered by Chapter XX of the Indian Penal

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<sup>3</sup> The Code of Criminal Procedure, 1973

Code (45 of 1860). (2) For the purposes of sub-section (1), an offense punished under section 497 or section 498 of the aforementioned Code will not be considered to have harmed anybody other than the woman's husband: Adultery is defined by law as when a married man has sex with a married woman he knows is the wife of another man without that man's consent . As a result, that human behaviour amounted to adultery rather than rape, for which there may have been a fine, a five-year extension, or both. Crucially, a woman could not prosecute her husband for adultery and could not be found guilty of the crime. Only the woman's husband could start the process; if he wasn't present, his nominee could.

### **Two cases dealt by Apex Court on Adultery:**

In two Supreme Court cases, *Yusuf Abdul Aziz v. State of Bombay*<sup>4</sup> and *Sowmithri Vishnu v. Union of India*<sup>5</sup>, the arguments against adultery were contested; however, the petition never once sought to declare the aforementioned sections unconstitutional, as was done in *Joseph Shine v. Union of India*. Yusuf Abdul Aziz, who was on trial for adultery in the case of *Yusuf Abdul Aziz v. State of Bombay*, contested Section 497 of the Indian Penal Code on the grounds that it violated Article 14 (Right to Equality) of the Constitution. He went to the Supreme Court after losing the Bombay case. In the Supreme Court, he contended that the S-497 violates the concept of equality enshrined in Articles 14 and 15<sup>6</sup> by presuming that adultery can only be committed by men and by allowing the adulterous wife to escape punishment, even if she is an accomplice. This, according to some, allows women to commit adultery. "We are unable to read any such restriction into the clause; nor are we able to agree that a provision which prohibits punishment is tantamount to a license to commit the offence of which punishment has been prohibited," the court ruled. Discrimination on the basis of religion, ethnicity, caste, sex, or place of birth is prohibited under Article 15. The government may establish specific measures for women and children under Article 15(3). The court unanimously decided through Vivian Bose J. that the exemption granted by this clause is protected by Article 15(3) of the Constitution, which was the topic of discussion in this case. In the second case, *Sowmithri v. Union of India*, it was argued that Section 497 creates an illogical distinction between men and women in the sense that it violates Article 14 of the Constitution. (i) Gives the husband the right to prosecute the adulterer, but does not grant the wife the same right to prosecute the woman with whom her husband has committed

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<sup>4</sup> Yusuf Abdul Aziz v. state of Bombay, AIR 1954 SC 321

<sup>5</sup> Sowmithri Vishnu v. Union Of India , AIR 1985 SC 1618

<sup>6</sup> INDIA CONST. art. 14; INDIA CONST. art.15

adultery; (ii) Does not grant the wife any right to prosecute the husband who has committed adultery with another woman; and (iii) Does not cover situations in which the husband has sex with an unmarried woman, giving the husbands a legal license to engage in extramarital affairs. One point that came up when the third argument was brought up in the Sowmithri case of the husband utilizing this part as a license was whether or not men could also make the same claim that this provision grants licenses to women. Returning to the Sowmithri case, the court rejected the claim that S. 497, which prohibits women from filing criminal charges for adultery, violates Articles 14 and 15 of women.

### **Adultery, Fornication, Infidelity, and Non-Monogamy:-**

A marriage in which the partners are permitted to engage in sexual relations with people other than their spouse is an example of non-monogamy. In certain legal jurisdictions, a spouse or wife's relationships with other people may be considered adultery, but in other legal jurisdictions, the life partners do not treat these relationships as such, nor do they treat the spouse or wife's subsequent sexual relationships with other people as infidelity. The adulterer is also required to provide her bill of divorce, and the adulteress is not permitted to do so. Strict laws prohibiting adultery were in place in the Greco-Roman civilization, but they were only applied to those who had sex with married women. The concept of unfaithfulness is understood differently in several cultures. A comparable behaviour is considered adultery and a felony in some legal systems, although it may be tolerated by the jurisdictions in others. Sex between consenting unmarried partners is referred to as fornication. Consequently, there is no connection to adultery. A similar act is seen as adultery and a felony in some legal systems, although it may be accepted in others. Sex between consenting unmarried partners is referred to as fornication. As a result, it has nothing to do with adultery.

### **Religious Perspectives and Legal Sanctions:**

Adulterers have always suffered from society's negative attitude against them, which varies greatly depending on local culture, religion, and morals. In the past, adultery was strictly condemned and punished, typically exclusively as a breach of the husband's rights. Among these individuals, adultery came to be associated with robbery, namely robbery of an aggravated form, since the spouse was viewed as her property. In many regions of Africa, seducers who defraud their husbands are punished by losing one or both hands. The seducer was not the only one who suffered; the guilty spouse faced terrible consequences as a result of her offended

spouse. According to Jewish law, the punishment<sup>7</sup> for adultery was stoning for both men and women. However, this was most successfully applied when the perpetrators had been warned by two separate witnesses prior to the crime being committed.

### **The Following Essentials Are Required in This Section:**

A man having sex with a woman he knows or believes to be the wife of another man. Such sex should only take place without the husband's permission or cooperation. Such sexual contact should no longer be considered rape. It is essential to file a complaint through a man or woman who has been wronged. (Sec. 198 CRPC) This offense is limited to adultery committed against a married woman, and the male perpetrator alone is subject to penalty. Accordingly, adultery is defined by the Code as an offense committed by a third person against a husband who is in love with his spouse.

### **Conclusion:**

It's possible that cultural sentiments are reflected in the government's claim that decriminalizing adultery would compromise the sacredness of marriage. As the cornerstone of society's worldview, morality changes and, to some degree, has to. The violation of Articles 14, 15, and 21<sup>8</sup> that the adultery act was upholding has been recognized since adultery was ruled to be unconstitutional. It is crucial to understand that consent-based behaviour cannot be criminalized when divorce is recognized in this opinion as a legal remedy in the event that reconciliation is unsuccessful. We think that this decision will pave the way for future challenges to discriminatory legislation, even if the underlying inequity in adultery law has already been remedied with its recognition as illegal. To address the issues of women's equality and dignity, a criminal infraction that either excludes or modifies must exist.

### **Reference:**

1. <https://en.wikipedia.org/wiki/Adultery>
2. The Indian Penal Code, 1860.
3. Criminal Procedure Code, 1973.
4. Criminal Procedure Code, 1973.
5. The Constitution of India, 1950.

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<sup>7</sup> See generally definitions of sexual offenses in religious jurisdictions

<sup>8</sup> INDIA CONST. art.21(Protection of Life and Personal Liberty)

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