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Decriminalization of Adultery in India

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ABSTRACT

Adultery, is the voluntary sexual intercourse of a married person with a third person other than the spouse. Under Indian law, Section 497 IPC makes adultery a criminal offence, and prescribes a punishment of imprisonment upto five years and a fine. The offence of adultery under Section 497 is very limited in scope as compared to the misconduct of adultery as understood in divorce proceedings. The offence is committed only by a man who had sexual intercourse with the wife of another man without the latter's consent or connivance. The wife is not punishable for being an adulteress, or even as an abettor of the offence.

Keywords: Adultery, Sexual intercourse, Wife, Adulterer, Husband and Divorce.

I. INTRODUCTION

“Autonomy is intrinsic in dignified human existence and Section 497 denudes women from making choices and held adultery as a relic of the past.”

– Justice DY Chandrachud

Supreme Court of India declared 158-year-old adultery law as unconstitutional. The term “Adultery” is derived from a latin word ‘Adulterium’ which means sexual intercourse with a person other than one’s own spouse. Generally, adultery means consensual sexual intercourse with the wife of another man. The act which indulges in any type of consensual sexual relationship between a married person and a person who is not their spouse is known as adultery. Five judge benches of Supreme Court of India struck down the section 497 of Indian Penal Code, 1860 along with 198(2) of the Criminal Procedure Code, 1973 as unconstitutional. Section 497 of the Indian Penal Code, 1860 dealt with adultery and Section 198 of the Criminal Procedure Code, 1973 deals with prosecution for offences against marriage.

II. ARTICLE 14, ART 15 AND ART 21 OF INDIAN CONSTITUTION

Under adultery law, only a man is convicted but woman is not convicted, clearly it goes against article 14 of the Constitution of India, also against article 15 of the Constitution of India which says no discrimination on ground of sex so it is discrimination against man.

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III. CASE DESCRIPTION

The Court unanimously struck down Section 497 IPC. The Bench produced four concurring opinions:

- Chief Justice Dipak Misra (on behalf of Justice Khanwilkar and himself)
- Justice Nariman
- Justice Chandrachud
- Justice Malhotra

Joseph Shine, a non-resident Keralite, filed public interest litigation under Article 32 of the Constitution. The petition challenged the constitutionality of the offence of adultery under Section 497 of the IPC read with Section 198(2) of the Criminal Procedure Code, 1973. Section 497 IPC criminalised adultery: it imposed culpability on a man who engages in sexual intercourse with another man's wife. Adultery was punishable with a maximum imprisonment of five years. Women though were exempted from prosecution. Section 497 IPC was inapplicable when a married man engaged in sexual intercourse with an unmarried woman. Section 198(2) of CrPC specified how a complainant may file charges for offences committed under Sections 497 and 498 IPC. Section 198(2) CrPC specified that only the husband may file a complaint for the offence of adultery. The Court reviewed the correctness of the precedents – *Yusuf Abdul Aziz*, *Sowmithri Vishnu* and *V. Revathi* – which had in the past upheld Section 497 as constitutionally valid. This case was first heard before a three-judge bench headed by the then Chief Justice Misra.

The three-judge bench referred the matter to a five-judge Constitution Bench and noted: '*Prima facie, on a perusal of Section 497 of IPC, we find that it grants relief to the wife by treating her as a victim. It is also worthy to note that when an offence is committed by both of them, one is liable for the criminal offence, but the other is absolved. ..Ordinarily, the criminal law proceeds on gender neutrality, but in this provision, as we perceive, the said concept is absent.*'

On 11 July the Centre filed an affidavit, arguing that diluting adultery in any form will impact the '*sanctity of marriage*'. The five-judge Bench started hearing the matter from August 1st 2018 onwards. On September 27th 2018, the Bench delivered its judgment, decriminalising adultery.

IV. SECTION 497 TO NO LONGER BE A CRIMINAL OFFENCE

Crime is something that is committed to society overall, while adultery is more of a personal

matter. Treating adultery as an offence would be tantamount to a state breaching a real private domain. Adultery would not fit into the definition of crime, since it would otherwise conflict with the extreme privacy of marriage. However, it appears to be a legal wrong and a reason for divorce. What happens after adultery has been committed should be left to the husband and wife to determine as it is something that should only require their personal discretion. It is difficult for the court to interpret the various situations that have brought them to this point. Declaring adultery as a crime would, thus, somehow bring inequality to the framework.

Adultery can be ground for civil wrong, a ground for divorce but not a criminal offence

V. CONCLUSION

The decision depends on the assumption that, for that matter, women can no longer be treated as property of their husbands or fathers. They have an equal status in society and every opportunity should be given to put forward their position.

VI. REFERENCES

- D. Gaur, Commentary on Indian Penal Code, Second Edition, Universal Law Publishing Co.
- Ratanlal & Dhirajlal, Justice K.T. Thomas and Advocate M.A. Thomas, Vol II. The Indian Penal Code, 33rd Edition
- Vedavalli v. MC Ramaswamy AIR 1964 Mys 280
- AS Puri v. KC Ahuja AIR 1970 Del 214, (1970) Cr LJ 1441 (Del)
- Brij Lal Bishnoi v. State (1996) Cr. Lj 4286 (Del)
- Stroud's Judicial Dictionary, Vol 1, p. 580
- Boulting v. Boulting, (1864) 33 LJ (P M & A) 33
- Munir, (1925) 24 ALJR 155
- Pothi Gollari v. Ghanni Mandal, AIR 1963 (Ori) 60
- Bharatlal v. Top Singh (1995) Cr LJ 3545 (M.P.)
- Kalyani v. State, AIR 2012 SC 497
