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Legal Implications of Adultery: A Comprehensive Analysis across Jurisdiction

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ABSTRACT

Adultery demonstrates the tension between a person's quest for happiness and social pressure. According to section 497 of the Indian Penal Code, 1860, adultery is no longer a crime in India. Legal research of how various legal systems regulate married people's adulterous behavior shows that the social norms around sexual morality at the time the law was created had a significant impact on the definition of adultery. One's initial reaction upon witnessing the reality is one of shock at the state's blatant intrusion into what appear to be private sexual areas of life. The paper's main focus is on the psychological implications of adultery, societal perspectives, legal repercussions, cultural differences, or depictions of adultery in India. A lady is exempt from the law of adultery. Section 497 of the Indian Penal Code, 1860 was drafted prior to the 150-year colonial period in India. Since then, it has been embroiled in contentious debates for a number of reasons, including its gender bias, reflection of cultural conflicts, and questioning of the cause of equality. There have also been compelling arguments made for its retention, modification, or removal from penal statutes. The study also explores important court rulings that have influenced the conversation about infidelity in India.. This research attempts to offer a nuanced view of how adultery is legally defined, prosecuted, and understood in the Indian legal system by looking at the cultural and social factors impacting legal perspectives. The results of this study add to the larger discussion about how morality, the law, and individual liberties interact with regard to Indian marriages. This study has made an effort to explain these disputes from a legal perspective in modern-day India.

After attempting to study adultery from a legal conceptual standpoint, this research article looked at its influence, effect, and relationship to other factors like marital bonds, property claims, over the progeny, remarriage, and divorce. In summary, by providing insights into the changing nature of these laws and their effects on both individuals and society, this research work advances our understanding of the legal intricacies surrounding adultery in India. The results offer a starting point for well-informed conversations about possible changes and factors to be taken into account for a legal system that is in line with modern values and social standards.

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I. INTRODUCTION

“Whoever looks at a women to lust after her has committed adultery already with her in his heart” - Jesus Christ

The exact definition of adultery is a voluntary physical relationship between two people who are not married to one another and who are either or both wedded to someone else with a living spouse. Although different countries may have varying definitions of adultery, having sex outside of marriage is the fundamental idea. Almost all religions consider adultery, sometimes referred to as infidelity or extramarital affairs, to be a sin and a moral transgression.³ Adultery was defined as the contamination of the marriage bed in the sixteenth century by the Council of Trent's catechism. The integrity of a married man's marriage bed is violated when he engages in sexual relations with an unmarried woman, while the sanctity of another person's marriage bed is defiled when an unmarried man engages in sexual relations with a married woman. According to several legal regimes, it constitutes a "crime against marriage." Despite the fact that the concept of "adultery" appears to vary across almost all legal systems, extramarital sex in one form or another is a recurrent theme.⁴ Adultery in India is a criminal offence as per the section 497 of Indian Penal code, 1860: it states that-

Adultery: Anyone who engages in sexual activity with someone he knows or has reason to suspect is the wife of another man without that man's knowledge or consent is guilty of adultery, which carries a sentence of up to five years in prison of any kind, a fine, or both. The wife will not be punished as an abettor in this situation.

The Indian Penal Code now makes adultery a crime that punishes only males who, in their opinion, have previously endured harsh and dehumanizing living conditions within the home. In its most recent ruling in *Joseph Shine v. Union of India*,⁵ The 158-year-old Victorian morality act on adultery was repealed by the Supreme Court. The ruling is of this type, and all earlier rulings supporting the adultery offense have been overturned.⁶

³ Vijaykumar Shrikrushna Chowbe, *Adultery – A Conceptual and Legal Analysis*, RESEARCHGATE (2025), https://www.researchgate.net/publication/228263447_Adultery_-_A_Conceptual_and_Legal_Analysis.

⁴ Tanuj Kanchan, *Adultery and the Indian Law*, RESEARCHGATE, https://www.researchgate.net/publication/296877247_Adultery_and_the_Indian_law (last visited Aug. 12, 2025).

⁵ Sehgal, D.R. (2024) *Joseph Shine v. Union of India: Case Analysis*, *iPleaders*. Available at: <https://blog.ipleaders.in/case-analysis-joseph-shine-v-union-india/> (Accessed: 12 August 2025).

⁶ Shivanshi Shukla, *A Critical Analysis on Decriminalizing Adultery*, 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES 2507.

Views on adultery

1. **Cultural Variations:** Different civilizations have different views on adultery. Because of their cultural, religious, or traditional traditions, some nations might be more lenient.
2. **Changing social norms:** Views on marriage and relationships have changed as a result of shifting social norms and heightened knowledge of individual rights.
3. **Therapeutic approaches:** In order to address the underlying issues, promote communication, and restore trust, therapists frequently engage with couples who have experienced adultery.
4. **Alternative relationship model:** Some people support alternative relationship models that go against the traditional monogamous conventions.

Implications of Adultery

1. **Emotional Impact:** Both partners frequently experience severe emotional suffering as a result of adultery. Feelings of inadequacy, remorse, and betrayal can have long-lasting psychological effects.
2. **Relationship breakdown:** One of the main causes of marriage dissolution is adultery.
3. **Legal Repercussions:** Adultery may have legal repercussions in some jurisdictions, impacting financial settlements, custody disputes, and divorce procedures.

Social Stigma: Although opinions on adultery differ, it is frequently associated with social stigma.

Both physical and mental acts are involved in adultery. It is impossible to commit overt adultery without first committing mental adultery. Spooning appears to be a powerful factor that typically results in mental infidelity, which in turn motivates the individual to commit overt adultery. A lady can be seduced in countless ways. One could try to learn about them from the cases that have been decided. Investigating the reasons behind infidelity becomes essential in order to implement effective corrective actions. Adultery is considered a crime that harms public morals and mistreats marriage partnerships in many jurisdictions. It puts the institution of marriage at danger.

II. HISTORICAL PERSPECTIVE

In the past, many civilizations have seen adultery as a grave transgression. Adultery can nonetheless have legal repercussions, especially in divorce situations, even in states where it is not a crime in and of itself. Moreover, in various regions of the world, adultery may lead to

social exclusion.⁷

It has been noted that in practically every civilized society on the planet, sexual relations have been the foundation of social relationships. Evidence from history suggests that a set of normative standards has governed and regulated people's sexual behavior. It has been determined that the institution of marriage, which was once considered a crucial institution for maintaining society, is based on the allowed sexual contact within the married couple.

Historical research has shown that, depending on a number of variables, different societies either clearly permit or forbid sexual relationships. These behaviors may be regulated by a value-based system of "sexual morality," which establishes standards for allowing or forbidding sexual relationships between people of different sexes. According to human civilization's recorded history, adultery was likewise forbidden because it directly threatened the marriage bondage that a stranger had broken. As a result, adultery is also seen as a relative phenomena that is influenced by societal norms surrounding sexual morality. Additionally, it has been governed differently in many societies.⁸

III. SUPREME COURT VIEWS

1. The case of Yusuf Abdul Aziz v. The State of Bombay featured the first significant debate about the constitutionality of the section. In this instance, it was argued that section 497 of the Indian Penal Code went beyond the bounds of Articles 14 and 15 of the Indian Constitution. According to the Supreme Court, article 14 is a broad provision that should be interpreted in light of the other clauses that outline exceptions to fundamental rights. Article 15(3) allows for exceptions for women and children, and sex is a valid classification.

According to the petitioners, this language is primarily intended to benefit women and is not intended to provide permission for doing or aiding criminal activity. However, the court ruled that they do not think that the clause amounts to a license to conduct the offense for which punishment has been forbidden, nor do they recognize any constraints as such. In the end, the court determined that when "read together, validate the impugned clause in section 497 of the Indian Penal Code," articles 14 and 15 are applicable.⁹

2. The constitutionality of section 198(1) read with section 198(2) of the Criminal Procedure Code, 1973, which only permits the adulterer's husband to prosecute the adultery and forbids the adulterer's wife from doing so, was established in the Revathi v. Union of

⁷ Vijaykumar Shrikrushna Chowbe, *supra* note 3.

⁸ *Id.*

⁹ SINGH, P. (2022) *Yusuf Abdul Aziz vs. the State of Bombay & Ors.*, LawFoyer. Available at: <https://lawfoyer.in/yusuf-abdul-aziz-vs-the-state-of-bombay-ors/> (Accessed: 12 August 2025).

India case. According to the court, neither spouse is permitted by law to prosecute the other under criminal law; a husband is not allowed to do so because the wife is not considered an offender in the eyes of the law. According to clause 198(1) read with section 198(2), the wife is not allowed to do so.

Additionally, there is "reverse discrimination" in favor of women, and as long as a woman is prohibited from bringing charges against her own husband, there is no discrimination against her.¹⁰

IV. COMMITTEE REPORTS AND SUGGESTIONS FOR LAW REFORMS

In its 42nd law report, the Fifth Law Commission recommended that section 497 remain in the penal code, but that both the husband and wife be found guilty because there is no legitimate reason "for not treating the guilty pair alike." Additionally, the commission recommended reducing the maximum punishment from five years to two years because the current punishment is "unreal and not call for in any circumstances."¹¹

The recommended section is as follows:

497-ADULTERY: If a man engages in sexual relations with a woman he knows or has reason to suspect is the wife of another man without that man's knowledge or consent, it does not constitute adultery and he will be punished with a fine, two years in jail of any kind, or both.¹² Section 497 was to be amended by the Indian Penal Code (Amendment) bill of 1978, but the legislature did not approve it.

Analysis of the argument of NCW

In its report, the National Commission on Women (NCW) made a case against the current IPC section 497 provision. In expressing its regret, it stated that the current IPC provision is predicated on the idea that the wife is the husband's personal property and that he is the only person who has been wronged in an adultery case. Accordingly, the commission has suggested appropriate changes to Criminal Procedure Code section 198(2), which now prohibits an unfaithful husband's wife from bringing charges against him for his infidelity.

However, given the purpose of section 497 of the IPC and the rulings of the Supreme Court in the V. Revathi case, this reasoning is untenable. The provision penalizes adultery by strangers and tries to address the institution of the family. Although they are married, it is also

¹⁰ Faculty, L. (2022) *Revathi v. Union of India & Ors* " Law Faculty, Law Faculty " law faculty. Available at: <https://lawfaculty.in/revathi-v-union-of-india-ors/> (Accessed: 12 August 2025).

¹¹ Id

¹² Id

convenient to suggest that women have enough of freedom to punish men on their own. In particular, section 498A gives the wife the authority to discipline her husband for any action. The same National Commission of Women study also makes the case that she shouldn't be prevented from filing a complaint under section 198 of the Cr. P.C., even when the other restrictions are in place.

But this argument is likewise absurd because the IPC's fundamental goals of safeguarding women and maintaining harmony in marriage institutions would have been defeated if section 497 had included the gender neutrality line.¹³

The commission also made the crucial suggestion that adultery be considered a civil wrong rather than a criminal offense. It holds that there may be various situations in which a woman want to keep her marriage intact and considers an adulterous relationship to be abnormal. This argument is solid, mature, and persuasive, and it offers a solution that is acceptable to contemporary culture.

V. WHY ADULTERY IS STILL PUNISHABLE?

"Why is adultery still punishable?" is the fundamental query. Because sexual relationships are currently not a very sensible aspect of society and marriage is not a central attraction for penal statutes, there are arguments in favor of decriminalizing adultery in particular and eliminating the provision that defines "adultery" as an offense in general. There are differences in the context and level of "sexual morality" that were prevalent in society at two distinct times between the time when section 497 of the IPC was drafted and the present day, when it is still in effect.

Social values had a significant impact on the legal and social framework that governed marriage and sexual relationships in the 19th century. Adulterous behavior was harshly discouraged by social values. The widow marriage was prohibited as well. As a general method of exploiting the dominating class, it was customary to retain the wife of a poor and inferior person as a security and surety. Therefore, the husband was in a position to use the criminal laws to defend the person whose wife had been taken away and a forceful sexual relationship had been developed, either with or without the wife's agreement.

The current situation, however, differs from that of the middle of the 19th century, when the IPC's legal provision for "adultery" was drafted. The social ideals surrounding sexual relationships have altered, and society has become considerably more liberal in recent years.

¹³ Vijaykumar Shrikrushna Chowbe, *supra* note 3.

The impoverished have been less frequently sexually exploited. Under the Indian legal system, adultery is considered to have occurred when even the husband's wife gives her assent for an adulterous connection with a man other than herself.

husband. The offense does not meet the requirements of section 497 of the IPC and would instead fall under section 376 if the wife does not have the co mission for the adulterous connection. Consequently, the women's assent is a necessary corollary for an offense of adultery.

This sparked yet another argument: does it not seem illogical and violate the law that the perpetrator is always a man and that the woman, even if she may have assisted, is not prosecuted for the crime of adultery when it is a consenting act between two people of opposite sexes who have a living spouse at the time of the adulterous act? Though it may be kept for civil remedies, these arguments strongly support the removal of the adultery provision from the penal statutes.

VI. CRITICISM

Since public opinion and Indian culture have not been taken into account, the decision to decriminalize adultery in India has caused chaos and confusion in the minds of the general public and has also disrupted social order, suggesting that it is not founded on accepted principles of criminal jurisprudence. While India is moving toward greater female equality, it is also seizing this right by giving the victim the ultimate justice through divorce and alimony.

Without a doubt, the aforementioned statute was gender biased in its language toward women, necessitating an amendment that would have struck down the entire law—that is, sections 497 of the IPC and 198(2) of the Cr. P.C.—and declared it unconstitutional, but this would not necessarily address the issue. In addition to potentially increasing the risk of STIs, decriminalizing adultery will seriously jeopardize the institution of marriage by promoting extramarital affairs.

VII. CONCLUSION

Therefore, the aforementioned legal examination of the penal statute's "adultery" clause clearly establishes the procedural and substantive requirements and establishes that section 497 has been designed differently. It might also be said that it results in a number of irrational absurdities. Provisions that perpetuate discrimination against this class are becoming less relevant as time goes on and women's rights are increased by feminine jurisprudence. Although the Mall Math Committee and Law Commission's gender-neutral version of the

adultery rule would seem more sensible, incidental, pertinent, and capable of serving a better goal, considering the different contexts and societal realities

Therefore, it can be said that the provisions on adultery in the various legislative packages have the intention of strengthening the institution of marriage, fostering marital harmony, giving the husband the ability to punish an outsider, giving both spouses the opportunity to forgive and move on, and ultimately serving as one of the grounds for divorce under personal laws. As a result, the current legislation package also protects women who are victims in a society that is controlled by men.
