

## SHOULD ADULTERY BE CRIMINALIZED?

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### ABSTRACT:

Adultery may be a common word in today's era. Almost every individual is responsive to a general description of the term. Adultery in common means unlawful carnal knowledge. Section 497 of the Indian Penal Code defines adultery as,

*“Whoever has sexual issues with an individual who is and whom he knows, or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexuality not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which can be five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.”<sup>1</sup>*

Adultery was a criminal offence in India, it is also decriminalized in most of the countries.

### WHY SHOULD ADULTRY DECRIMINALIZED IN INDIA?

There are several loopholes in Section 497 of IPC (Indian Penal Code). The major loophole is that it punishes only men that commit adultery, and girls are treated as victims and innocent. This can be discriminatory on the premise of gender.

Another important loophole is that, it considers woman as a property of her husband. This law states that a person can file a case on the individual that have a bootleg affair along with his wife, without his permission.

The law punishes only those that have illegal relationship with married women. If a married person has an affair with an unmarried woman, he can't be punished under this law. Considering these reasons, the Supreme Court struck down the 158-year-old law by stating that adultery may be misconduct and may not be a criminal offence. However, one can go for divorce if his/her life partner commits adultery. On September 28, 2018, the apex court unanimously struck down Section 497 of IPC which was referring to adultery. The bench

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

comprised of Justice Deepak Misra, Justice Nariman, Justice Chandrachud and Justice Malhotra. It absolutely was the second colonial-era law which was struck down by the Supreme Court within the span of a month. It had previously overturned another 157-year-old colonial law which criminalized gay sex in India.

### IS ADULTERY STILL GROUND FOR DIVORCE?

For attracting the operation, it'd not be enough if the spouse was living in adultery sometime within the past, but had seceded from such life for an appreciable duration extending to the filing of the petition. It is impractical to put down a tough and fast rule about it since the choice of every case must rely upon its own merits and switch upon its own circumstances.

But it's clear that for invoking the applying of (old) cl. (i) of sub-sec. (1) of s. 13 of Hindu Marriage Act, it must be shown that the amount during, which the spouse was living an adulterous life was so related from the purpose of proximity of your time, to the filing of the petition that it may well be reasonably inferred that the petitioner had a good ground to believe that, when the petition was filed, the respondent was living in adultery.

By using the words 'is living in adultery' the Legislature failed to shall make such living co-extensive with the filing of the petition. The identical expression of 'living in adultery' is to be found in s. 488(4) the Code of Criminal Procedure (old) and in s. 125(4) of the Code of Criminal Procedure (new)<sup>2</sup>. This expression implies that one lapse from virtue whether or not true won't suffice, and it must be shown that the respondent was actually living in adultery with some other person at the time of the appliance. Living in adultery is different from failing to steer a chaste life.

### CONCLUSION:

If adultery may be a punishable offence, both man and woman that commit it should be punished. However, it's far better if law doesn't interfere with personal lives. Fear of law cannot bring love on life partner. It's far better to come back out of a loveless marriage than to send the adulterer to jail with the hope that their relationship is back to normal.

The law entirely is unconstitutional and shows lots of gender discrimination. Also, having relationship isn't something which the govt. or the other person completely unrelated thereto includes a say in. Adultery being a ground for divorce is justified within

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<sup>2</sup> Code of Criminal Procedure, 1973

the sense that when the wife or husband has gender with another man or woman, their spouse does have a say in whether she or he wants to continue the relation or not as long because it may be a ground for divorce for both men and girls. But punishing just the person for having sexual activity with married women isn't justified. There could also be cases where the initiation for the adulterous relationship came from the ladies or the adulterer was unaware of the wedding. When the choice is from two matured individuals who have full knowledge about the consequence of their act, there's no crime. The world is advancing altogether possible ways. Men and girls both want equal status and rights. a lady is not any longer meant to be inside the four walls. There's no rational reasoning which will incline to the definition given under Section 497 of IPC. Hence, adultery shouldn't be criminalized and will just be a ground for divorce. Thus, the whole section needs a relook.



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