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## SECTION 497 – ADULTERY: AN ANALYSIS

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### ABSTRACT

Any individual who engages in sexual intercourse with someone whom they know or have reason to believe is married to another person, without the consent or connivance of that married person, and if the act does not amount to rape, then the individual is guilty of the crime of adultery. The punishment for this offense may include imprisonment for a term that could extend up to five years, a fine, or both. However, the wife in such a case cannot be punished as an abettor.<sup>1</sup>

‘ADULTERY IS A MORAL WRONG’. It is indeed a moral wrong, as the marriage ceremony is a pure and trustworthy relationship between husband and wife and it is always a sin to have sex with another person outside the marriage, betraying trust and love.

**Keywords:** wrong, adultery, consent, punishment, sin.

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<sup>1</sup>Garg, J. January 13, 2021., 2022.

## **"Adultery occurs in the head long before it occurs in the bed" - Chuck Swindoll**

### **Introduction:**

It is proved to be a sin even in our sacred books inspired by our spiritual leaders or dieties. Under Hindu Law divorce has never been talked about historically as marriage is considered as a sacrament. **"Thou shalt not commit adultery"** is found in the Book of Exodus of the Hebrew Bible, means if a man be found lying with a woman married to an husband, then both of them 'shall die'. Adultery is viewed not only as a sin between an individual and God but as an injustice that reverberates through society by harming its fundamental unit, the family: Adultery is an injustice. He who commits adultery fails in his commitment.

### **WHY IS ADULTERY LEGALIZED AND IS NO LONGER A CRIMINAL OFFENCE IN INDIA?**

The reason stated by the Supreme Court says - Adultery is primarily a matter of personal concern and does not fall under the definition of a "crime" because it intrudes upon the extreme privacy of marriage. It should be the prerogative of the husband and wife to determine how to deal with the consequences of adultery, as this is a matter that should remain within their purview. Thus, criminalizing adultery would introduce injustice into the system.

But as we all know that **a crime is not just a wrong against an individual but also against the state**. So for the partner being cheated undermines social integrity, decreases trust, and thus damages society. Plus, cheating gives some people an unfair advantage over others as well.

### **Argument:**

**Yusuf Abdul Aziz v State of Bombay, 1954;** this case was challenged in the Supreme Court after losing the case in Bombay.<sup>2</sup>

The person contends that Section 497 of the Indian Penal Code (IPC) is unconstitutional as it infringes upon the fundamental right to equality guaranteed by the Constitution. Specifically, the section is discriminatory in that it holds only male offenders accountable for adultery, while exempting women from any punishment. Such a provision is in violation of Article 14 of the

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<sup>2</sup> Singh, P. 11 August 2022.

Constitution, which ensures equality before the law and equal protection of the law. Moreover, the provision contravenes Article 15(1) of the Indian Constitution, which prohibits discrimination on the basis of gender. By considering only husbands as the aggrieved party, the law discriminates against women and undermines their equal status before the law.

So the question that mainly arises is, **WHY ARE WOMEN NOT SUBJECTED TO THE PROSECUTION FOR ADULTERY?**

It was found that the status of women in our country was extremely vulnerable when Section 497 of the Indian Penal Code (IPC) was enacted. Women were not treated equally to men, and as such, legislation was needed to protect them. Therefore, Section 497 of the IPC was formulated to provide women with a legal position that is empathetic and considerate of the challenges faced by women in our society. The provision was intended to provide women with protection under the law and ensure their safety and well-being.. During the year this case was challenged that is in 1954, Supreme Court laid the judgement on the grounds of the existing position of women in the society.

In my opinion, the position of women is comparatively lot more better than 1950's. According to which there should be equal punishment for both men and women in our society which will eventually also not violate article 15(1) of the India constitution. As adultery is a sexual intercourse by a married man with the wife of another man that does not amount to rape as it is committed with the **consent** of woman, so the women should equally be held liable for committing an offence. This act of committing adultery is reprehensible by our society. Because committing adultery "is a choice, not just a mistake."<sup>3</sup> Hereby, there is a quote from a sacred religious text in Hinduism that says – **"A corrupt woman destroys family values which further leads to the destruction of the clan"** ~Bhagwat Geeta

**‘Adultery is a ground for divorce’**, one of the grounds for divorce available in the Hindu Marriage Act and other laws is adultery. This ground is based on the fundamental principle that marriage is a bond of trust and equality. When one partner cheats and fails to disclose their infidelity, it can irreparably damage the foundation of the marriage. In fact, research has shown that the divorce rate is extremely high, standing at around 80%, for couples where one partner engages in extramarital affairs and fails to take responsibility for their actions.

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<sup>3</sup> Brian, P. October 11, 2022.

The Special Marriage Act, 1954 recognizes adultery as a valid ground for divorce. According to this law, if the respondent engages in voluntary sexual intercourse with anyone other than their spouse after the marriage has been solemnized, it is considered a legitimate reason for divorce. This provision provides an opportunity for spouses to dissolve their marriage if their partner has committed adultery, and they are unable to continue the relationship due to the breach of trust and lack of mutual equity.<sup>4</sup>

**Conclusion:**

Adultery, the act of engaging in a sexual relationship with someone outside of a committed relationship or marriage, has been considered immoral and wrong throughout history. While there may be cultural variations on what constitutes adultery, the underlying principle remains the same – betrayal of the trust and commitment that underlies a healthy relationship. It can have devastating consequences for those involved, including the partners, children, and families. It can lead to emotional pain, damaged relationships, and even legal and financial repercussions. The effects of adultery can be long-lasting, and it can take years for individuals and families to recover from the hurt and trauma caused by it. One of the main reasons why adultery is considered wrong is because it violates the trust and commitment that are the foundation of a healthy relationship. In a committed relationship or marriage, both partners agree to be faithful to each other and to build a life together based on mutual love and respect. Adultery undermines this commitment and trust and can cause irreparable damage to the relationship.

Adultery can also be seen as a form of betrayal, not just of the partner but also of the larger community of friends and family. Infidelity can cause a ripple effect of negative consequences, affecting not just the couple but also their children, extended family, and social networks. It can lead to broken trust, hurt feelings, and damaged relationships that can be difficult to repair. Moreover, adultery can have a negative impact on the mental and emotional health of those involved. Individuals who engage in extramarital affairs often experience guilt, shame, and a sense of moral ambiguity. They may feel conflicted about their actions and the impact they are having on their partners, and this can lead to feelings of anxiety, depression, and low self-esteem. From a legal perspective, adultery can also have serious consequences. In some countries, adultery is considered a criminal offense, and those who engage in it may face legal

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<sup>4</sup> Torrone, C. September 21

sanctions such as fines or imprisonment. Adultery can also be used as grounds for divorce in many jurisdictions, and this can have significant financial implications for those involved. However, attitudes towards adultery vary widely across different societies and throughout history.

In conclusion, adultery is wrong for many reasons. It violates the trust and commitment that are essential to healthy relationships, causes emotional pain and trauma, and can have serious legal and financial consequences. While it may be tempting to stray from a committed relationship, it is important to remember that the consequences of adultery can be devastating and long-lasting. Instead, it is better to work through any problems or challenges in a relationship openly and honestly, and to seek help if needed to maintain the integrity of the relationship.

Now as Section 497 is no more treated as an offence, so I may not question the judgement of the court but hereby i end my argument by putting up a basic question for all my readers...