

Prevalence and Religious Concept of Adultery in India and Other Countries

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Abstract – This Article is focused on prevalence and religious concept of adultery in India as well as in other countries all over the world wherein we come to know that it existed from a very long time in our society but it was criticized everywhere. Even it was criticized in all religions which can be easily seen in respective religious books. The methodology used in the present Article is mixture of primary as well as secondary research. For understanding this Article, the author has included meaning, definition and legal constructs of adultery; its available defences; punishments all over the world; problems arising out of adultery; adultery issues in all religious books and religions; historical background and advancement of adultery laws all over the world; and its consequences. After finding out all the above-mentioned things, it was concluded by the author that adultery developed along with development of the society. Since it is not a new act; and can be easily found in history of mankind, that's why this act was always criticized. Moreover, codified laws were not there in ancient time and everyone was bound by his / her concerning religion, so all religious books forbid for this act. Even after having codified laws, adultery was and has been forbidden everywhere and many countries declared it a crime.

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“Adultery,” which comes from the Latin term “adulterium,” refers to extramarital sexual relations that are judged inappropriate for a variety of reasons. Christian, Jewish, and Muslim cultures all have the same definition of adultery despite a wide range of sexual behaviours that fall under the category of infidelity, as well as a wide range of social, religious, and legal implications. Generally speaking, adultery is characterised as a single act of sexual intercourse, whereas an affair is a longer-term sexual relationship.

International organisations believe that, in light of recent high-profile stoning cases, it is time to decriminalise adultery. According to the leader of the United Nations group tasked with eliminating laws that discriminate against women, “Adultery should not be considered a criminal offence at all,” Kamala Chandrakirana. In a joint statement, the UN Working Group on Discrimination against Women in Law and Practice argues that criminalizing adultery puts women's human rights at risk.

In several nations, courts have ruled that various adultery laws discriminate against women because of the gender of the people involved; as a result, these laws are commonly considered as discriminatory.

DEFENCE OF PROVOCATION

In the past, adultery has been used as a legal defence against a criminal charge like murder or assault since it is a form of provocation. This defence has been supplanted by a partial defence of provocation, or the victim's behaviour may be cited as a mitigating factor in sentence.

DEFINITIONS AND LEGAL CONSTRUCTS

In certain places, adultery was also known as illicit discussion. The civil tort resulting from adultery was named after this and is based on compensating the other spouse for the harm they've incurred as a result. England outlawed criminal talk in 1857, whereas the Republic of Ireland outlawed it in 1976. An affair with a third person is an alienation of affection, which is a legal tort committed by one spouse against the other. It was also known as desertion, and it was usually a criminal act. It is only in a few jurisdictions that illegal discussion and/or accusations of love alienation are still permitted. This tort is still in effect in six US states.

Despite the Divorce Act's clear language referring to extramarital encounters with someone of the opposite sex, a British Columbia court used the Civil Marriage Act in 2005 to grant a woman a

divorce from her husband who had cheated on her with another male.

PUNISHMENT

A third-party "intruder" is punished in certain nations instead of the adulterous spouse. Section 266 of the South Sudanese Penal Code defines adultery as "voluntary sexual intercourse with a man or woman who is or has reason to believe is the spouse of another person." ¹ Similarly, until the Supreme Court of India nullified the adultery act in 2018, having consensual sexual relations with a married woman without her husband's agreement was a criminal offence in India².

LEGAL ISSUES REGARDING PATERNITY

Recently, the law has begun to place greater importance on a child's bond with his or her biological father than on keeping the family's looks. When a married German man fathered twins with an unmarried woman in 2010, the European Court of Human Rights (ECtHR) granted him access to the children in spite of the mother's and her husband's opposition.

GRECO-ROMAN WORLD

There were strict laws against adultery in Greco-Roman civilization, but they only applied to relationships involving sexual contact with a married woman. The *jus tori* belonged to the spouse under Roman law. Having sex with a slave or an unmarried woman was therefore not viewed as a crime against the wife.

BIBLICAL SOURCES

According to both Judaism and Christianity, adultery is forbidden by the Seventh Commandment in the Hebrew Bible (Christians refer to it as the Old Testament). Book of Exodus passage Exodus 20:12. Then, in Leviticus 20:10, adultery between a man and a married woman carries the death punishment:

For the record, anyone found guilty of adultery with a woman other than his own wife will be executed absolutely.

JUDAISM

Except for the daughter of a Kohain, who got the death sentence of burning in Scripture for adultery, strangling was the only punishment for the crime. Stoning as indicated in John 8:5–7 was never mentioned by the Pharisees or the Rabbis of ancient Judaism, despite the fact that this penalty is explicitly stated in the Gospel of John.

CHRISTIANITY

Exodus 20:14 and 1 Corinthians 6:9–10 are used by Christians as evidence that adultery is wicked and a sin. The fact that 1 Corinthians 6:11 clearly reads "and I know there were some of you who were. In contrast, you were sanitised." Despite this, Islam nevertheless regards adultery as morally repugnant and morally repugnant.

ISLAM

Premarital or extramarital unlawful sexual relations are referred to as "zina" in Arabic. In the past, adultery has been linked to a number of circumstances and penalties. In Islamic law, adultery is defined as having sexual relations (whether with a man or a woman) with someone to whom one is not married. A breach of the matrimonial pact and one of the most serious transgressions against Allah, according to the Qur'an, is committed via adultery.

Qur'anic verses prohibiting adultery include:

"Adultery should be avoided at all costs. Opening roads is unquestionably a horrible and immoral act (to other evils)."

"Say, 'Verily, my Lord has prohibited the shameful deeds, be it open or secret, sins and trespasses against the truth and reason.'"

HINDUISM

The Sanskrit scriptures of Hinduism provide a wide range of views on adultery. The Rigveda hymn 4.5.5 refers to sex as *ppa* (evil, sin). An adulterer is regarded a sin in other Vedic scriptures as well as murder and wrath. There are several Vedic texts that acknowledge that male and female lovers are a fundamental part of human existence, yet they advise that such extramarital sex be avoided on certain ritual occasions (*yajna*). Many of the Rigveda's similes describe a woman's emotional need to see her lover, such as one song that requests the gods to maintain a pregnant wife's embryo as she sleeps with her husband and other lovers.

As the Manu Laws, the Manusmriti goes into great depth on this subject. When translated, the Bible describes adultery as a heinous crime in verse 4.134. In the Manusmriti, adultery is not seen as a "grievous sin," but rather as a "secondary vice" that leads to caste disgrace. In the book, the proposed punishment is based on mutual consent and intent. The lady doesn't believe rape to be adultery, yet the rapist is punished severely. Stricter penalties should be applied to those who engage in consensual sex. Even if the adultery was committed with a man from the same caste, Manu cites the death penalty and "penance" for the act of adultery. When a performer's wife engages in

sexual activity with him, it is not wicked and is exempt, according to the author in lines 8.362-363. Infidelity is examined from two different angles in this book. For the remainder of their lives, it instructs newlyweds to stay sexually devoted to one another. As a result, it acknowledges that adulterous relationships do occur, that children are born as a result of these connections, and that they belong to a woman's legal spouse, not her biological father.

Vatsyayana spends "not less than fifteen sutras (1.5.6–20) to enumerating the reasons (karana) for which a man is entitled to seduce a married lady" in the Kamasutra. An involved woman is predisposed to help him, fight against his enemies, and help him achieve his goals, Wendy Doniger claims in her book *The Kamasutra*, based on the teachings of the ancient Indian text. There are various signs and reasons a woman may desire to have an affair, as well as times when she doesn't. Even though it provides instructions on how to have an affair, the Kamasutra finishes its chapter on sexual liaison by saying that adultery harms both partners in a marriage and breaches dharma as well as artha, therefore making it illegal.

BUDDHISM

Buddhist scriptures like the Digha Nikaya refer to adultery as one of the links in a chain of immorality and suffering. Buddhism's earliest literature, according to Wendy Doniger, speculated that this belief in adultery as immoral derives from a previous life's desire for more money. A blend of Hindu and Buddhist concepts was prominent at the time of this notion. Sentient beings without bodies are said to be reborn on Earth because of their need and longing; some persons become beautiful, while others become ugly. A jealousy of the beautiful's wife prompts the ugly to commit adultery with her. It is a degenerative process that results from sexual yearning, according to Doniger's interpretation of Buddhist literature.

OTHER HISTORICAL PRACTICES

Some Native American tribes have harsh punishments for an unfaithful husband. One spouse said that his wife had been exposed to severe physical abuse with the intention of removing any future sexual attraction she might have to other men. The Aztecs punished adulterous wives by impaling them, but the most prevalent punishment was to be stoned to death.

ADULTERY AND THE LAW

Adultery has long been viewed as a heinous crime punishable by death, mutilation, or torture, especially for the married woman and her sex partner. Such sanctions have fallen out of favour, especially in Western countries, since the 19th century. The crime

of adultery remains punishable by fines, caning, and even death in some countries. Throughout the twentieth century, such regulations have been a hot-button issue, with most Western nations eliminating them.

ASIA

In the Philippines, adultery is a crime that carries a heavy penalty. The law in the Philippines differentiates between the genders of the spouses. A woman can be charged with adultery, although a male can only be charged with concubinage, which is a far broader felony (It necessitates either maintaining the mistress in the family house, cohabiting with her, or having scandalous sexual relations with her). Adultery is currently being legalised in the Philippines.

The Hudood Ordinance, which was established in 1979, makes adultery criminal in Pakistan. Under the Ordinance, the death sentence is the most severe punishment. As a result of the Ordinance's requirements for proof of rape, women who file a rape complaint face prosecution for adultery. Only with the evidence of at least four witnesses can a person be found guilty of rape. Recent high-profile rape cases in Pakistan have drawn greater attention to the Ordinance than similar laws in other countries. Countries like Saudi Arabia and Brunei have similar laws.

EUROPE

European countries no longer punish adultery as a crime.

Most Communist countries did not punish adultery as a crime. A felony in Romania until 2006, although the offence had a narrow interpretation that excluded situations where the other spouse was complicit or where it took place while the couple was living apart and apart, prosecutions for adultery were exceedingly rare in actual practise in Romanian law enforcement.

LATIN AMERICA

Until the 1990s, most Latin American countries maintained strict laws against adultery. Since 1990, Paraguay, Chile (1994), Argentina (1995), Nicaragua (1996), the Dominican Republic (1997), Brazil (2005), and Haiti have all decriminalised adultery (2005). As in Guatemala (1996), when the Guatemalan Constitutional Court threw down the adultery act based on the Constitution's gender equality clause as well as human rights treaties such as CEDAW, courts in other countries have stricken down laws that discriminate against women. In 2011, the Mexican Federal Criminal Code removed its adultery provision.

UNITED STATES

Adultery-related criminal legislation are seldom enforced in the United States. Since the Supreme Court's judgement in *Lawrence v. Texas* in 2003, federal appellate courts have given inconsistent opinions on whether these acts are constitutional, and the Supreme Court has yet to decide on the question expressly as of 2019.³

CRITICISM OF ADULTERY LAWS

Political Arguments

An adultery legislation has been considered invasive and incompatible with the aims of minimal government. One reason libertarians have been so critical is because they feel that the state has no business interfering in their personal affairs and that problems should be settled privately rather than subjected to public punishment. Religious ideas, it is said, lie at the root of adultery laws in a secular country.

Discrimination against women

Opponents of adultery laws argue that they perpetuate social norms that justify violence and oppression of women, whether through state-sanctioned forms of violence like stoning, flogging, or hanging for adultery, or through individual acts of violence committed against women by their husbands or relatives, such as honour killings, crimes of passion, and beatings.. Adultery should be decriminalised, according to the United Nations Women. They highlighted their concern about the criminalization and punishment of adultery, which leads to discrimination and violence against women, when the United Nations Working Group on Discrimination in Law and Practice released a statement in 2012.

Use of limited resources of the criminal law enforcement

Investing law enforcement resources on the investigation and prosecution of adultery (which is exceedingly difficult) may imperil the prevention of large violent crimes, according to one argument against making adultery a criminal offence.

CONSEQUENCES OF ADULTERY

General

It's not uncommon for newlyweds to enter into a marriage with the idea that their spouse would remain loyal for a number of reasons. As a betrayal of the trust and a violation of the marriage vows, adultery is often seen as a sin. Divorce is common when a couple engages in unfaithful behaviour.

Violence

When a woman cheats on her husband, it can lead to extreme violence, including murder. Most countries have made it illegal to commit acts of domestic abuse.

Crimes of passion

As in honour killings, women are killed by male family members and the crime is considered as justifiable or understandable since it's seen as a form of vengeance.

Flogging

Adultery is punishable by flogging in a number of countries. There have also been instances of unauthorised religious tribunals issuing extrajudicial floggings. In 2011, a 14-year-old Bangladeshi girl was publicly beaten and killed after being accused of having an affair with a married man. Sharia law was invoked by the villagers and they executed her.

CONCLUSION

Adultery developed along with development of the society. Since it is not a new act; and can be easily found in history of mankind, that's why this act was always criticized. Moreover, codified laws were not there in ancient time and everyone was bound by his / her concerning religion, so all religious books forbid for this act. Even after having codified laws, adultery was and has been forbidden everywhere and many countries declared it a crime. Although some countries have uplifted cover of crime over this act, still this act has not been allowed by them.

Endnotes

1. Article 266 of the Penal Code of South Sudan
2. Section 497 of the Indian Penal Code, 1860
3. *Lawrence v. Texas*

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