

# Constitutional Validity of Section 497 IPC

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**Abstract – This Article is focused upon constitutionality of section 497 in the IPC which deals with the offence of adultery. 'The Committee on the State of Women in India' has condemned the judicial response to the criminal offence of adultery (CSWI). Bigamy is illegal under the law (Sec 494 IPC). Even if we agree that the law is unbiased in that both husband and wife cannot sue each other for the criminal offence of adultery, the demand for punishment for the wife alone appears baseless as long as the husband is not found guilty of the criminal offence of adultery; and it seems most unfair for a man to demand from a wife the chastity he does not practise. Criminal communication can result in a maximum 5-year prison sentence, as well as a fine or both. The constitutional legality of this clause has been questioned in several cases, and women's rights advocates have repeatedly contested the retention of the provision about free love. Despite the fact that the laws were originally created to safeguard women and make only those in dangerous situations accountable, they instead serve to spread the societal view that women are weak, have no thought of their own, and hence must be protected by males. On occasions over one, the constitutions vires of section 497 was challenged within the Supreme Court on the ground, inter alia, that it by creating solely a person accountable for free love and mandating a court that the slut wife be not admonished as associate accessory discriminates in favour of ladies and against men only on the bottom of sex, and thereby goes against the spirit of equality embodied within the constitution.**

**After learning all of the above, the author has come to the conclusion that the errant mate's husband/wife should not only be allowed to seek divorce from the other life partner, but also to initiate legal proceedings with the goal of establishing criminal liability for the "outsider" who ruined the wedding.**

**The methodology used in the present Article is mixture of primary as well as secondary research.**

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The Committee on the Status of Women in India has condemned the judicial response to the crime of adultery (CSWI). It was argued that it flouted the Constitution's guarantee of equal treatment. The validity of the Constitution has also been questioned several times. Observing that Section 497 does not contemplate a husband's prosecution of his wife for adultery, the Supreme Court upheld S. 497 as constitutional. The provision explicitly states that the wife will not be punished even if she is a co-conspirator. The clause does not allow the woman to sue her husband for adultery, hence there is no cause for complaint. Isn't it obvious, then, that the law sees the woman who has an unlawful connection with another man as a victim of the crime rather than its perpetrator? According to Section 497 of the Criminal Code, adultery is defined as an offence committed by a man against the sacredness of the marital home. Only one type of extramarital connection is prohibited by law: a relationship between a married man and a single, unmarried woman, in which the guy is alone the offender. An adulterous spouse puts his marriage at risk, or even invites a divorce lawsuit from his wife. That "Law does not give licence upon spouses to be licentious by gallivanting with unmarried women" is an

obvious addition. If he does this, he puts himself at risk of a divorce suit from his wife.

Women, married and unmarried, have changed their lifestyles over the years and there have been occasions when they have disrupted other marital families. We hope this is not too correct but an under inclusive definition is not always discriminating.. When it comes to criminal law reform, legislators may be justified in paying heed to the supposed shift in female attitudes, for better or worse. In order to stay up with the times, they may widen the meaning of "Adultery." Since then law must stay unchanged. Articles 14 and 15 of the Constitution are not violated by the statute as it now stands. In criminal law, bigamy is strictly forbidden (Sec 494 IPC). Given the fact that Hindu women continue to face social discrimination in a society dominated by men, and that polygamous marriages and child marriages are still common in rural areas where the law is either unknowledgeable or long-established customs, this is a critical issue that needs to be addressed. According to the Supreme Court's assessment, the wife who is lured by her husband is actually the

victim and not the perpetrator of a crime committed by her husband.

In its ruling, the Supreme Court ruled that the Penal Code clause prohibiting lawsuits between spouses was not discriminatory. When the 'outsider' who breached the sanctity of the marital household was a male, the crime is exclusively directed at the 'outsider.' As a result, it appears that the penal law's definition of adultery is rather narrow. Reverse discrimination in favour of women rather than against them was viewed as the reason why a woman 'outside' the marital household could not be punished for the same offence. Criminal law, on the other hand, makes no mention of the reasons for this reversal of treatment. Female paramours may be spared from the sanctity of a marital household, but males are not. Reverse discrimination: Is it right to use this tactic? Why, under S. 497 of the Indian Penal Code, does it fail to recognise that adultery may be committed by a woman as an offence against the integrity of the marriage home?

Critics have taken issue with this double standard. In light of our current understandings of women's role in marriage, it's now time to reexamine the crime of adultery. When a husband commits adultery, he has the right to prosecute his wife's lover without allowing her the same right to prosecute her husband for having extra-marital affairs, or the right to prosecute the lover. Adultery was clearly a violation of Article 14 since it treated men and women differently.

We can agree that the law is unbiased in that spouses cannot sue each other for the criminal law offence of adultery, but why is only the aggrieved husband allowed to sue the male paramour for breach of the sanctity of matrimonial house, while the wife is not given a similar right to sue the female paramour? The legal and constitutional rights of women aren't equal, are they? **Law is not only discriminatory towards married females (wife); it is also towards male (paramour). Wife should have equal right to sue the female paramour, who seduces the husband.**

It was recently rejected by the National Commission for Women (NCW) suggestions to alter Section 497 in order to make it possible to punish women for adultery. Adultery should be considered as a civil wrong rather than a criminal one, according to an important suggestion. It's important to look at infidelity as a betrayal of trust. The commission, on the other hand, has stated that this should only be done upon the formation of a national consensus. They went on to say that women are socially disadvantaged and that legislation aimed at protecting them must be reinforced. As of present, Section 198(2) of the Criminal Procedure Code (Cr. PC) does not allow the wife of an unfaithful spouse to prosecute him for his promiscuous behaviour, but the commission has suggested that it be altered since it will lead to gender prejudice in law. There must be an offended party (victim) and an author of the crime for every alleged

offence. The offended person in the case of a male paramour of the wife's husband breaking the sanctity of the marital home is the wife. It's not clear why the criminal law doesn't treat the wife as an injured person when the husband and female paramour are both culpable for the same offence.

If the husband is not found guilty of adultery, then the demand for punishment of the wife is illogical. However, if the victim of the crime is the wife, the punishment of the male paramour may be appropriate. In circumstances when a married woman (wife) is the seducer, is the penalty for the male paramour justified? It should be listed in the criminal code and explained in detail.

In the judicial system, the phrase "adultery" is inappropriately used. Under S. 497 IPC, neither the adulterous husband nor the adulteress wife are liable for the offence of adultery, which is an offence against one's marriage, breach of trust, and house. Only a male paramour can be sentenced for violating the marriage home's sanctity when he is a third party participating in the crime. Criminal law treats the offence committed by both men and women differently, with a bias towards married women (wives) and their lovers.

The judiciary's role in interpreting the constitution and its amendments is becoming increasingly important in light of shifting social attitudes. Women's rights must be improved in light of the Hon'ble Supreme Court's finding that they are socially and economically disadvantaged in the majority of the country. The woman should be able to sue the adulteress for violating the sanctity of her married home in the same way that the husband would be able to.

As a result, it is imperative that this discriminatory statute be changed. This discriminatory law should be the subject of a national discussion and a consensus should be developed. S. 497 IPC compromises the dignity and rights of the woman as a person. This has to be addressed. Keeping in mind the importance of women's equality and dignity, the criminalization of adultery should be eliminated or changed.

It seems most unfair for a man to require from a wife the chastity he does not himself practice.

Adultery is one of the few issues that are commonly discussed in relation to disputes that develop due of the rapid changes in the mindset of people, particularly in India, where the conservative perspective is no longer considered as valuable as it was in the past. Free love, or as some prefer to call it, "violation of the wedding bed," is an invasion of a husband's right over his wife that some believe reflects the same motivation as the "Ramayana" good war, which began after Sita was abducted by Ravana and had to travel for "Agnipariksha" in order

to prove her chasteness. However, when we look at today's culture, we see an absolute alteration that either returns or is only waiting to affect the ethical ideals of this generation. A gift study was conducted at four different institutions, each with a rural or concrete background, to get people thinking about this topic. When we find clear concepts, reasonable thoughts, meriting remarks, and compelling wishes for the adjustment of gift legislation and social regulation, we see attention-grabbing effects. However, the study shows that there is a pressing need for a rethinking of free love and its societal regulation.

Individual freedom and the safety of society have been at odds for a long time. Since it's difficult to reconcile competing claims of individual freedom (sexual liberty) and social security (punishment ability for deviant sexual behaviour), it's well-reflected in the space of sexual behaviour. An increasingly diverse, multilingual, multicultural, and pluralistic society makes it even more challenging. Social balance might be threatened by this new phenomenon. Law and sex have a long history of intertwining, resulting in a wide range of social problems. To all humans, sex is a fundamental need. Laws, morality, traditions, and beliefs are all examples of societal institutions that attempt to rein in the impulse to engage in sexual activity. Faith as a tool of social action weakened throughout time, while law evolved as a strong and convenient alternative. Most of the time, laws were enacted to regulate sexual preferences and practises. Remember that a few centuries ago, Christianity was the primary pillar of social cohesion and a tool for sexual restraint. The idea of a "society" may be both a dynamic and a living one. As you go through life, it gets stronger and stronger. There are many forces at work in society, and they have established a dynamic equilibrium that keeps the society in balance. Equally true is the fact that social ideals change throughout time. Bigamy, for example, was formerly not a crime, but it has now become a crime for Hindus. Similarly, sexual ideals change from place to place and time to time. Those who profess Islam don't appear to be bigots. Criminal talk is not an offence in Europe, but it is in Asian countries. For a long period before the codification of Hindu law, polygamy was used, and as a result, monogamy is observed by everyone save Muslims. A number of laws have been implemented in Asian countries with the goal of reducing the prevalence of sexually explicit behaviour. Also, a reference to laws or legal regulations regarding marital affairs, the interference with immoral commerce in girls and children, the indecent depiction of females, obscenity and sexual activities might be made during this relationship. In the wake of these laws, the scope of acceptable sexual activity has been drastically reduced. It is possible that a number of reasons are to blame for the breakdown of society. Disintegration of society is implied by violence. Adultery, as well as other non-violent offences, shows that they have the potential to devastate society. Moral ideals are best guarded through law, according to conventional wisdom. If sexually aberrant behaviour is not reined in, society's moral fibres might be ripped apart. A well-

functioning society is dependent on its citizens adhering to a set of sound ethical ideals. Both social and sexual values must be given proper consideration by the state, and a soul a like analysis must be performed.

Divorce isn't a big deal for women, but it is for males. Divorce could not be granted without definite grounds, which were required by law. Such seminars and short courses should be part of the curriculum in schools and universities. It's difficult to pin down exactly how religion affects the social rate of divorce. Unspecified spiritual connection breakdowns must be explored and encouraged in every country, and the outcome of faith on divorce in the United States may differ from the outcome of faith in other nations. Relationship stability or divorce is strongly linked to the character of the family. Many people who live in shared households end up divorcing. This may be because joint families provide new methods of adapting that are both fulfilling, successful, and socially acceptable to the individual and the family as a whole. The length of a couple's marriage and likelihood of divorce are both affected by the people's residential background (urban vs. rural). Compared to the lower castes, there are a lot more divorces in the upper castes. People in lower-status jobs are more likely than those in higher-status jobs to become divorced. Divorces and separations between spouses are more common in areas where there is a greater disparity in educational attainment. Divorce is more common in families with low and moderate incomes. It's not necessarily true that a wedding at a young age (before the age of 18) dissolves sooner than a wedding at an older age. Unproductive people are more likely to divorce than those who have children.

Criminal talk is punishable by a prison term of up to five years, a fine, or a combination of the two. An adulterous adult female cannot be punished nor be considered an author of a crime under this provision (section 497 of the IPC). In this horrible idea of victimisation, "the psychological conviction that one is powerless, lacking strength to overcome difficulties and during a need for some other force to require them out of the circumstance" is the foundation. By passing laws like these, the government feeds into the victim-blaming mentality by making people feel even more powerless. When a "outsider" sneaks into a married household, he or she is punished by a society for violating a couple's marital bond by having a bootleg connection with one of the spouses, but only if he or she is an error-prone "man." The Honorable Court sees this as a source of competition. It does not provide the two spouses the legal code as a weapon to employ against one another. Under a scenario when the lady is widowed, she cannot be prosecuted at all, but the Court overlooks the fact that the adult female has no remedy in the law code despite the identical provision being offered to the husband. That's something that the constitution holds very dear, and it will be considered as a breach.

Throughout history, people's non-secular beliefs influenced the development of criminal laws, which were founded on the treatment of criminal discourse as an offence in many faiths prior to the development of any code of law in any country. Adultery has long been considered a horrific crime in many civilizations, with punishments as harsh as the death sentence, bodily harm, and torture. Typically, only the woman was held culpable for the conduct, but in other communities, males were held equally responsible. According to ancient Indians, "day and night women should be unbroken in dependency by the males of their families, and if they attach themselves to sensuous enjoyments, they must be unbroken under one's direction." For centuries, Hinduism has seen adultery as a morally repugnant transgression that should be avoided at all costs. A great deal of public contempt and shame were heaped on anyone involved in illegal or treacherous partnerships. As Hinduism regards marriage as an inviolable union, it is imperative to maintain the purity of the wedding and to honour the promises made at the ceremony. The Quran instructs Muslims to refrain from engaging in immoral sexual behaviour (zina). As far as I know, it's always associated with moral depravity and is terrible in its own right. Christianity is the world's most popular and widely practised religion, with more than a billion adherents worldwide. Criminal discourse as a crime has a long history of being associated with Christian beliefs on criminal conversation. When it comes to the Bible, Christians believe that the wedding should be held in honour and that the marriage bed should be unbroken and unadulterated, because God can choose fornicators and adulterers to be his brides and saviours. Keep your marriage bed pure by avoiding engaging in any extramarital sexual activity. That's what the term "Marriage bed" refers to.

Women's rights advocates have often argued against the continuation of the provision pertaining to free love, despite the legitimacy of section 497's constitutional validity being repeatedly questioned. Aside from their stated purpose of protecting women and making the person in additional circumstances liable, these provisions, which are meant to instil a social belief that women are powerless and thus should be shielded by men, only serve to perpetuate the idea that women are weak and thus need to be protected. Of fact, the IPC's definition of "free love" is in direct conflict with Article 14 and Article 15 (1) of the constitution's guarantee of sex equality. Free love, or adultery, is when a man engages in sexual activity with a woman without her husband's knowledge or consent. The entire substance of the offence is that the partner is the property of the spouse, and such property cannot be trespassed upon or encroached upon by another man, without the approval of the person concerned, according to a careful reading of the clause. It views women as nothing more than property. Deceptive to say the least, because a husband gains control over his wife's body when she consents to or connives with him and grants permission for them to have sexual relations, even though an adultery offence hasn't been committed

because of their free love. Second, only the one who has engaged in sexual activity with the lady will be held accountable. Even under the honourable pretext that females are vulnerable and should be shielded from harm, this has been the case. It discredits the woman's capacity to reason, discriminate, and be held accountable for her acts. In order to protect naïve ladies, it's odd that the supply doesn't make sexuality by a married guy with an unmarried associate offence. An individual who is in a situation where he or she is a victim of a patriarchal culture should be reprimanded equally. In addition, the husband is the only one who may file a criminal complaint against a person who is having an affair with his wife. Several times, at the Supreme Court, the constitutional viability of Section 497 was questioned on the grounds that:

- i. By creating solely a person accountable for free love and mandating a court that the slut wife be not admonished as associate accessory discriminates in favour of ladies and against men only on the bottom of sex, and thereby goes against the spirit of equality embodied within the constitution.;
- ii. By conferring upon the husband the power to prosecute the offender, however not conferring a corresponding right upon the partner (wife) to prosecute the girl with whom her husband has committed free love i.e. adultery and her husband.

Free love was upheld by the Supreme Court, which rejected all of the reasons against it. Adultery, which interacts only with "an outsider" to the marital unit, invades the peace and privacy of the married unit, and destroys the connection between the two partners, even though it may be a benefit provided for a girl. The supreme court ruled that Section 497 does not violate the gender equality articles of Article fourteen, Article fifteen, and Article twenty one of the Constitution, which prohibit discrimination on the basis of faith, race, caste, sex, or place of birth. According to the ruling in the case of Sowmithri v. Union of India, husbands are not allowed to engage in extramarital affairs with unmarried women. An extra-marital connection between a man and a woman is only considered to constitute an offence if the male is the only one involved. When a guy seduces another man's partner, the legislature has the right to address the issue. Section 497 also breaches Article 21 since it hinders the freedom of an individual to make their own personal call.

## CONCLUSION

Since the formulation of the law code a century and a half ago, society has undergone a major shift; women are no longer considered to be the property of their husbands. To free women from the centuries-old system of seclusion and subjugation that had held them back, many Acts have been passed in the post-PC period. Laws such as this one

appear to be in direct conflict with modern views of women's status and also with constitutional principles that guarantee equal justice for all citizens and do not discriminate on sex grounds in the criminal justice system, which is why they are a violation of the constitution today. Gender equality can be guaranteed and marriage ceremony ties can be strengthened if the modification request is approved by a competent authority. Additionally, the husband or wife of an errant guest should not only be permitted to seek divorce from the other life partner, but also to begin legal processes with a view to establishing the "outsider's" criminal involvement in the wedding's derailment. The current "social shift" ensuring women's equality as well as the constitutional ethos of gender equality necessitate such alterations.

## ENDNOTES

1. Smt. Sowmithri Vishnu vs Union of India &Anr (1985 AIR SC 1618)
2. Joseph Shine vs. Union of India(2019) 3 SCC 39
3. Section 494 and 497 of the Indian Penal Code, 1860
4. Section 198 of the Code of Criminal Procedure, 1973
5. Articles 14, 15 and 21 of the Constitution of India, 1949

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