

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **ADULTERY AND ITS CONSTITUTIONALITY**

AUTHORED BY - ANUSHKA GUPTA

College: Amity University

Course: B.A., LL. B (H)

CO-AUTHOR - DR. SARITA YADAV

Assistant Professor

## **ABSTRACT**

In Hinduism, marriage is considered crucial for achieving moksha. It is also vital for ensuring a legitimate lineage. In Indian culture, marriage is a revered bond. This union relies on mutual respect and trust between partners, and when one partner engages in sexual relations outside the marriage, it undermines its sanctity. Adultery is not the root cause of broken marriages but rather a symptom. Many people are unaware of the legal status of adultery. It is defined as a married individual engaging in consensual sexual relations with someone other than their spouse. The definition of adultery varies across different countries and legal systems. According to Section 497 of the Indian Penal Code, 1860, adultery is a criminal offense in India, and laws are associated with this section. I will now explore the origins of the concept of adultery, its historical application, and some previous legal decisions in this context. Different religions prescribe specific punishments for adultery. Following this, the impact of this law on society and its decriminalization are two aspects that are not particularly advantageous to society. Ultimately, the latest evaluation of whether this law benefits society can be understood by reading this.

Keywords: Adultery, marriage, sexual intercourse, legislation, discrimination, decriminalization.

## **INTRODUCTION**

Adultery has traditionally been viewed as both a personal betrayal and a criminal act under Indian law. For more than a century, Section 497 of the Indian Penal Code (IPC), which was established during British colonial rule in 1860, criminalized adultery in a manner that was significantly discriminatory based on gender. Under this provision, a man could face punishment for engaging in sexual relations with a married woman without the consent of her

husband, while the woman was not regarded as an offender but rather as a victim. This legal framework effectively reinforced patriarchal norms by positioning women as subordinate to men, devoid of independent agency in matters concerning marriage and sexuality. The constitutionality of this provision faced challenges in numerous cases over the years, but it was only in the landmark case of *Joseph Shine v. Union of India* (2018) that the Supreme Court of India unanimously ruled Section 497 unconstitutional. The five-judge constitutional bench determined that the law infringed upon the fundamental rights enshrined in Articles 14 (Right to Equality), 15 (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty) of the Indian Constitution. The Court condemned the provision for perpetuating gender inequality, stripping women of their dignity, and criminalizing private consensual acts between adults. This ruling not only brought an end to criminal penalties for adultery but also represented a progressive transformation in the Indian legal framework towards the promotion of constitutional morality, gender justice, and individual autonomy. However, the decriminalization of adultery does not equate to its moral endorsement; instead, it recognizes that the state should refrain from intervening in private consensual relationships by imposing criminal penalties.

### **How Do We Define Adultery?**

The word adultery is derived from the Latin term *adulterium*, which implies intentional sexual intercourse between a married individual and one who is not his or her spouse. Throughout societies, adultery has been widely condemned on social, moral, religious, and sometimes legal basis. According to the Merriam-Webster Dictionary, adultery is a "voluntary sexual intercourse between a married person and a person other than that person's current spouse or partner." In marriage, such extramarital affair amounts to a violation of monogamy and trust. In India, adultery has long been conceived of not just as a moral offense but as a legal one until recent court decisions challenged that conception and reconfigured its legal status.

### **Adultery according to religion**

India, being a culturally and religiously diverse country, is a secular country that tolerates the practices and beliefs of all religious groups. Apart from differences in religious teachings, adultery is universally viewed as a grave moral and spiritual offense in most major religions. Even though the various interpretations and punishments laid down are different, the underlying perception is the same adultery is viewed as a sin and a violation of moral obligation.

- In Hindu religion, marriage is a holy union (Sanskar), one that ties the couple together not only for this life, but for seven continuous births. Extramarital sex is considered a break of this holy promise, resulting in discord in the family and social order. Fidelity between husband and wife is regarded as indispensable to maintaining dharma (righteous duty), and extramarital sex is immoral and dishonourable.
- Adultery in Islam is classified as one of the Zina, a general category of unlawful sexual intercourse, along with fornication and rape. The Quran categorizes Zina as a hudud offence—crimes for which God mandates specific punishments. The punishments were harsh and traditionally comprised public flogging, stoning to death, and other corporal punishments, based on the legal schools of thought practiced in various Islamic cultures. Adultery, in specific, is regarded as a serious sin that undermines the moral fabric of society.
- Christianity, and in specific terms, Biblical teachings, also regard adultery as a grave offence. Adultery is condemned by the Bible as a sin that must be punished by death, and it is not gender specific. It is depicted as an infraction of divine law and an ethical failure that taints the human being and communities. Adultery is always presented as unethical, immoral, and against the teaching of Christ.
- Sexual misconduct, including adultery, is forbidden in Buddhism as one of the Five Precepts—simple moral precepts for ordinary followers. The third precept expressly prohibits followers from engaging in sexual acts outside a stable relationship, especially those causing harm to others. Adultery is thought to create karma (negative effects) and suffering in this life and future rebirths.
- Judaism, one of the oldest monotheistic religions, also considers adultery to be a capital offence. Traditional Jewish law mandates death for both the adulterer and the adulteress. Adultery is not only considered a violation of the marital bond but also of the covenant with God.

In all these religious traditions, adultery is not just conceived as an individual shortcoming but as a grave offense with spiritual, social, and moral repercussions. Its denunciation indicates a larger preoccupation with upholding the purity of marriage, family morals, and social order.

### **Legal Provisions for Adultery Before Decriminalization**

Before being struck down in 2018, adultery in India was governed by two key legal provisions: **Section 497 of the Indian Penal Code (IPC)** and **Section 198 of the Criminal Procedure**

Code (CrPC).

### Section 497 of IPC – Adultery

This section defined adultery as a situation where a man has sexual relations with a married woman without her husband's consent or knowledge. If such an act did not amount to rape, it was considered a criminal offence. The punishment could include imprisonment of up to five years, a fine, or both. However, the law did **not punish the woman**, even though she was a willing participant. The law treated the wife as the property of her husband and gave him the exclusive right to prosecute the man involved.

### Section 198 of CrPC – Prosecution for Offences Against Marriage

This section of the CrPC laid down the procedure for prosecuting offences related to marriage, including adultery. It stated that:

1. A court could only take up an adultery case if a complaint was made by the "**aggrieved person.**"
2. For offences under Section 497 and Section 498 of IPC, **only the husband** of the woman involved was legally recognised as the aggrieved party who could file a complaint.
3. If the husband was not available, someone else responsible for the woman's care could file the complaint on his behalf, but only with the court's permission.

In short, under this legal framework:

- Only **men** could be punished for adultery.
- A **husband** could file a complaint against the man who had an affair with his wife, but a **wife** could not do the same if her husband had an affair.
- If the husband had given **consent or approval** to the affair, then no offence was considered to have occurred.

### Decriminalization in 2018

In the landmark **Joseph Shine v. Union of India (2018)** judgment, the Supreme Court of India declared Section 497 of the IPC unconstitutional and struck it down. The Court held that the law violated the principles of equality, personal liberty, and dignity under the Constitution. However, **adultery remains a valid ground for civil matters**, such as divorce, custody, and maintenance.

## Supreme Court Cases Related to Adultery in India

- **Yusuf Abdul Aziz vs. State of Bombay (1954):** The Supreme Court upheld Section 497 IPC, ruling that **special provisions for women** were **justified under Article 15(3)**.
- **Sowmithri Vishnu vs. Union of India (1985):** The Court upheld Section 497 IPC, stating that only the husband had the right to prosecute, reinforcing gender bias in adultery laws.
- **V. Revathi vs. Union of India (1988):** The Court upheld Section 497 IPC and Section 198(2) CrPC, arguing that the law **aimed to preserve the sanctity of marriage** rather than punish women.
- **K.S. Puttaswamy vs. Union of India (2017):** The judgment recognized the **right to privacy as a fundamental right**, strengthening the argument for decriminalizing adultery.
- **Joseph Shine vs. Union of India (2018):** The Supreme Court struck down **Section 497 IPC as unconstitutional**, affirming gender equality, privacy, and autonomy in marriage. It was struck down on the grounds that it violated **Articles 14, 15 and 21 of the Constitution**.

### Conclusion

The Supreme Court's decision to decriminalize adultery in the *Joseph Shine v. Union of India* case holds significant value—not only in protecting women's matrimonial rights but also in prompting broader reflection on other legal provisions that impact personal autonomy and gender justice. All the judges unanimously agreed that within the context of marriage and family life, a woman possesses the fundamental right to autonomy, bodily integrity, and individual choice.

- This judgment also brings into question the constitutional validity of two related legal provisions: the **restitution of conjugal rights**, which legally compels a spouse to return to the matrimonial home against their will, and the **exception for marital rape**, which does not recognize non-consensual sex within marriage as rape. These laws, like the now-defunct Section 497, restrict a woman's agency and violate her dignity.
- The Court emphasized that **adultery, in itself, cannot be treated as a criminal offence** unless it is accompanied by other criminal elements—for instance, if it leads to the suicide of a spouse, it may be prosecuted under **Section 306 IPC (abetment of suicide)**. However, criminalizing consensual relationships between adults, even if they are extramarital, is not justifiable under criminal law.

- Marriage, though both a civil contract and a sacrament, is fundamentally a personal relationship based on trust. Deciding whether a spouse should be penalized for infidelity should remain a matter between the individuals involved, not the State. Regulating private and personal matters like marriage through criminal law is intrusive and unjust.
- Although adultery continues to be a **ground for divorce** in civil law, the Court rightly held that **criminal prosecution is not a fair or effective solution** for addressing the emotional and moral complexities of such relationships. This aligns with the global legal trend—many Western countries have already decriminalized adultery, recognizing that legal punishment does little to serve justice in such cases.
- Historically, adultery was made a criminal offence during a time when there were no uniform personal or marital laws, and women were largely treated as the property of their husbands. Ironically, while the original intent may have been to protect women, the law failed to empower them—it gave them no legal right to file a complaint against an unfaithful spouse. It was only with the enactment of the **Hindu Marriage Act in 1955** that adultery became a legitimate ground for divorce.
- As society has evolved, so understands marriage, fidelity, and women's rights. Today, women are seen as independent individuals with equal standing, not as extensions of their husbands. With these changing norms, **criminalizing adultery had become outdated and counterproductive.**
- Therefore, the Supreme Court's 2018 ruling is both progressive and necessary. It reaffirms the principles of **equality, dignity, and personal liberty**, and sets a strong precedent for safeguarding women's autonomy in modern Indian society.

#### References:

1. *The Constitutional Validity of Section 497 of IPC and Section 198(2) of CrPC*, Legal Service India. (<https://www.legalserviceindia.com/legal/article-7702-the-constitutional-validity-of-section-497-of-ipc-and-section-198-2-of-crpc.html> )
2. *Adultery and the Law: Understanding Legal Perspectives*, Drishti Judiciary. (<https://www.drishtijudiciary.com/blog/adultery-and-the-law-understanding-legal-perspectives>)
3. *Decriminalisation of Adultery*, Supreme Court Observer. (<https://www.scobserver.in/journal/5-decriminalisation-of-adultery/>)