

DE JURE NEXUS LAW JOURNAL

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**DECriminalization of Adultery under the Purview of
Ground for Divorce under Hindu Law**

Introduction

Marriage done according to Hindu customs is not just a marriage but a bond of seven births. It is not only a sacred activity, even a holy union between the spouses, and a bond of trust. When one of the spouse's cheats on other spouses and has voluntary sexual intercourse with any person, then it is considered a breach of trust under Hindu law.

What is adultery

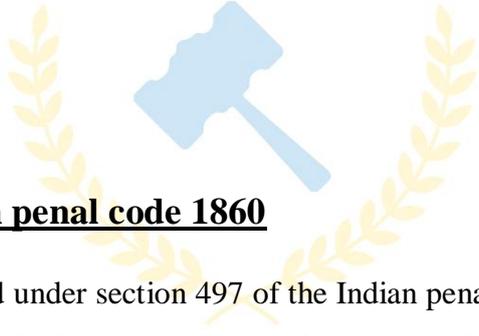
Adultery is derived from the Latin word "*adulterium*" which means the offense committed by a man, married or unmarried, having sexual intercourse with another man's wife (sexual relations outside of marriage – between a wife and a person aside from her husband). Adultery is considered undesirable on social, religious, moral, or legal grounds. Adultery is not only objectionable under Hinduism even it is also objectionable in Islam, Christianity and Judaism. A single act of sexual intercourse of a wife with someone else's other than the husband will sufficient to constitute adultery.

Adultery under Hindu law

Section 13 (1) (i) of the Hindu Marriage Act, 1955 provides that a petition for divorce could also be presented by either party if after the solemnization of the wedding the opposite party had voluntary sexual intercourse with an individual apart from his or her spouse.

Even one act of adultery is sufficient to draw in the bottom of divorce. after the marriage laws (amendment) ACT, 1976 the expression 'living in adultery' has been dispensed with.

After the judgment of the supreme court of India in **Joseph Shine v. Union of India**¹ adultery has been declared unconstitutional but the court has expressly held that it'll remain ground for matrimonial cases.



Adultery under Indian penal code 1860

The term adultery is defined under section 497 of the Indian penal code (1860), Whoever has sexual activity 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 sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery.

On 27th September 2018 Supreme court of India broke down Section 497 of the Indian legal code within the **case Joseph Shine v. Union of India**, which criminalises the act of Adultery. 497.on the ground that it violated the constitution of India. Hence, adultery is now just a tort that the remedy is divorce.

How did the method of decriminalization of adultery begin?

First Cases on adultery

The adultery was 1st time challenged in 1951 in the case of **Yusuf Aziz v. the State of Bombay**².

Arguments:

The petitioner stated that the adultery law violated the fundamental right of equality guaranteed under articles 14 and 15 of the Constitution of India.

¹ 2018 SCC OnLine SC 1676

² (1954) SCR 930

The respondent argued in the court hearing that section 497, deals with adultery law which is discriminatory against the men, not the woman.

It was also argued that adultery law gives a license to women to commit the crime.

Held:

Three years later in 1954, the Sc ruled that section 497 was valid and further stated that this section did not give the license to women to commit adultery.

It is commonly accepted that if the man is seduced, he will be guilty of the offense of adultery, not the woman.

Sc, further held that women can be victims of adultery but she could not be prosecuted for the offense of adultery u/s 497 of IPC

Second judgment of the Supreme Court in the adultery case

The next important judgment regarding adultery u/s 497 came in the case of **Sowmithri Vishnu v. Union of India 1985³**.

In this case, the supreme court held that the woman need not be included as an aggrieved party in the name of making the law under this section.

It is also explained as to why women should not be involved in the prosecution of adultery cases.

Further, the supreme court held that men were not allowed to prosecute their wives for the offense of adultery to protect the purity of marriage, and thereby, women also could not prosecute their husbands.

The judgment retained the offense of adultery as a crime committed by a man against another man.

The supreme court also rejected the argument that unmarried women should be brought under the preview of adultery law.

The argument was that if an unmarried man establishes adulterous relation with married women then he will be prosecuted for the offense of adultery but if an unmarried woman established a

³ (1985) Supp SCC 137

relationship with a married man, he could not be found guilty for adultery under section 497 of IPC, even though both are disturbing the purity of marriage

Third judgment of The Supreme Court

The 3rd important judgment regarding adultery under section 497 came in the case of **V Revathi V. Union of India 1988⁴**.

In this case, the supreme court held that the women not included in the prosecution of adultery cases promoted “social goods”. And also offered a changing concept to the couple to make up and keep the purity of marriage unblemished.

The supreme court observed the adultery law as a “shield rather than a sword”.

The supreme court ruled that the existing adultery law did not infringe upon any constitutional provision by restricting the ambit of section 497 to man.

During The 42nd report of the law commission of India report of 1971 and therefore the Malimath committee on legal code reforms of 2003 recommended an amendment to the adultery law. Both argued to make section 497 of IPC gender neutral.

Concerns relating to Adultery according to the Malimath Committee:

- This law is not gender-neutral.
- Section 497 does not allow the woman to file a complaint against her husband when he had cheated her by having sexual intercourse with another woman.
- Section 497 treated a married woman as her husband’s chattel and this provision was a reflection of the social dominance of men that were being faced by the women for over 150 years due to this law

Petition to decriminalize Section 497 in India

Case: joseph shine v. union of India 27th September 2018

⁴ (1988) 2 SCC 72

Facts:

A writ petition was filed in 2017 under article 32 by Joseph Shine. The Supreme Court had accepted the PIL⁵ under article 32 of the Indian Constitution to completely strike down Section 497, alongside Section 198(2) of the Criminal Procedure Code, 1973, due to its problematic interpretations.

For Section 497 it had been stated that “It imposed culpability on a person who engages in sexual activity with another man’s wife.” the person was punished with a maximum imprisonment of five years and the woman was exempted from the prosecution.

For Section 198(2) it was stated that “only the husband may file a complaint about the offense of adultery.” It was seen that only the husband has the right to bring a prosecution against the other man and hence the woman had no individual identity for herself.

Judgment:

The judgment given by CJI, Deepak Mishra started with a statement proving that wives are not the property of husbands and husbands are not their masters.

s. 497 disposes of the woman of her autonomy, dignity, and privacy. To live is to live with dignity.

s. 497 is considered as the wives’ encroachment on her right to life and personal liberty by accepting the notion of marriage which overthrew true equality.

Adultery is no longer a criminal offense; a crime is committed against society as a whole whereas adultery is related to personal issues. Adultery does not fit into the ambit of crime otherwise it would invade the extreme privacy sphere of marriage. However, adultery is considered a civil wrong and a valid ground for divorce.

Conclusion:

The law must be changing the ideas and ideologies in a changing society. The law must take cognizance or conscience of the changing society and must be appropriate with the developing concept and ideologies in the changing time. If a law is not developing with the changing need of society, then it will automatically become null and void. Moreover, the need for such change

⁵ PIL – Public Interest Litigation

in law is decade and attempt had been made for it time to time at last in the joseph shine case it was held that adultery is no more punishable but a valid ground for divorce.



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