



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

A REVIEW ON SECTION 497 IPC, 1860

(With Case Laws Discussion)

¹Perna Jain, ²Paras Pradhan

¹B.A. LL.B, ²LL.B

¹SRMS College of Law, Bareilly (UP), India

¹MJP Rohailkhand University, Bareilly (UP), India

ABSTRACT

The concept of adultery differs from country to country. As per the Indian traditions and culture, marriage is considered as the most sacred and pious institution and any sort of interference by any outsider which can destroy the sanctity of marriage cannot be acceptable. With the objective to protect the sanctity of marriage section 497 – ADULTERY was included in Indian Penal Code. The code considers adultery as an offence. This idea was based on the viewpoint that the sacredness of the institution of marriage cannot be contaminated by a third person.

In the recent times there is a drastic change in the thinking and conceptions about marriage and privacy. However, section 497 was made to provide a safeguard to the pious institution of marriage but the concept had certain loopholes. The concept of adultery was introduced in the 19th century India when there is much discrimination in society on the basis of sex, when women were considered as mere property of men. Any sort of trespass on the property of an individual was illegal so with the women.

In the modern, independent and democratic India, women have the equal rights, status and opportunities as of men. They have the right to equality as per Article 14 and the right to life with dignity as per article 21 of the Constitution of India. Somehow, The Hon'ble court as according to the need of the society modifies the laws for the purpose of maintaining the balance among mankind.

This paper points out the Meaning as well as the cases involve with the Sec- 497 of IPC, 1860 & provides the data of Pre and post-period of Amendments of laws.

Index Terms – Adultery, IPC, Article-14, Article-21, Constitution, Section 497.

I. INTRODUCTION

Adultery is derived from the French word 'avoutrie', which in turn derived from a Latin word 'adulterare' meaning "to corrupt." Adulterare can be defined as "To make impure by adding extraneous, improper, or inferior ingredients"¹.

1.1 Definition of Adultery :

• According to **Black's Law Dictionary 6th ed.** - "Voluntary sexual activity of a spouse with an individual aside from the offender's husband or wife, or by an individual with an individual who is married to another"²

• According to Concise **Oxford Dictionary** - "voluntary sexual intercourse of married person with a person other than his spouse"³

• According to **Section 497, Indian Penal Code** - "Whoever has sexual intercourse with a person 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"⁴

II. INGREDIENTS OF SECTION 497, IPC 1860

- Sexual intercourse between a man and wife of another person.
- The man should know or should have the reason to believe that the woman is the wife of another person.
- It should not amount to the offence of rape means the act is done with the consent of the woman.
- It must take place without the consent of the husband of the woman.

III. WHO IS LIABLE?

As per section 497, IPC, adultery is an offence when a man had sexual intercourse with a married woman without the consent of her husband. Only the man involved in adultery is liable for the offence. The woman involved in the act is not liable, even not as an abettor of the offence. Section 497, IPC clearly says, "In such case the wife shall not be punished as an abettor".

3.1 Aggrieved person

Section 198(2), CrPC considers the husband of the woman as an aggrieved party of the offence committed under Section 497 IPC, provided that in the absence of husband, some person who had care of the woman on his behalf at the time when such offence was committed, with the permission of the court, can complaint on his behalf. The sections do not consider the wife of the adulterer as an aggrieved person.

IV. NATURE OF OFFENCE

The offence of adultery was an:

- Non cognizable offence – the accused cannot be arrested without an arrest warrant.
- Bailable offence – the offences in which bail can be granted to the accused.
- Compoundable offence - the court can record a compromise between the parties and drop charges against the accused. [Section 320 CrPC].

V. PUNISHMENT UDER SECTION 497, IPC

Section 497 of Indian Penal Code considers adultery as an offence and provides punishment with imprisonment of either description of a term which may extend to 5 years, or with fine, or with both.

VI. CASE LAWS

6.1. Yusuf Abdul Aziz vs. The State Of Bombay ⁵ :

The Supreme Court held that section 497 of IPC does not violate Article 14, 15 and 21 of the Constitution of India on the ground that in a act where both the parties are engaged with their consent only the man is held liable, not the woman. It is the reasonable classification under Article 15(3), which enables the state to make special provisions for women.

6.2. Sowmithri Vishnu vs. Union Of India &Anr ⁶:

The apex court held that the provisions of adultery as an offence does not violate any of the fundamental rights. It is a general belief to consider the man as seducer, not the woman. The court dismissed the petition by saying that the arguments raised does not have a legal basis.

6.3. Revathi vs. Union Of India &Ors ⁷ :

The court observed that Section 497 of the IPC and Section 198(1) read with Section 198(2) of the Criminal Procedure Code – "constitute a legislative packet to deal with the offence committed by an outsider to the matrimonial unit who invades the peace and privacy of the matrimonial unit and poisons the relationship between the two partners constituting the matrimonial unit... There is thus reverse discrimination in 'favour' of the woman rather than 'against' her"⁸. Therefore the above sections were held constitutionally valid.

VII. CASE DISCUSSION

7.1 Joseph Shine vs. Union of India⁹ :

This case is considered as one of the leading and important case related to the offence of adultery. A public interest litigation was filed under Article 32 of the Constitution, on October 2017 by Joseph Shine, a non-resident Keralite.

The petition challenged the constitutional validity of the offence of adultery under Section 497 of the IPC read with Section 198(2) of the CrPC being violative of the following **fundamental rights** as provided by the Constitution of India:

- **Article 14** : “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”
- **Article 15** : “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”.
- **Article 21** : “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The petition claimed that the provision is discriminatory on the basis of gender and against the dignity of a woman.

7.2 The apex court held that:

• The wife of the man involved in adultery, unlike the husband of the woman involved, have no right to prosecute her husband for the offence. The husband of the adulterous woman is only considered as an aggrieved party, not the wife of the adulterous man. Hence section 497, IPC and section 198(2), CrPC violates **article 14 and 15(1)** of the Indian constitution.

• **Article 15(3)** of the Indian constitution enables the state to make beneficiary legislations for women and children. But section 497 under which an act is done between and with the consent of two adults. Such a provision cannot be considered as a beneficiary provision covered under **article 15(3)** of the Indian constitution.

• Section 497 violates the dignity of the woman contained in **article 21** of the constitution of India. Section 497 permits such act if the husband of the woman gives his consent to the act and thus treating the woman as a mere property of her husband.

While considering Article 21, an invasion of privacy by the State must meet a three-fold requirement as set held in

Justice K. S. Puttaswamy (Retd.) & Anr. vs. Union of India & ors.¹⁰ :

1. Legality, which postulates the existence of law;
2. Need, defined in terms of a legitimate State interest, and
3. Proportionality, which ensures a rational nexus between the object and the means adopted.

Section 497 fails to meet this three-fold requirement.

- Adultery should not be treated as a crime as it is a private wrong and so left as a ground for divorce.
- The Roman maxim *cessante ratione legis cessat ipsa lex* meaning when the reason of the law ceases, the law itself also ceases fits section 497 as the section has outlived its purpose. It is the solemn duty of the Supreme Court to cease such law and not to wait for the legislation.

VIII. CONCLUSION

The present paper is the collection of different case laws as well as the provision of laws, which acts as the binding source in relation to Adultery.

Hon’ble SC in their latest landmark judgement held that,

- **Section 497** is declared as unconstitutional on the ground that it violates **article 14, 15, and 21** of the Indian constitution.
- **Section 198(2)** of the CrPC. which contains the procedure for prosecution under Chapter XX of the I.P.C. shall be unconstitutional only to the extent that **it's** applicable to the offense of Adultery under Section 497¹¹.

In addition, the apex court overruled its judgement given in the cases

1. Yusuf Abdul Aziz vs. The State Of Bombay
2. Sowmithri Vishnu vs. Union Of India & Anr
3. Revathi vs. Union of India & Ors

Thus, Hon'ble SC gives the clear-cut view about Sec 497 of Indian Penal Code, 1860 as by decriminalizing adultery.

Now one the most important pillar of democracy did its work done, but it's upon the society to how fast and socially they will going to accept the same.

REFERENCES

- [1] <https://www.thefreedictionary.com/adulterare>
- [2] H.C. Black , Black's Law Dictionary, Henry Black, (6 th ed.)
- [3] Concise Oxford Dictionary
- [4] Indian Penal Code (1860) , section 497
- [5] Yusuf Abdul Aziz vs. The State Of Bombay, 1954 AIR 321 (India)
- [6] Sowmithri Vishnu vs. Union Of India &Anr, 1985 AIR 1618 (India)
- [7] Revathi vs. Union Of India &Ors , 1988 AIR 835 (India)
- [8] Indiankanoon.org, <https://indiankanoon.org/doc/921415/>
- [9] Joseph Shine vs. Union of India, 2018 SCC ONLINE SC 1676 (India)
- [10] Justice K. S. Puttaswamy (Retd.) &Anr. vs. Union of India & ors, (2017) 10 SCC 1 (India)
- [11] SCC Online Blog

