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Examining Adultery after specific judgments laid down by the honorable Supreme Court Of India

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Abstract

Adultery is defined as a consensual extramarital sexual relationship that is viewed negatively on social, religious, moral, and/or earlier legal grounds. Since one can remember, sexual infidelity to one's spouse has been a widespread occurrence in human culture. Why is it so hard for us to be faithful to our spouses as humans?

Although adultery is no longer a crime, it is still considered delinquent behavior because it goes against the social expectations that one is supposed to uphold.

Throughout the last 158 years, it has been considered a crime, but since the Supreme Court's decision in Joseph Shine v. Union of India, adultery has been decriminalized and reduced to a civil wrong rather than a crime. This section gave husbands the authority to bring charges against their wives' adulterers while denying spouses the ability to file complaints against their husbands' adulteresses. To make section 497 gender-neutral the penalty was removed and was made only a civil wrong and not a penal offense. But, in vain this amendment could not bring a true sense of justice and morality.

Letting go of infidelity unpunishable results in a dysfunctional family structure. The partners and any children the couple may have may suffer long-term effects from infidelity. Children born out of such illicit relations do not have any legal recognition the society, and neither can claim any formal or legal right from their biological father or mother. Therefore, in the above context, the children are the ones who suffer the most in such situations.

Prior to this, there have been many suggestions here to fore under various law commission reports to make the offense of infidelity gender-neutral by punishing the women who are equally involved in the act of infidelity. The forty-second Law Commission report in 1971 and Justice Malimath Committee in 2003 suggested the same but these suggestions were never implemented.

Introduction

The word "adultery" is a French word that came from the Roman verb "adulterium," which meant to corrupt. It refers to extramarital sex, which is prohibited under social, religious, moral, and or legal norms. Adultery was defined by Merriam-Webster as "voluntary sexual activity between a married person and a person who is not the person's current spouse or partner." The act of adultery was punishable under Section 497 of the Indian Criminal Code of 1860, which stipulates that anyone who engages in sexual activity with a married woman without the lady's spouse's knowledge or agreement commits adultery.

Marriage is an institution that strongly depends on the dedication, devotion, and faithfulness of the spouses. Marriage has been granted a revered and devout status among all religions and all nations. So, if either spouse engages in adultery, they are not only breaching their pledges to one another but also jeopardizing the marriage's integrity. According to the prior adultery offense, the married woman was a helpless victim of adultery and was released from "criminal culpability." The guy who did the conduct was found guilty. Additionally, it was asserted that the adulterous man had been unfaithful to the married man and was exclusively responsible for any sexual relations. However, the apex court abolished the crime of adultery because it violates women's fundamental rights and views them as the husband's personal property after Keralite Joseph Shine, a non-resident, filed a Public Interest Litigation under Article 32 of the Indian Constitution challenging the constitutionality of the offense.


Although decriminalizing this law has resulted in many negative effects on relationships, the institution and sanctity of marriage, and mainly upon the children who are born out of such illicit relations as well as children born out of wedlock. The amendment should have incorporated what the Malimath committee proposed years back as making Section 497 a gender-neutral offense and sentencing punishment to both males and females.

RELIGIOUS PERSPECTIVES AND LEGAL SANCTIONS

India is a nation renowned for its variety and unity. The religious sentiments of all peoples are equally honored in our secular nation. Every religion has unique principles and goals. Yet, nearly every faith places a strong condemnation of adultery. Although different religions have different views on adultery, the basic concept is shared by all. Every religion considers adultery to be sinful. Nonetheless, different religions may have different methods of punishment. Given that it offends the religious sentiment of every religion, it is regarded as a delinquent act. From a spiritual standpoint as well as from a religious or legal one, it has always been seen as a sin.

1. Adultery, according to traditional Hindu viewpoints, devalues the family and leads to social unrest. Hinduism views marriage as a sacrament that lasts for seven subsequent births and requires the fidelity of both partners. It is assumed that they only have sexual contact with their spouse.

2. Islam considers the illegal acts of adultery, rape, and fornication to be Zina. According to the Quran, Zina is a crime for which god has set consequences. Crucifixion, hand amputation, public whipping, and execution by public stoning are just a few of the punishments that may be applied. In particular, adultery is punishable by death by stone, according to the Quran.
3. The Bible says that adultery is a sin that deserves death for both men and women. Adultery is viewed as immoral, unethical, and bad for society.
4. Outside of marriage, having sex is considered a sin that causes further suffering in Buddhism. The third of the five fundamental precepts from which one must abstain in Buddhism is adultery.
5. One of the ancient religions, Judaism, has a rule that calls for the execution of both adulterers and adulteresses.



Adulteries have always had to deal with society's disapproval of them, which can take many different forms based on local culture, religion, and morals. In the past, adultery was strongly disapproved of and strictly punished, almost always exclusively as a breach of the husband's rights. In this group, the wife was viewed as the property of her husband, and infidelity was thus equated with theft—especially serious theft. In some parts of Africa, the seducer was punished by losing one or both hands as a form of robbery committed against the husband. Not just the seducer, but the violating wife also faced severe consequences from her offended husband.

She was frequently forced to face physical harm that, in the opinion of the offended spouse, would keep her from ever again becoming a temptation to other men. The wife, however, was not permitted to bring a claim against the unfaithful husband, and practically all ancient legal laws also mention the prejudice inherent in ancient people's customs. Though lacking in virtue, seeking pleasure elsewhere, or lacking in good qualities, a faithful wife must worship her husband constantly as a god; on the other hand, “If a wife disobeys her lord because she is arrogant about the importance of her relatives or of her own brilliance, the king will order that she be eaten by dogs in a public area.” These are just two of Manu's remarkable laws from ancient India. In Jewish law, adultery was punishable by both man and woman being stoned, although this punishment was only applied when two separate witnesses had warned the perpetrators before the crime was committed. Jewish law currently forbids a man from continuing to live with a wife who has cheated on him; instead, he must either give her a bill of divorce drafted by a sofer or scribe or obtain one from one. The adulterer must also give the adulteress a divorce decree; she is not permitted to see him. There were strict rules against adultery in the Greco-Roman era, but they only applied to anyone who had sex with married women. In the Old Testament, adultery is prohibited by Christianity and is punishable by death. Even though he preached that adultery was a sin, Jesus had a more lenient view of it in the

New Testament. According to the Bible, adultery is a serious social transgression. Judaism forbade adultery, however, relationships between married men and unmarried women were exempt from this prohibition. Only having sex with another man while married was deemed adultery, in which case both the lady and the man were held accountable. Adultery is one of the greatest sins and a breach of the marriage bond in Islam. Islam considers premarital sex and extramarital sex to be adultery. As a result, adultery has always been punishable by harsh punishments like the death sentence and being stoned to death. Under rules based on fault, it has been a basis for divorce. Adultery is a crime that is covered under several jurisdictions' penal codes. States have different laws in the United States. Adultery carries a potential life penalty in Michigan, a two-year prison sentence or 18 months of insanity treatment in Pennsylvania, and a ten-dollar fine in Maryland. In Michigan, adultery carries a potential life sentence. Under the Divorce Act, adultery is defined in Canadian law. Adultery is a crime that carries a 10 dollar fine in Maryland.

As a result, adultery has always been punishable by harsh punishments like the death sentence and being stoned to death. Under rules based on fault, it has been a basis for divorce. Adultery is a crime that is covered under several jurisdictions' penal codes. Under the Divorce Act, adultery is defined in Canadian law. In Pakistan, a legislation known as the Hudood makes adultery a crime. Ordinance, which sets the death sentence as the maximum punishment. Under S. 497 IPC, adultery is a crime in India, however under civil law, both the husband and the wife may file for divorce on the basis of adultery.

NEGATIVE EFFECTS OF ADULTERY ON FAMILY RELATIONS

Family ties might suffer significantly from adultery. The following are some potential effects:

- 1. Breach of trust:** Adultery is a trust violation in a committed marriage or relationship. It can be challenging for the other person to trust their partner again after they have cheated, which can result in hurt and feelings of betrayal.
- 2. Emotional Distress:** A variety of unfavorable feelings, such as rage, grief, and depression, may be felt by the betrayed spouse. Their mental health and general well-being may be negatively impacted by these feelings.
- 3. Self-esteem Damage:** Being cheated on can also be detrimental to one's confidence and sense of self. They could doubt their own worth and wonder why their lover betrayed them.
- 4. Affected Family Relationships:** Adultery can affect how well children and other family members get along. Children may be puzzled, upset, or resentful of the cheating parent, and other family members may take

sides or reject the partnership.

5. Legal Repercussions: Adultery may have legal repercussions as well, particularly if it results in divorce. Adultery may have an effect on matters such as alimony, child custody, and property partition in some places where it is a basis for divorce.

6. Financial Repercussions: Divorce brought on by infidelity may also have financial repercussions, including the price of attorney's costs, the division of assets, and potential income loss.

NEGATIVE EFFECTS OF ADULTERY ON A PSYCHOLOGICAL BASIS

1. Anxiety and Despair: Loss of trust and betrayal can lead to anxiety and depression. The betrayed partner can be concerned about their relationship's future or question their own self-worth. Additionally, they may experience fatigue, melancholy, and a loss of interest in previous interests as depressive symptoms.

2. Low self-esteem and self-doubt: Being cheated on might result in these emotions. The deceived spouse might start to doubt their value as a mate and their attractiveness and appeal. Additionally, they might feel inadequate or like they failed in some way.

3. Post-painful Stress Disorder (PTSD): Adultery can occasionally cause PTSD, particularly if the betrayed partner is continually exposed to the painful incident (for example finding out about multiple affairs). The signs of PTSD can include nightmares, flashbacks, and increased anxiety.

4. Guilt and shame: The cheater could also go through unfavorable psychological impacts. They might experience guilt and shame over their behavior, which would result in poor self-perception and self-talk.

5. Relationship issues: Even if a future relationship is not with the same person, adultery can still have an effect on it. An individual may find it challenging to trust their partner if they have a history of infidelity, which can cause problems with intimacy, communication, and overall relationship happiness.

DOES INFIDELITY PAIN EVER GO AWAY?

Infidelity frequently results in suffering, which can have detrimental emotional effects. It's okay if you feel like you're grieving because you very well may be. Human loss can take many different forms, and no one has the right to minimize your pain. However, both parties must be willing to put forth the effort necessary for healing.

According to Dr. Dennis Ortman, those who learn of a partner's affair are traumatized. In his 2009 book, Ortman refers to this trauma response as Post-Infidelity Stress Disorder (PISD). One might encounter signs of post-traumatic stress disorder. Discovering cheating can be a mental shock to the system one has developed as a couple, as opposed to a physical shock like post-traumatic stress disorder (PTSD).

What consequences does being cheated on have over time?

It could take a while to get over being cheated on. One may experience persistent anxiety, post-traumatic stress disorder (PTSD), sadness, and suspicion of people for a while after the incident.

How does the brain respond to being tricked?

Your brain may experience love as addictive since it is a source of dopamine release and induces bliss. As a result, the rejection brought on by infidelity may alter certain brain networks in ways that are similar to withdrawal in substance use disorders. Your brain chemistry may be affected both immediately and later on as a result of rejection. Infidelity can prevent the neural connections that result in the release of the chemicals oxytocin and dopamine which are released more when we are in love.

NEGATIVE EFFECTS OF ADULTERY ON PHYSIOLOGICAL BASIS

- 1. Sleep Disturbances:** Adultery can cause insomnia, nightmares, and restless sleep, among other sleep disorders. Due to worry, rage, or despair, the betrayed partner may have trouble going asleep or staying asleep.
- 2. Enhanced Risk of Illness:** Adultery can weaken the immune system by causing stress and mental distress, which increases a person's susceptibility to illness and disease. The risk of heart disease, stroke, and other health issues can also rise with ongoing stress.
- 3. Added Likelihood of Substance Misuse:** Adultery can also raise the likelihood of substance usage. The betrayed partner may turn to drink or drugs to ease their emotional suffering, which can result in addiction and

severe health issues.

4. Reduced sexual function: Both the betrayed partner and the adulterer may experience reduced sexual function and enjoyment as a result of adultery. Additionally, it may raise the possibility of unintended pregnancy and sexually transmitted infections (STIs).

5. A person's appetite and weight can also change as a result of adultery. The betrayed partner may experience weight changes and related health issues since they may lose their appetite or use food as a coping mechanism.

WHEN YOUR CHILD DISCOVERS YOUR DECEPTION

If your kid learns you cheated, there could be a lot of consequences:

Your youngster might support and have more faith in your spouse than in you. Similar to the partner who was cheated on, they could feel confused, anxious, abandoned, and alone. Another study contends that offspring of adult infidelity may have trust concerns with potential romantic partners. Your child can have unfavorable opinions of faithfulness. A 2017 research trusted source examined the ways in which kids emulate infidelity.

DIFFERENT FORMS OF INFIDELITY OBJECT AFFAIR

This occurs when one partner neglects the union in favor of pursuing a passion outside of wedlock. The quest may become obsessional in nature.

1. Object affair: This happens when a partner neglects the relationship to follow an interest outside the marriage. It's possible for the pursuit to become obsessional.

2. Sexual affair: Without any emotional tie to the other, one partner engages in sexual activity separately from the relationship. Some studies indicate that women are more likely than men to overlook an affair if there is no emotional connection.

3. Cyber Affair: A brief emotional relationship with someone you meet online without any imminent plans for physical or sexual closeness is considered online adultery. Chatting and sexting are used for it. This includes pornographic viewing.

4. Emotional affair: An emotional affair is a romantic partnership in which one spouse develops a close bond with a person not involved in the marriage. The outside person is frequently of the opposite gender, and the unfaithful partner may communicate with them frequently. The unfaithful partner can disregard their partner while discussing relationship issues with the stranger. It's not necessarily an emotional event when two people have sex. A connection that combines emotional and sexual intimacy is frequently referred to as a secondary relationship.

EFFECTS OF INFIDELITY ON THE UNINVOLVED PARTNER

Aside from the spouses, children may also experience the effects of infidelity. They have a negative psychological and bodily impact on the other partner, causing them to feel:-

1. Concern and sadness
2. Posttraumatic stress disorder(PTSD) and rage
3. Increased anxiety, guilt, and shame

The impacted couples frequently question whether they did enough and tend to blame themselves for the affair. Even if there were issues in the relationship in the past, it's critical to remember that the other person made the decision to cheat.

1. Low self-esteem and confidence- It's normal to feel confused since the things that formerly brought you comfort are no longer there. Realizing your skills and capacity to handle the situation and understanding your strengths and capacity to deal with the circumstance is essential.

2. Poor Performance Both at Work and Socially- It's crucial to refrain from making significant adjustments to your life while you're experiencing emotional pain as a result of the affair. Having a network of family and friends to lean on can help you find methods to deal with the aftereffects of the affair since healing takes time.

3. Loss of Trust in the Cheating Spouse-the victim of an affair frequently has trouble trusting others and has questions about their ability to judge them. If they decide to start a new relationship, suspicion can come next. It's crucial to get professional assistance in order to deal with the trust issues and negative consequences of the affair. Being cheated on increases the likelihood of engaging in risky behavior. This could include unprotected

sex, drug, and substance addiction, bingeing or purging, and excessive exercise.

EFFECTS OF INFIDELITY ON THE PARTNER WHO CHEATS

The partner who is having an affair is also impacted by infidelity, especially if it continues for a long time.

1. The individual may feel more depressed or anxious.
2. They might experience severe guilt.
3. feeling stuck in the relationship or unable

A lengthier affair may occur because the parties involved may believe it is difficult to change the circumstances. The symptoms will be more severe the longer it drags on. Most affairs are discovered, and the anxiety of disclosing them furthers the suffering to both participants.

ADDITIONAL EFFECTS OF INFIDELITY

Financial Consequences

The majority of the time, money from the marriage is spent on the new partner for things like dinners, dates, motels, and presents, to mention a few. This is one way to waste marital income. If a person and his/her spouse get divorced, the court will take this into account when distributing your assets, and you might have to pay something back. During an affair, a woman may spend money on enhancing her appearance through cosmetic surgery. If a divorce occurs soon after, this action also wastes marital income.

Effects on Children and Family

The emotional upheaval that follows learning about an affair can be severe. There are numerous emotional obstacles to overcome if you and your partner decide to stay married. One option is to be honest and disclose every aspect of the encounter. While acknowledging the resentment and hurt, there is a need to reconnect. If your kids find out about the affair—during or after—your relationship with them may suffer greatly. The parent who had an affair risks losing the children's respect and trust. Additionally, they might grow resentful of the partner who wasn't involved, believing that they encouraged their spouse to have an affair. Children may feel betrayed, especially if the divorce caused by the affair disrupts or changes the family life they have grown accustomed to. Once they get married, some kids may unintentionally imitate the bad parent by engaging in the same behavior.

Effects on Sexual Health

Affairs can affect one's sexual health, especially if there is unprotected sex involved. In certain cases, they expose the other partner to STIs that have no symptoms. They can seriously harm a person's ability to reproduce if left untreated.

COUNTRIES IN WHICH ADULTERY IS STILL A CRIME

(DEVELOPED NATIONS)

- 1. South Korea:** Adultery is a crime there, with a maximum sentence of two years in prison for offenders. Although there have been recent attempts to have the law repealed, it is rarely enforced.
- 2. Taiwan:** Adultery is regarded as a felony in Taiwan and is punishable by up to a year in jail. The statute has been called for to be repealed, however, it is rarely implemented.
- 3. The Philippines:** In the Philippines, adultery is a crime that carries a prison sentence. Although there have been recent attempts to have the law repealed, it is rarely enforced.

(DEVELOPING NATIONS)



- 1. Saudi Arabia:** According to Islamic law, adultery is a serious offence and is forbidden in Saudi Arabia. Flogging, jail, and even death by stoning are all possible punishments.
- 2. Iran:** Adultery is prohibited and offenders risk receiving harsh punishments like public flogging or being stoned to death.
- 3. Egypt:** Adultery is illegal there, and offenders might spend up to three years in jail. The statute has been called for to be repealed, however, it is rarely implemented.
- 4. Pakistan:** Adultery is likewise a crime there, with a maximum sentence of five years in jail for offenders. Although it is uncommon for laws to be enforced, there have been instances where people have been accused of crimes and prosecuted.

ADULTERY LAWS IN THE USA

Adultery is not a federal crime in the United States, and it is not specifically criminalized under the criminal codes of most states. However, some states still have laws on the books that criminalize adultery, although they are rarely enforced. For example, in some states, adultery can be considered a misdemeanor offense, punishable by a fine, while in other states it is considered a ground for divorce but is not a criminal offense.

It's worth noting that while adultery itself is not criminalized in most states, some forms of sexual activity outside of marriage can be criminalized if they involve coercion, force, or involve a minor. Additionally, adultery can still have legal implications in some situations, such as in divorce proceedings where it can be considered as a factor in determining spousal support or property division.

ADULTERY LAWS IN THE UNITED KINGDOM

Adultery is not a criminal offense in the United Kingdom, and it has not been criminalized since 1857. The Offences Against the Person Act of 1861 removed adultery as a criminal offense and replaced it with grounds for divorce. In the UK, adultery is considered a civil matter and is a legal ground for divorce. In order to obtain a divorce on the grounds of adultery, one spouse must prove that the other spouse has had sexual intercourse with someone else of the opposite sex and that they find it intolerable to live with them as a result. It is also worth noting that adultery is not considered a criminal offense in other parts of the United Kingdom, such as Scotland and Northern Ireland. However, like in England and Wales, adultery is a ground for divorce in these regions.

WHY MUSLIM COUNTRIES HAVE CRIMINALIZED ADULTERY?

Muslim nations that have made adultery a crime often do so in accordance with their understanding of Islamic law, which derives from the Quran, the Prophet Muhammad's sayings, and other sources. In many Muslim nations, adultery is viewed as a serious offense and is considered a breach of Islamic law.

Adultery is considered a hard offense under Islamic law, which implies it is a crime against God and is therefore punishable severely. Depending on the nation and the particulars of the case, the penalty for adultery may range from imprisonment to flogging to even death by stoning.

Muslim nations that criminalize adultery do so to uphold their culture's moral and social ideals and to deter behavior that is deemed detrimental to both individuals and society at large. In Islam, adultery is perceived as a violation of the sanctity of marriage and a betrayal of trust. Marriage is regarded as a basic institution. These

nations aim to protect Islamic morals and discourage people from having extramarital affairs by making adultery a crime.

However, there is ongoing discussion within the Muslim community about whether it is appropriate to criminalize adultery. Some people contend that it is a personal matter between two people and should not be punished by the law. Others contend that making adultery a crime can result in the oppression of women and the violation of personal freedoms.

MALIMATH COMMITTEE REPORTS

It is argued that repealing Section 198(2) of the CrPC and Section 497 of the IPC will harm the fundamental Indian ethos, which places a high value on the institution of marriage and its sacredness.

The legislative provisions being contested in the current lawsuit were specifically crafted by the legislature in its wisdom to protect and safeguard the sanctity of marriage while taking into account the distinctive social structure and culture of India, the petition added.

The Justice Malimath Committee report on criminal justice system changes, which advocated gender equality for section 497, was also cited by the Centre. According to the affidavit, the Law Commission of India was looking into the matter and had established working groups to discuss certain areas of concern.

"It is suggested that the Law Commission's final report on the revision of Section 497 of the IPC is awaited. According to the Malimath Committee's report, the goal of this part is to uphold the sacredness of marriage.

IPC AND CRIMINALIZING OF ADULTERY

In this First Draught of the IPC, Lord Macaulay did not believe it was necessary or prudent to add the term "adultery." He evaluated the three Presidency's views on the legality of making adultery a crime, and he concluded that criminalizing adultery does not appear to have the benefits that most people would expect, and there is disagreement over the appropriate level of punishment for adultery. One school of thought contends that this can never be sufficiently atoned for, while the opposing school of thought supports imposing only a monetary fine on the offending spouse. They believed that treating adultery as a civil wrong is the best course of action in the current situation. Despite adopting a different stance, the Law Commission's Second Report heavily relied on Macaulay's observations regarding the status of women in this country before coming to its ultimate conclusion, which is as follows: -

" While we believe that the crime of adultery should not be removed from the Code, we would only consider it to be a crime if it were committed with a married woman, and considering that there is much weight in the last remark in Note 'Q', regarding the condition of the women in this country, in deference to it, we would render the male offender alone liable to punishment.

According to the Indian Penal Code⁵, "Whoever has sexual relations with a person who is and whom he knows or has reason to believe to be the wife of another man, without that man's consent or connivance, and such relations do not amount to rape, is guilty of the offense of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.". In this situation, the wife is not subject to punishment for aiding and abetting. ”

It is important to understand fully the ingredients of the offense and its entailments. To be considered adultery, an act must possess the following elements: A) Sexual Interaction; B) Heterosexual Interaction; C) Voluntary Interaction; D) Both parties are married; E) The male has cause to assume the lady is married. Along with the above, it is also important to note that according to Section 198 Cr.P.C., only a man can complain against another man for having engaged in an act of adultery.

To illustrate, take the example of H (Husband) and W (Wife). 1. If H sleeps with an unmarried woman, no offense is made out 2. If H voluntarily sleeps with a woman he knows to be married, an offense is made out but only the husband of such another woman can complain and W cannot complain 3. If W sleeps with an unmarried man, no offense is made out. 3. If W sleeps with an unmarried man, no offense is made out. 5. Nobody can, in any case, accuse their own spouse of adultery. Adultery can be alleged only against 3rd parties.

ADULTERY ACCORDING TO THE LAW

Section 497 of the Indian Penal Code (IPC) 1860 described adultery in India as:

Without the consent or connivance of the other man, anyone who engages in sexual activity with someone who is and whom they know or have reason to believe to be the wife of another man, without that man's consent or connivance, commits the crime of adultery. If the adultery does not constitute rape, the offender will be punished with either type of imprisonment for a term that may reach five years, a fine, or a combination of the two. The wife is not subject to punishment as an accessory in such a situation.

In *Joseph Shine v. Union of India* in 2018, a constitutional panel of five judges, including Justices Deepak Mishra, Ajay Manikar Khanwilkar, Rohinton Nariman, D.Y. Chandrachud, and Justice Indu Malhotra, unanimously threw down Section 497. Additionally, it was decided that any disgruntled spouse who committed suicide, in that case, could be charged under section 306 of the Indian Criminal Code for aiding and abetting the

suicide (IPC). Yet, despite section 497's decriminalization, the then Chief Justice Deepak Mishra and Justice A.M. Khanwilkar declared in the current case that it was still a viable basis for divorce.

Italian hotelier Mr. Joseph Shine, the petitioner in the current case, was not personally impacted by the law. His petition was approved in light of the locus standi (right or capacity to institute an action or to appear in court) in Public Interest Litigation (PIL) proceedings with the goal of promoting social justice.

The petitioner claimed that women's fundamental right to sexual autonomy is violated by the statute. While the government, on the other hand, claimed that it was crucial to upholding the sanctity of marriage, it also acknowledged that Section 497 was biased towards women and advocated making the crime of adultery gender-neutral.

It was determined in the case that criminalization had limited the rights of women in the following ways:

1. The Constitution's Article 21 (Right to Life) guarantees the right to sexual freedom.
2. Sexual expression is protected by the constitution's Article 19 (Right to Freedom).
3. The constitutionally guaranteed right to equality as stated in Article 14 (Right to equality).
4. Article 15 of the constitution, which protects against discrimination, provides this right.
5. Interference by the government in a person's private affairs. Nonetheless, both men and women must adhere to this.

The then-Chief Justice of India, Hon. Dipak Mishra, and A.M. Khanwilkar, held that Section 497 of the IPC discriminates against women based on gender stereotypes. Additionally, they claimed that the focus placed on the husband's assent amounted to the subordination of women. The Constitution's Article 21 is also broken by this. They maintained that, while adultery is not prohibited, it is best avoided as a cause of divorce. As a result, they declared Section 198 of the Criminal Procedure Code, which deals with the crime of adultery, and Section 497 of the IPC to be unconstitutional. Judge Nariman claims that Articles 14, 15(1), and 21 of the Indian Constitution are violated by Section 497 of the IPC read with Section 198 of the Criminal Procedure Code of 1973.

SUGGESTIONS FOR REFORMS

According to Judge D.Y. Chandrachud, Section 497 is obviously arbitrary and lacks any guiding principles for criminalizing consenting sexual activity. He further claimed that Section 497 violates Article 14 of the Constitution by creating women's submissive position in marriage and society. In addition, he claimed that Section 497 violates Article 15 of the Constitution because it upholds gender norms regarding the place of women in society. The IPC's Section 497 does not provide, he added, which is why he made that statement.