



Breaking Boundaries: The Legal And Social Journey Of Decriminalization Of Adultery In India

Author: Dr. Shwetta Bajaj
Professor (Adjunct),

Department of Law, Gurugram University, Gurugram

Abstract:

Adultery laws in India have undergone significant transformations, reflecting evolving societal norms and constitutional principles. This research paper examines the historical context, legal challenges, and judicial interventions leading to the decriminalization of adultery, with a focus on Section 497 of the Indian Penal Code (IPC). By analyzing constitutional provisions, judicial interpretations, and societal shifts, this paper elucidates the implications of decriminalization on gender equality, individual autonomy, and legal frameworks in India.

1. Introduction:

Adultery, once considered a criminal offense in India, was regulated by Section 497 of the Indian Penal Code, enacted in 1860. This legal provision primarily targeted men engaging in extramarital relationships with married women, while providing immunity to women from prosecution. However, the discriminatory nature of this law raised constitutional concerns, particularly regarding gender equality and personal liberty. Section 497 of the IPC stipulated that if a man engaged in consensual sexual intercourse with another man's wife without the husband's consent or connivance, he could be subjected to punishment, including imprisonment for up to five years, a fine, or both. Essentially, adultery was defined as the act of a married woman engaging in sexual relations with a man other than her husband, with the man being held accountable while the wife remained exempt from punishment. Notably, if a married man had relations with an unmarried woman, neither party faced legal consequences. However, if a married man engaged in relations with a married woman other than his wife, his offense was deemed against the husband of the woman involved, rather than his own wife.

Prosecution for adultery could only be initiated upon the complaint of the aggrieved husband or, in exceptional cases, by someone entrusted with the wife's care by the husband. Despite its provisions, Section 497 did not hold wives accountable, even if they aided the act. Furthermore, according to the Code of Criminal Procedure, a wife involved in adultery forfeited her entitlement to maintenance, contingent upon proof of ongoing adultery. However, a distinction was made between continuous adultery and a one-time offense. Engaging in adultery by enticing one's own wife was punishable under sections 498 and 497 of the Indian Penal Code. The prerequisites of Section 497 included engaging in sexual relations with a married woman with the knowledge or belief of her marital status, without the husband's consent or connivance, and excluding instances of rape. It's important to note that a woman's consent did not absolve adultery.

Section 198 of the 1973 Code of Criminal Procedure specified that only the husband or a caretaker authorized by him could file a complaint regarding adultery. The absence of punishment for women likely stemmed from patriarchal notions of ownership over wives, with no legal recourse available for wives whose husbands committed adultery due to differential legal treatment. Adultery remained a non-arrestable and non-compoundable offense, with husbands exclusively empowered to accuse offenders, further highlighting its gendered implications and societal attitudes towards marriage. The Supreme Court subsequently declared this law unconstitutional, as it unfairly vested authority solely in the husband. However, it affirmed that adultery remains sufficient grounds for divorce.

2. Historical Context:

Section 497 of the IPC criminalized adultery, reflecting Victorian-era morality and patriarchal norms. The law treated women as passive participants in extramarital affairs, reinforcing unequal power dynamics within marriages. Despite societal changes, the legal framework remained largely unchanged until constitutional challenges emerged.

3. Legal Challenges and Constitutional Principles:

Critics argued that Section 497 violated fundamental rights enshrined in the Indian Constitution, including Articles 14, 15, and 21. These provisions guarantee equality before the law, prohibit discrimination, and protect personal liberty. The Supreme Court of India, in landmark judgments, addressed the constitutional validity of adultery laws, highlighting their discriminatory nature and infringement on individual rights. The notion was that laws should maintain a gender-neutral stance. Yet, in this particular scenario, such neutrality seems to cast the woman solely as a victim, inadvertently eroding her sense of individual autonomy and identity.

The opposing party, the Centre, argued against the decriminalization, contending that the current law upholds and protects the institution of marriage, emphasizing the importance of marital stability. They express concern that decriminalization could lead to an increase in extramarital affairs. Instead, they propose implementing the recommendations of the Committee on Reforms of Criminal Justice System (2003), which suggested amending the wording of the section to address gender bias and redefine adultery as "Whoever has sexual intercourse with the spouse of any other person is guilty of adultery..."

4. Judicial Interventions and Decriminalization:

The Supreme Court's series of judgments represent a pivotal moment in Indian legal history, where the judiciary took a proactive stance in addressing the discriminatory nature of adultery laws. These judgments not only underscored the imperative to uphold constitutional principles but also recognized the importance of promoting gender equality within marital relationships, aligning with broader societal aspirations for progressive legal reforms.

India, renowned for its deep-rooted cultural heritage and traditional values, has undergone notable legal and societal transformations in recent times. Among these, a pivotal moment occurred in September 2018 when the Supreme Court of India rendered adultery decriminalized. This landmark ruling not only questioned age-old concepts of matrimony but also underscored the significance of individual autonomy and gender parity. Within this discourse, we delve into the historical backdrop, legislative frameworks, and judicial pronouncements that culminated in the decriminalization of adultery within the Indian context.

4.1. Landmark Supreme Court Cases Shaping Adultery Laws:

The Supreme Court has extensively deliberated on the constitutional validity of adultery provisions, ultimately leading to the monumental decision of 2018.

In *Yusuf Abdul Aziz v. State of Bombay* (1954) The Apex Court delineated adultery as a moral transgression rather than a criminal offense under the Indian Penal Code (IPC).

Upholding the constitutionality of Section 497 of the IPC, the Supreme Court in *Sowmithri Vishnu v. Union of India* (1985) endorsed the notion that this provision, though asymmetrically punitive towards men, did not contravene the equality clause of Article 14.

The culmination of these interventions materialized in the landmark decision to strike down Section 497 of the Indian Penal Code on 27 September 2018. In *Joseph Shine v. Union of India* (2018) which is marked as a watershed moment, the Supreme Court invalidated Section 497 of the IPC, citing it as violative of women's dignity and autonomy. The court elucidated that criminalizing adultery undermines individual freedom guaranteed by Article 21 and perpetuates gender stereotypes by treating women as chattel.

This unanimous ruling marked a significant departure from antiquated legal norms, signaling the court's commitment to rectifying systemic injustices entrenched within the legal framework. Chief Justice Dipak Misra's articulation of the verdict resonated with a recognition of individual autonomy and dignity within marital unions, emphasizing that while adultery ceased to be a criminal offense, its repercussions could still be addressed within civil matters such as divorce proceedings.

This decision not only symbolized the triumph of constitutional values over archaic moralistic considerations but also heralded a new era of legal jurisprudence rooted in gender justice and individual freedoms. By dismantling Section 497, the Supreme Court dismantled a legal relic that had perpetuated gender disparities and infringed upon personal liberties for over a century. Moreover, it reaffirmed the judiciary's pivotal role in safeguarding fundamental rights and steering legal discourse towards greater inclusivity and equity.

However, it's crucial to acknowledge that the decriminalization of adultery represents just one step towards achieving substantive gender equality and justice within intimate relationships. While the legal barriers have been removed, societal attitudes and cultural norms surrounding adultery continue to pose challenges. Efforts to address entrenched patriarchal attitudes, enhance access to legal remedies for victims of marital infidelity, and promote healthier relationship dynamics remain imperative in realizing the transformative potential of legal reforms.

4.2 Legal Amendments and Ramifications Post-Decriminalization are summed up as under:

The aftermath of adultery decriminalization witnessed substantial legislative adjustments:

1. The Supreme Court's nullification of Section 497 of the IPC effectively eliminated the criminal stigma associated with adultery, aligning with principles of personal autonomy, privacy, and gender equality.
2. The amendment to Section 198(2) of the Code of Criminal Procedure (CrPC) ensured gender neutrality in adultery complaints, permitting both spouses to file grievances against adulterous partners.
3. Although no longer a criminal offense, adultery retains civil implications, particularly in divorce proceedings, where it may serve as grounds for dissolution if proven to cause irretrievable marital breakdown.

Furthermore, the decision to decriminalize adultery highlights the judiciary's proactive role in safeguarding constitutional principles and promoting justice in a democratic society. It reaffirms the judiciary's commitment to upholding fundamental rights, including the right to privacy, dignity, and equality before the law. By striking down discriminatory laws and fostering a more inclusive legal environment, the judiciary contributes to the progressive transformation of Indian society, fostering a culture of respect for individual autonomy and personal choices.

However, while the decriminalization of adultery represents a significant step towards gender equality and social justice, its implications extend beyond the legal realm. It prompts a broader societal conversation about the nature of relationships, consent, and the role of the state in regulating private conduct. Efforts to address deeply ingrained cultural attitudes towards marriage and infidelity, promote healthy communication and mutual respect within relationships, and provide support for individuals navigating marital challenges are essential complements to legal reforms in ensuring meaningful societal shifts towards greater equality and empowerment.

5. Implications and Societal Shifts:

The decriminalization of adultery in India represents a seismic shift in the country's legal landscape, reflecting a broader evolution in societal attitudes towards personal autonomy and individual freedoms within intimate relationships. By removing the criminal stigma attached to extramarital affairs, the legal system acknowledges the complexities of human relationships and moves away from moral policing towards a more nuanced understanding of marital dynamics.

This legal reform not only underscores the recognition of evolving societal norms but also reflects the maturation of India's legal frameworks towards greater inclusivity and progressivism. It signifies a departure from archaic notions of morality that have historically been used to regulate personal behavior, particularly within the confines of marriage.

The primary impact of decriminalization of Adultery on society is summed up as under:

a) **Stirring Societal Discourse:**

The decriminalization of adultery in India triggered widespread discussions and debates spanning various segments of society. The implications of this legal shift reverberated across social, cultural, and legal spheres, prompting individuals to reassess traditional notions of relationships and marital fidelity.

b) **Advocates of Personal Freedom:**

Supporters of adultery decriminalization advocate it as a pivotal step towards enhancing individual autonomy and freedom within relationships. They argue that adults should have the liberty to navigate their personal lives without the looming threat of legal repercussions. This perspective emphasizes the importance of empowering individuals to make choices aligned with their own values and desires, rather than conforming to societal norms or legal mandates.

c) **Gender Equality and Empowerment:**

Proponents of decriminalization assert that it plays a crucial role in promoting gender equality by recognizing and affirming women's agency within marital relationships. By removing the asymmetrical legal burden historically placed on men for adultery, this shift acknowledges women as equal partners with the capacity to make autonomous decisions regarding their relationships. It fosters a more equitable dynamic where both spouses are held equally accountable for their actions, irrespective of gender.

d) **Concerns Over Marital Integrity:**

Conversely, critics express apprehensions regarding the potential repercussions of adultery decriminalization on the institution of marriage and family values. They contend that removing legal sanctions against adultery may inadvertently undermine the sanctity of marital bonds, leading to a breakdown of trust and fidelity within marriages. These concerns often stem from deeply ingrained cultural and religious beliefs that uphold marriage as a sacred and immutable union, central to societal stability and cohesion.

e) **Cultural and Religious Perspectives:**

The controversy surrounding adultery decriminalization reflects divergent cultural and religious viewpoints on the nature and sanctity of marriage. Critics often draw upon these traditional values and beliefs to argue against legal reforms, positing that such changes threaten to erode foundational principles that underpin

familial and societal structures. These perspectives highlight the complexities inherent in reconciling legal reforms with deeply entrenched cultural and religious norms.

f) Navigating Societal Values and Legal Reform:

The debate surrounding adultery decriminalization underscores the ongoing tension between evolving societal values and the preservation of traditional institutions. As legal reforms intersect with deeply ingrained cultural and religious beliefs, navigating this terrain requires careful consideration of the diverse perspectives and interests at play. Balancing individual freedoms with societal expectations remains a complex and ongoing endeavor as societies strive to reconcile tradition with progress.

6. The Parliamentary Committee on Home Affairs Recommends Gender-Neutral Approach to Adultery Law

The Committee's report on the BNS 2023 advocates for the reinstatement of adultery as a criminal offense. However, it proposes a significant amendment: making the law gender-neutral, thus holding both men and women accountable for the act. The report highlights the discriminatory nature of section 497 of the IPC, which previously only penalized married men, perpetuating the notion of women as property. The Committee emphasizes the sacredness of marriage in Indian society and underscores the necessity of protecting its sanctity. Ultimately, the report contends that the previous section's downfall was rooted in discrimination, and making it gender-neutral would rectify this disparity.

7. Conclusion:

The repeal of Section 497 marks a significant milestone in India's legal history, reflecting a departure from discriminatory laws and patriarchal norms. It reaffirms the nation's commitment to equality, dignity, and personal freedom under the Constitution. The Supreme Court judgments recognized the importance of treating women as equals and emphasized the need to dismantle archaic laws that perpetuate gender stereotypes. While the decision faced its fair share of controversies, it is a progressive move that aligns with the principles of a modern, inclusive society. Moving forward, it is crucial to address the civil consequences of adultery and continue fostering a society that values personal choices while upholding the sanctity of relationships. Such laws may pose a threat to erode the sanctity of marriage.

Nevertheless, preservation of the institute of marriage depends upon the personal commitment of the spouse and not as a deterrence of law.

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